

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

and

BLUE POINT BREWING COMPANY, INC.

EQUIPMENT LEASE AGREEMENT

Dated as of May 1, 2017

Town of Brookhaven Industrial Development Agency
(Blue Point Brewing Company, Inc. Facility)

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THIS EQUIPMENT LEASE AGREEMENT, dated as of May 1, 2017 (this “**Equipment Lease Agreement**”), is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738 (the “**Agency**”), and BLUE POINT BREWING COMPANY, INC., a business corporation, duly organized and validly existing under the laws of the State of New York, having its principal office at One Busch Place, St. Louis, MO 63118 (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, and Chapter 47 of the Laws of 1974 of the State, as amended (collectively, the “**Act**”), the Agency was created and is empowered under the act to undertake the Project Work as defined below and the leasing of the Facility defined below; and

WHEREAS, the Project shall consist of (i) the acquisition of a parcel of land totaling approximately 8.0 acre located at 225 West Main Street, Village of Patchogue, Town of Brookhaven, Suffolk County, New York (the “**Land**”), (ii) the demolition and renovation of interior building spaces located in an existing two-story approximately 109,200 square foot building located thereon including, but not limited to, the construction and equipping of (a) an approximately 1,200 square foot addition to the west side of the existing building to accommodate four (4) new loading dock doors, (b) an approximately 7,100 square foot portion of the space to be used as office space, (c) approximately 61,800 square foot portion of the space to be used for production, packaging, warehousing space and a tasting room, restaurant and retail space for the public (the “**Improvements**”); and (iii) the acquisition and installation of furniture, fixtures and equipment including, but not limited to, state-of-the-art craft beer manufacturing equipment including brew kettles, beer packers, keg fillers and palletizers, tables, chairs and related furnishings (collectively, the “**Equipment**”; and, together with the Land and the Improvements, the “**Facility**”), all to be leased by the Agency

to the Company in its growth and expansion as a Long Island craft brewery (the “**Project**”); and

WHEREAS, the Company has informed the Agency that it is ready to proceed with the equipping of the Facility (the “**Project Work**”); and

WHEREAS, the Company has agreed to transfer title to the Equipment to the Agency pursuant to a certain Equipment Bill of Sale, dated the Closing Date (the “**Equipment Bill of Sale**”); and

WHEREAS, the Agency contemplates it will acquire a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of June 1, 2017 or such other date as the Chairman, the Chief Executive Officer of the Agency and counsel to the Agency shall agree (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Agency contemplates it will sublease and lease the Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of June 1, 2017 or such other date as the Chairman, the Chief Executive Officer of the Agency and counsel to the Agency shall agree (the “**Lease Agreement**”), by and between the Agency and the Company; 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, which definitions are incorporated herein and made a part hereof by reference.

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, New York in furtherance of the Public Purposes of the Agency.

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 business corporation, organized and existing under the laws of the State of New York, is in good standing under the laws of the State of New York, and has full legal right, power and authority to execute, deliver and perform each of the Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

(b) To the best of Company's knowledge, neither the execution and delivery of any of the Company Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Company Documents and the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Company's Organizational Documents, 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, Organizational Documents, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

(c) The Equipment 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 transactions contemplated by this Equipment Lease Agreement shall not result in the removal of any facility or plant of any Facility occupant(s) from one area of the State to another area of the State or in the abandonment of one or more facilities or plants of the Facility occupant(s) located within the State.

(e) The Company hereby represents to the Agency that facilities and property that are primarily used in making retail sales of goods and services to customers who personally visit the Facility will not constitute more than one-third (1/3) of the total costs of the Facility, except in accordance with New York General Municipal Law (the “GML”) Section 862.

(f) 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.

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

(h) Company has received no notice of any action or proceeding pending or, to the best of the Company’s knowledge, after diligent inquiry, threatened, by or against the Company by or before any court or administrative agency that would adversely affect the ability of the Company to perform its obligations under this Equipment Lease Agreement or any other Company Document.

(i) The Company has or will have obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the Closing Date in connection with the execution and delivery of this Equipment Lease Agreement and each other Company Document or in connection with the performance of its obligations hereunder and under each Company Document.

(j) The Project Application Information was true, correct and complete as of the date submitted to the Agency, and no event has occurred or failed to occur since such date of submission which could cause any of the Project Application Information to include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make such statements not misleading.

ARTICLE III
CONVEYANCE OF THE EQUIPMENT; EQUIPPING OF THE FACILITY

Section 3.1 Agreement to Convey to Agency. The Company has conveyed or will convey has or will cause 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. 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 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 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.

(d) 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 3.4 Certificates of Completion. To 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, 2017 or such other date as may be extended by the Agency.

Section 3.5 Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the 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.

ARTICLE IV DEMISING CLAUSES AND RENTAL PROVISIONS

Section 4.1 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 4.2 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 8.1 and 10.2 hereof) and the leasehold interest or subleasehold interest created hereby shall commence on the Closing Date and the Company shall accept possession of the Equipment on the Closing Date.

(b) Except as provided in Section 10.2 hereof, the leasehold interest created hereby shall terminate at 11:59 p.m. on December 31, 2017 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 8.1 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 4.3 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 Closing Date and continuing on the first Business Day of each and every January thereafter during the term of this Equipment Lease Agreement.

(b) In addition to the payments of basic rent pursuant to Section 4.3(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 4.3, 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 4.3(a) or 4.3(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 4.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 4.3 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.

Section 4.5 No Warranty of Condition or Suitability by Agency. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE FACILITY. THE

COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

ARTICLE V SALES TAX EXEMPTION

Section 5.1 Sales Tax Exemption.

(a) The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency (i) to complete the equipping of the Facility in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for the equipping of the Facility with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in connection with the Project Work, (iv) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the equipping of the Facility, and (v) to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Company from purchasing any motor vehicle, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets.

(b) 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.

(c) 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 Facility for the purpose of effecting purchases and leases of Eligible Items so that such purchases and leases are exempt from the

imposition of Sales and Use Taxes. The Agency's authorization with respect to such Sales Tax Exemption provided to the Company and its Agents pursuant to this 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 Closing Date and expiring upon the earliest of (A) the termination of this Equipment Lease Agreement, (B) the Equipment Completion Date, (C) failure of the Company to file Form ST-340, as described in Section 5.1(g) below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 or (E) the date upon which the Company received the Maximum Company Sales Tax Savings Amount.
- (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 which shall be purchased, incorporated, completed or installed for use only by the Company and 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 or the Company), it being the intention of the Agency, the Company and the Company that the sales and use tax exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Company and 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 and 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 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 Company Sales Tax Savings realized by the Company and by each Agent in connection with the Facility shall not exceed in the aggregate the Maximum Company Sales Tax Savings Amount.

(d) Procedures for Appointing Agents. If the Company desires to seek the appointment of a contractor, a subcontractor or other party to act as the Agency's agent (an "Agent") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this 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.

(e) Form ST-60 Not an Exemption Certificate. The Company acknowledges that the executed Form ST-60 designating the Company or any Agent as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. Neither the Company nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR

DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, THE COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(f) 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 construction, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice 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.

(g) Form ST-340 Filing Requirement. The Company shall annually (currently, by each February 1st with respect to the prior calendar year) file a Form ST-340 with NYSDTF with a copy to the Agency, in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF (the "**Commissioner**"), of the value of all Company Sales Tax Savings claimed by the Company and each Agent in connection with the Facility. Should the Company fail to comply with the foregoing requirement, the Company and each Agent shall immediately cease to be agents of the Agency in connection with the Facility without any further action of the Agency and the Company shall immediately and without demand notify each Agent appointed by the Agency in connection with the Facility of such termination.

(h) 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 Company Sales Tax Savings realized by the Company and each Agent during the prior annual period ending on the preceding June 30th (or such shorter period beginning on the Closing Date and ending on the preceding June 30th), unless the Termination Date occurred prior to such June 30th. Within ten (10) days after the Termination Date, the Company shall file with the Agency a completed Sales Tax Registry which accounts for all Company Sales Tax Savings realized by the Company and each Agent during the period from the preceding July 1st to the Termination Date.

(i) 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 Company State Sales Tax Savings taken or purported to be taken by the Company, any Agent or any other person or entity acting on behalf of the Company to which the Company is not entitled or which are in excess of the Maximum Company Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company 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 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.

(j) Subject to the provisions of Section 5.1(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).

(k) 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 5.1.

Section 5.2 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Equipment Lease Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(i) If there shall occur a Recapture Event after the Closing Date, but on or before December 31, 2020, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);

(b) The term “**Recaptured Benefits**” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by the Equipment Lease Agreement including, but not limited to, the amount equal to 100% of:

(i) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Equipment Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the “**Company Sales Tax Savings**”); and

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after such notice.

(c) The term “**Recapture Event**” shall mean any of the following events:

(i) The occurrence and continuation of an Event of Default under this Equipment Lease Agreement (other than as described in clause (iv) below or in subsection (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or

(ii) The Equipment shall cease to be a “project” within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Company; or

(iii) The sale of the Facility or closure of the Facility and/or departure of the Company from the Town of Brookhaven, except as due to casualty, condemnation or force majeure as provided in subsection (e) below or as provided in Section 9.3 hereof; or

(iv) Reserved; or

(v) Any significant deviations from the Project Application Information which would constitute a significant diminution of the Company's activities in, or commitment to, the Town of Brookhaven, Suffolk County, New York; or

(vi) The Company receives Sales Tax Savings in connection with the Project Work in excess of the Maximum Company Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits; or

(vii) The Company fails to enter into the Company Lease Agreement and the Lease Agreement within twelve (12) months of the Closing Date.

(d) Reserved.

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event (as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "**Loss Event**") to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company or any of its affiliates so long as the Company or any of its affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(f) The Company covenants and agrees to furnish the Agency with written notification within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(g) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.2, from amounts received by the Agency pursuant to this Section 5.2.

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 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 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 3.3 hereof, the Company or any permitted Company of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility, so long as such additional property is properly identified by such appropriate records, including computerized records, as approved by the Agency. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur: (i) if any Event of Default has occurred or (ii) if any such removal shall adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided further, that if any damage to the Facility is occasioned by such removal, the Company agrees promptly to repair or cause to be repaired such damage at its own expense.

Section 6.3 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.

(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 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 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.

(a) 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.

(b) The Agency does not in any way represent that the insurance specified in this Equipment Lease Agreement, whether in scope or coverage or limits of coverage, is adequate or sufficient to protect the Company's business or interests.

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;

(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);

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

(iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be (A) paid to the Company for the replacement, repair, rebuilding, restoration or relocation of the Equipment as provided in Section 7.1(b) hereof or (B) applied pursuant to Section 7.1(e) hereof; and

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

(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 not repair, replace, rebuild, restore or relocate the Equipment, it shall be deemed to have exercised its option to terminate this Equipment Lease Agreement pursuant to Section 11.1 hereof. Any Net Proceeds derived from insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof and the balance shall be delivered to the Company. If an Event of Default hereunder shall have occurred and 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.

ARTICLE VIII SPECIAL COVENANTS

Section 8.1 Right to Inspect Equipment. The Agency and its duly authorized agents shall have the right at all reasonable times on reasonable notice to inspect the Equipment, including, without limitation, for the purpose of ascertaining the condition of the Environment at, on or in the vicinity of the Equipment.

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 (the “**Indemnified Parties**”) shall not be liable for and agrees to defend, indemnify, release and hold the Indemnified Parties harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses (including, without limitation, reasonable attorneys’ and experts’ fees, expenses and disbursements, incurred whether by reason of third party claims or to enforce the terms, conditions and provisions of this Lease Agreement) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Agency relating to, resulting from or arising out of: (i) 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, (ii) the Agency’s acquisition, 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 (whether by reason of third party claims or by reason of the enforcement of any provision of this Lease Agreement (including without limitation this Section) or any of the other documents delivered on the Closing Date by the Agency) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, (iii) the conditions of the Environment at, on or in the vicinity of the Equipment, (iv) the operation or use of the Equipment in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production or Disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, except in compliance with all applicable Environmental Laws, (v) the presence of any Hazardous Substance or a

Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance or waste on, at or from the Equipment, (vi) the failure promptly to undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility, required by any Environmental Law, (vii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Equipment or the ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law, (viii) a violation of any applicable Environmental Law, (ix) non-compliance with any Environmental Permit, (x) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company in this Equipment Lease Agreement, or (xi) the costs of any required or necessary investigation, assessment, testing, repair, cleanup, or detoxification of the Equipment and the preparation of any closure or other required plans; provided that any such losses, damages, liabilities or expenses of the Agency are not incurred on account of and do not result from the gross negligence or intentional or willful wrongdoing of the Indemnified Parties. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of any of the Indemnified Parties, 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.

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. The liability of the Company to the Agency hereunder shall in no way be limited, abridged, impaired or otherwise affected by (i) any amendment or modification of any of the Transaction Documents by or for the benefit of the Agency, the Company or any subsequent owners or users of the Equipment, (ii) any extensions of time for payment or performance required by any of the Transaction Documents, (iii) the release of the Company or any other person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Transaction Documents by operation of law, either by the Agency's voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Transaction Documents, (v) any exculpatory provision contained in any of the Transaction Documents limiting the Agency's recourse to any other security or limiting the Agency's rights to a deficiency judgment against the Company, (vi) any investigation or inquiry conducted by or on the behalf of the Agency or any information which the Agency may have or obtain with respect to the condition of the Environment at, or ecological condition of, the Equipment, (vii) the sale, assignment, subleasing, transfer or conveyance of all or part of the Equipment or the Company's interests and rights in, to, and under the Equipment Lease Agreement or the

termination of the Equipment Lease Agreement, but only with respect to a Release that has occurred prior to any such event, (viii) the death or legal incapacity of the Company, (ix) the release or discharge, in whole or in part, of the Company in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, or (x) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Company under the Equipment Lease Agreement, or any other Transaction Document.

(b) In the event of any claim against the Indemnified Parties 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 Company to Maintain Its Existence. The Company agrees that during the term of this Equipment Lease Agreement, it will (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Lease Agreement, and (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it, except with consent of the Agency, which consent shall not be unreasonably withheld or delayed or conditioned.

Section 8.4 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 8.5 Agreement to File Annual Statements and Provide Information. The Company shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) of the New York State General Municipal Law (the "GML"). The Company shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Company shall also provide the Agency with the information necessary for the Agency to comply with Section 874(9) of the GML. Annually, the Company shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Facility as a result of the Agency's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained. The Company further agrees 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 8.6 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 8.7 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 8.7, 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 (except the Company) 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 (except the Company), representative, contractor, or subcontractor acting on behalf of the Agency with respect to the Equipment.

Section 8.8 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 8.9 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 8.10 Security Agreements and Leasing of Equipment.

(a) 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 (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 Agency Provisions (as hereinafter defined).

(b) 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 (collectively, the "Agency Provisions"):

Section ____ . 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 [____]. 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 [] 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 8.11 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 5.1 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, without the prior written consent of the Company.

(b) The Agency and the Company from time to time 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 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 unless consented to by the Agency, which consent shall not be unreasonably withheld or delayed subject to the dates of the Agency's board meetings and which consent shall be conditioned upon the Agency being indemnified and held harmless to its reasonable satisfaction;
- (ii) the assignee or Company 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; and
- (v) the Equipment shall continue to constitute a "project" as such quoted term is defined in the Act.

(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 each 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 4.3(a) or 4.3(b) hereof;

(ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(c), 4.4, 5.1, 6.4, 6.5, 8.2, 8.4, 8.5, 8.11, 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), (ii) and (v)) 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; or

(vi) the occurrence and continuation of a Recapture Event.

(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 3.4 or 6.1 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 or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2 Remedies on Default.

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

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 4.3(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 4.3 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 forty five (45) nor more than ninety (90) days from the date such certificate is filed) in compliance with the requirements set forth in Section 11.2 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 4.2, 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 Conveyance on Termination. At the closing of any termination of the Equipment Lease Agreement pursuant to Section 11.1 hereof, the Agency shall, upon receipt of the amounts payable pursuant to Section 11.2 hereof, deliver to the Company all necessary documents (i) to terminate this Equipment Lease Agreement and to convey the Equipment to the Company, subject in each case 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 Company 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 ENVIRONMENTAL MATTERS

Section 12.1 Environmental Representations of the Company. Except as otherwise shown on Exhibit D attached hereto, the Company hereby represents and warrants to the Agency that:

(a) The Equipment is not being nor has been used in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste management or disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) Reserved.

(c) Reserved.

(d) There has been no Release or threat of a Release of any Hazardous Substance in violation of any applicable law on, at or from the Equipment and the Company has not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, licensee or occupant of the Equipment or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Equipment in violation of any applicable law.

(e) All Environmental Permits necessary for the acquisition, installation, ownership, use or operation of the Equipment have been or will be obtained and are in full force and effect.

(f) To the best of Company's knowledge no event has occurred with respect to the Equipment which, with the passage of time or the giving of notice, or both, would

constitute a violation of or non-compliance with any applicable Environmental Law or Environmental Permit.

(g) To the best of Company's knowledge there are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future acquisition, installation, ownership, use, operation, sale, transfer or conveyance of the Equipment which require any change in the present condition of the Equipment or any work, repairs, construction, containment, clean up, investigations, studies, removal or remedial action or capital expenditures in order for the Equipment to be in compliance with any applicable Environmental Law or Environmental Permit.

(h) Company has received no notice of any actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or remedy that arise out of, relate to or result from (i) conditions of the Environment at, on or in the vicinity of the Equipment, (ii) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit with respect to the Facility, (iii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Equipment or any property adjacent to or within the immediate vicinity of the Facility or (iv) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Equipment, or the acquisition, installation, ownership, use, operation, sale, transfer or conveyance thereof.

Section 12.2 Environmental Covenants of the Company. The Company hereby covenants and agrees with the Agency as follows:

(a) The Company shall acquire, install, use, operate and manage the Equipment in accordance with all applicable Environmental Laws and Environmental Permits, and shall cause all operators, tenants, subtenants, licensees and occupants of the Equipment to acquire, install, use, operate and manage the Equipment in accordance with any applicable Environmental Laws and Environmental Permits, and shall not cause, allow or permit the Equipment or any part thereof to be operated or used for the storage, treatment, generation, transportation, processing, handling, production, management or Disposal of any Hazardous Substances other than in accordance with all applicable Environmental Laws and Environmental Permits.

(b) The Company shall obtain and comply with, and shall cause all contractors, subcontractors, operators, tenants, subtenants, licensees and occupants of the Equipment to obtain and comply with, all Environmental Permits, if any.

(c) The Company shall not cause or permit any change to be made in the present or intended acquisition, installation, use or operation of the Equipment which would (i) involve the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance other than in accordance with any applicable Environmental Law, or the use or operation of the Equipment as a landfill or

waste management or disposal site or for manufacturing or industrial purposes or for the storage of petroleum or petroleum based products other than in accordance with any applicable Environmental Law, (ii) violate any applicable Environmental Law, (iii) constitute a violation or non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance.

(d) The Company shall promptly provide the Agency with a copy of all notifications which the Company gives or receives with respect to conditions of the Environment at or in the vicinity of the Equipment or any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Equipment. If the Company receives or becomes aware of any such notification which is not in writing or otherwise capable of being copied, the Company shall promptly advise the Agency of such verbal, telephonic or electronic notification and confirm such notice in writing. Furthermore, upon the Company's discovery thereof, the Company shall promptly advise the Agency in writing of: (i) the presence of any Hazardous Substance on, under or about the Equipment of which the Agency has not previously been advised in writing; and (ii) any remedial action taken by, or on behalf of, the Company in response to any Hazardous Substance on, or about the Equipment or to any environmental proceedings of which the Company has not previously been advised in writing. The Company shall also provide the Agency with copies of all reports, analyses, notices, licenses, approvals, orders, correspondences or other written materials in its possession or control relating to the condition of the Environment at the Equipment or environmental proceedings promptly upon receipt, completion or delivery of such materials.

(e) The Company shall undertake and complete all investigations, studies, sampling and testing and all removal or remedial actions necessary to contain, remove and clean up all Hazardous Substances that are or may become present at the Equipment and are required to be removed and/or remediated in accordance with all applicable Environmental Laws and all Environmental Permits. All remedial work shall be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer, (ii) pursuant to a detailed written plan for the remedial work approved by any public or private agencies or persons with a legal or contractual right to such approval, (iii) with such insurance coverage pertaining to liabilities arising out of the remedial work as is then customarily maintained with respect to such activities, and (iv) only following receipt of any required permits, licenses or approvals. In addition, the Company shall submit, or cause to be submitted, to the Agency, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, governmental comments or approvals, proposed removal or other remedial work contracts and similar information prepared or received by or on behalf of the Company in connection with any remedial work, or Hazardous Substances relating to the Equipment. All costs and expenses of such remedial work shall be paid by or on behalf of the Company, including, without limitation, the charges of the remedial work contractors and the consulting environmental engineer, any taxes or penalties assessed in connection with the remedial work and the Agency's out-of-pocket costs incurred in connection with monitoring or review of such remedial work. The Agency shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any environmental proceedings.

(f) If at any time the Agency obtains any notice or information that the Company or the Equipment, or the use or operation thereof may be in violation of an Environmental Law or in non-compliance with any Environmental Permit or standard, the Agency may require that a full or supplemental environmental inspection and audit report with respect to the Equipment of a scope and level of detail reasonably satisfactory to the Agency be prepared by a professional environmental engineer or other qualified environmental scientist acceptable to the Agency, at the Company's sole cost and expense. Said audit may, but is not required to or limited to, include a physical inspection of the Equipment, a records search, a visual inspection of the Equipment, personnel interviews, review of all Environmental Permits and the conducting of scientific testing. If necessary to determine whether a violation of an Environmental Law exists, such inspection shall also include subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance on, at or from the Equipment in violation of any applicable law, the Company shall promptly undertake and diligently pursue to completion all necessary, appropriate investigative, containment, removal, clean-up and other remedial actions required by any Environmental Law, in accordance with Section 12.2(e) above. The Company hereby consents to the Agency notifying any party under such circumstances of the availability of any or all of the environmental reports and the information contained therein. The Company further agrees that the Agency may disclose such environmental reports to any governmental agency or authority if they reasonably believe that they are required to disclose any matter contained therein to such agency or authority; provided that the Agency shall give the Company at least forty-eight (48) hours prior written notice before so doing. The Company acknowledges that the Agency cannot control or otherwise assure the truthfulness or accuracy of the environmental reports. The Company agrees that the Agency shall not have any liability whatsoever as a result of delivering any or all of the environmental reports or any information contained therein to any third party if done in good faith, and the Company hereby releases and forever discharges the Agency from any and all claims, damages, or causes of action arising out of, connected with or incidental to the delivery of environmental reports.

Section 12.3 Survival Provision. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and indemnifications of the Company contained in this Article XII shall survive any termination, conveyance, assignment, subleasing or defeasance of any right, title or interest of the Company in and to the Equipment or in, to or under the Equipment Lease Agreement.

ARTICLE XIII MISCELLANEOUS

Section 13.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication) addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

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

With a copy to:

Brookhaven Town Attorney's Office
1 Independence Hill, 2nd Floor
Farmingville, New York 11728
Attention: Annette Eaderesto, Esq.

To the Company:

Blue Point Brewery Company, Inc.
One Busch Place
St. Louis, MO 63118
Attention: Tax 202-5

With a copy to:

Anheuser-Busch, LLC
One Busch Place
Attn Tax 202-5
St. Louis, MO 63118
Attention: Tom Larson, Senior Associate General Counsel

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

Section 13.2 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 13.3 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 Mortgage or Security Agreement 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.

Section 13.4 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 13.5 Amendments, Changes and Modifications. This Equipment Lease Agreement may not be amended, changed, modified, altered or (except pursuant to Section 10.2 hereof) terminated except in a writing executed by the parties hereto.

Section 13.6 Execution of Counterparts. This Equipment Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.7 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.

Section 13.8 List of Additional Equipment; Further Assurances. Upon the Equipment Completion Date 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.

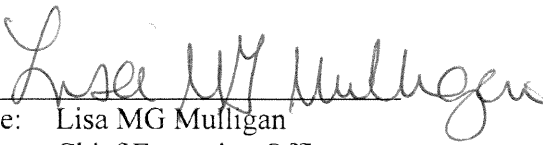
Section 13.9 Survival of Obligations. This Equipment Lease Agreement shall survive the performance of the obligations of the Company to make payments required by Section 4.3 and all indemnities shall survive the foregoing and any termination or expiration of this Equipment Lease Agreement.

Section 13.10 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 May 1, 2017.

**TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT
AGENCY**

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

**BLUE POINT BREWING
COMPANY, INC.**

By: _____
Name:
Title:

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 May 1, 2017.

**TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT
AGENCY**

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

**BLUE POINT BREWING COMPANY,
INC.**

By: Jna
Name: Thomas Larson
Title: Secretary

By: Daniel P. Kelditz
Name: Daniel P. Kelditz
Title: Assistant Secretary

EXHIBIT A

Equipment

All Eligible Items acquired and installed and/or to be acquired and installed by or on behalf of Blue Point Brewing Company, Inc. (the “Company”) pursuant to the Sales Tax Exemption in connection with the completion of the Town of Brookhaven Industrial Development Agency’s/Blue Point Brewing Company, Inc. 2017 Facility located at 225 West Main Street, Village of Patchogue, Town of Brookhaven, Suffolk County, New York, and leased to the Company pursuant to the Equipment Lease Agreement, dated as of May 1, 2017.

EXHIBIT B

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: DECEMBER 31, 2017

ELIGIBLE LOCATION:

**225 WEST MAIN STREET, VILLAGE OF PATCHOGUE, TOWN OF
BROOKHAVEN, SUFFOLK COUNTY, NEW YORK**

_____, 201_

TO WHOM IT MAY CONCERN

Re: Town of Brookhaven Industrial Development Agency
(Blue Point Brewing Company, Inc. Facility)

Ladies and Gentlemen:

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

1. Pursuant to a certain Equipment Lease Agreement, dated as of May 1, 2017 (the "Equipment Lease Agreement"), between the Agency and Blue Point Brewing Company, Inc., a business corporation organized and existing under the laws of the State of New York, having an address of One Busch Place, St. Louis, MO 63118 (the "Company"), the Agency has authorized the Company to act as its agent in connection with the Facility described therein located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the 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 Lease Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Schedule A hereto with respect to the scope of Sales Tax Exemption provided under the 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 Facility and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

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

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 “IDA Agent or Project Operator Exempt Purchase Certificate”** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes (“Form ST-123”) for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the construction, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice and 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 Facility by completing and submitting to the Company and the Agency the **Sales Tax Registry** attached hereto as **Schedule B**. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Facility (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

8. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter, it shall pay any and all applicable 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 Company Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company or the Agent failed to comply with a material term or condition to use property or services in the manner required by this Sales Tax Agent Authorization Letter or the 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 "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 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:

Schedule A

**To
SALES TAX AGENT AUTHORIZATION LETTER**

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

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

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

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

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) 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 Company Sales Tax Savings realized by the Company below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Company, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Company, by the Town of Brookhaven Industrial Development Agency ("TOBIDA"). This form and information provided pursuant hereto may be disclosed by TOBIDA in connection with the administration of the programs by TOBIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Lessee Name: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

EXHIBIT D

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES OF COMPANY

[None.]

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.

“Agent” shall have the meaning set forth in Section 5.1(a).

“Approving or Inducement/Authorizing Resolution” means the resolution adopted by the Agency on October 16, 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 Executive Director, or any member or officer of the Agency; in the case of the Company, the President or any Vice President, Secretary or Treasurer; 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, containing the specimen signature of each such person and signed on behalf of (i) the Agency by the Chairman, the Executive Director, or any member or officer of the Agency, or (ii) the Company by the President or any Vice President, Secretary or Treasurer.

“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.

“Closing Date” means May 5, 2017.

“Company” means Blue Point Brewing Company, Inc., a business corporation duly organized and validly existing under the laws of the State of New York, having its principal office at One Busch Place, St. Louis, MO 63118, its successors and assigns.

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

“Completion Date” means the date of completion of the acquisition and installation of the Equipment as certified pursuant to Section 3.4 of the Equipment Lease Agreement.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

“Construction Period” means the period beginning on the commencement of the renovation and equipping of the Facility, and ending on the Completion Date.

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

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

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

“Equipment Lease Term” means the duration of the leasehold estate created by the Equipment Lease Agreement as specified in Section 4.2 of the Equipment Lease Agreement.

“Event of Default” means 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, (i) the acquisition of a parcel of land totaling approximately 8.0 acre located at 225 West Main Street, Village of Patchogue, Town of Brookhaven, Suffolk County, New York (the “**Land**”), (ii) the demolition and renovation of interior building spaces located in an existing two-story approximately 109,200 square foot building located thereon including, but not limited to, the construction and equipping of (a) an approximately 1,200 square foot addition to the west side of the existing building to accommodate four (4) new loading dock doors, (b) an approximately 7,100 square foot

portion of the space to be used as office space, (c) approximately 61,800 square foot portion of the space to be used for production, packaging, warehousing space and a tasting room, restaurant and retail space for the public (the “**Improvements**”); and (iii) the acquisition and installation of furniture, fixtures and equipment including, but not limited to, state-of-the-art craft beer manufacturing equipment including brew kettles, beer packers, keg fillers and palletizers, tables, chairs and related furnishings.

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

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

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

“FTE” shall have the meaning set forth in Section 8.5 of the Equipment Lease Agreement.

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

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

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

“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.

“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 \$2,000,000, or such maximum dollar amount as increased by the Agency pursuant to 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.

“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 Demised Premises 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 Agency or its counsel, and (iv) purchase money security agreements, UCC-1 Financing Statements, liens for Equipment whether now existing or hereafter created or granted on any of the Equipment which are granted in writing by the Agency or its counsel.

“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.

“Prime Rate” means the rate designated by any lender from time to time as its “prime rate.”

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

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

“Sales Tax Agent Authorization Letter” shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit B – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 5.1(c) 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 C.

“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 Equipment Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Demised Premises.

“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.

“State” means the State of New York.

“State Sales and Use Taxes” shall mean sales and compensating use taxes and fees imposed by Article 28 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.

“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 Demised Premises.

“Termination Date” shall mean such date on which the Sales Tax Exemption may terminate pursuant to Section 5.1(c)(i) hereof.

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

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

“Unassigned Rights” ” means the rights of the Agency and moneys payable pursuant to and under Sections 4.3, 4.5, 5.1, 5.2, 6.4(b) and (c), 6.5, 8.2, 8.6, 8.7, 8.8, 10.2(a), 10.4, 11.2, 11.3 and 13.9 of the Equipment Lease Agreement