

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BROOKHAVEN, NEW YORK)

and

MEDFORD GARDENS, LLC

MEDFORD GARDENS HOUSING DEVELOPMENT FUND CORPORATION

LEASE AND PROJECT AGREEMENT

Dated as of November 1, 2024

Town of Brookhaven Industrial Development Agency
(**MEDFORD GARDENS, LLC 2024 Facility**)

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THIS LEASE AND PROJECT AGREEMENT, dated as of November 1, 2024 (this “**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 **MEDFORD GARDENS, LLC**, a limited liability company duly organized and validly existing under the laws of the State of New York, having its principal office at 1985 Marcus Avenue, Suite 100, New Hyde Park, New York 11042 (“**Medford Gardens**”) and **MEDFORD GARDENS HOUSING DEVELOPMENT FUND CORPORATION**, a housing development fund company duly organized and validly existing under the laws of the State of New York, having its principal office at 1985 Marcus Avenue, Suite 100, New Hyde Park, New York 11042 (“**HDFC**”; together with Medford Gardens, the “**Company**”, and each, a “**Constituent**”).

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 358 of the Laws of 1970 of the State, as amended (collectively, the “**Act**”), the Agency was created and is empowered under the act to undertake the Project Work and the leasing of the Facility defined below; and

WHEREAS, the Project shall consist of: (a) the acquisition of an approximately 6.827 acre parcel of land (the “**Land**”) located on Horseblock Road approximately 700 feet northwesterly from the intersection of the westerly side of Eagle Avenue and the northerly side of Horseblock Road, Medford, New York (SCTM #0200-700.00-01.00-004.002), (b) the construction and equipping of an approximately 69,000 square foot three-story building consisting of 67 mixed income multifamily rental apartments (consisting of 10 studios and 56 one-bedroom units for individuals who are 55 years of age or older, including 33 units targeted for households needing supportive services (within the meaning ascribed thereto in 26 USCS §42(g)(2)(B)) with rents of 30% of income, 8 units targeted for households earning up to 40% of the area median income (“**AMI**”), 8 units targeted for households earning up to 50% of AMI, 17 units targeted for

households earning up to 60% of the AMI, and one two-bedroom unit dedicated to an on-site building manager), and site improvements and amenities, including an on-site sewage treatment plant, parking, walkways, and recreation areas (the “**Improvements**”), and (c) the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; together with the Land and the Improvements, the “**Facility**”) which Facility will be leased by the Agency to the Company to be used by the Company to provide mixed income, multifamily affordable age-restricted rental apartments (the “**Project**”); and

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to the terms of a certain Company Lease Agreement, dated as of November 1, 2024 (the “**Company Lease**”), by and between the Company and the Agency; and

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

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

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to complete the Project Work.

AGREEMENT

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

ARTICLE I DEFINITIONS

All capitalized terms used in this Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A, and words and phrases set forth therein shall be interpreted as provided therein.

ARTICLE II REPRESENTATIONS AND COVENANTS

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

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

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

(c) By resolution dated October 23, 2023, the Agency determined that, based upon the review by the Agency of the materials submitted and the representations made by the Company relating to the Facility, the Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQR Act.

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

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

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

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

(h) The undertaking of the Project is anticipated to serve the Public Purpose of the State by advancing health, general prosperity and economic welfare of the people of the State and to improve their standard of living in the State.

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) Medford Gardens is a limited liability company, duly organized and validly 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 on behalf of the Company 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) HDFC is a housing development fund company duly organized and validly 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 on behalf of the Company each of the Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

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

(c) The Facility, the Project Work and the design, and operation of the Facility will conform with all applicable zoning, planning, building and Environmental Laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. 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.

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

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

(f) The transactions contemplated by this 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.

(g) The Company agrees to take any actions deemed necessary by the Agency, or its Chairman, Vice Chairman, Chief Executive Officer, or any member or officer of the Agency, counsel to the Agency or Transaction Counsel, in order to ensure compliance with Sections 2.2(e) and (f) and 9.3 of this Lease Agreement provided that the Company receives duly acknowledged written confirmation from the Agency setting forth the reason(s) for said action(s). Without

limiting the generality of the foregoing, the Company will provide the Agency with any and all information and materials describing proposed Facility occupants as necessary.

(h) The Company will sublease and lease the Facility in accordance with the provisions hereof, including, but not limited to, Section 9.3 hereof, and will cause future tenants, users and occupants of portions of the Facility (other than residential tenants of the dwelling units) to execute and deliver to the Agency a Tenant Agency Compliance Agreement in form and substance satisfactory to the Agency, prior to the commencement of such tenancy, or prior to the use or occupancy of the Facility, or a portion thereof, by such tenant, user or occupant in accordance with the provisions of Section 9.3 hereof.

(i) The sole members of Medford Gardens are Medford Gardens MM, LLC and USA WellLife Medford Gardens LLC; the sole members of Medford Gardens MM, LLC are WellLife Network Inc. and RiseWell Community Services, Inc.; the sole member of HDFC is WellLife Network Inc.

(j) 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.

(k) There is no 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 Lease Agreement or any other Company Document.

(l) The Company has 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 Lease Agreement and each other Company Document or in connection with the performance of its obligations hereunder and under each Company Document.

(m) The Project Application Information was true, correct and complete as of the date submitted or made to the Agency, and no event has occurred or failed to occur since such date of submission or presentation 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.

(n) The Company shall not use or permit any use of the Facility for any purpose or in any manner other than as approved by the Agency pursuant to the Authorizing Resolution and described herein, unless otherwise consented to by the Agency.

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

ARTICLE III
CONVEYANCE OF FACILITY SITE; PROJECT WORK AND COMPLETION

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

Section 3.2 Title Report and Survey. The Company has obtained and delivered to the Agency (i) a title report (in form and substance acceptable to the Agency) reflecting all matters of record with respect to the Land and existing Improvements, including municipal searches, and (ii) a current or updated survey of each of the Land and the existing Improvements certified to the Agency.

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

Section 3.4 Project Work.

(a) The Company agrees that, on behalf of and for the benefit of the Agency, it will promptly, diligently and expeditiously complete the Project Work in accordance with the Plans and Specifications and pay all costs and expenses therefor.

(b) The Company may revise the Plans and Specifications from time to time with the consent or approval of the Agency; provided that the Facility shall retain its overall configuration and intended purposes and shall remain a "project" as defined in the Act.

(c) Except as set forth in Section 6.2 hereof, fee or leasehold title, as applicable, to all materials, equipment, machinery and other items of Property incorporated or installed in or placed in, upon, or under the Facility shall vest in the Agency immediately upon the Company's obtaining an interest in or to the materials, equipment, machinery and other items of Property. The Company shall execute, deliver and record or file all instruments necessary or appropriate so to vest such title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(d) The Agency shall enter into, and accept the assignment of, in form and substance reasonably acceptable to the Agency and containing such exculpatory provisions as the Agency may require, such contracts as the Company may request in order to effectuate the purposes of this Section 3.4.

(e) The Company, as agent for the Agency, shall comply with all provisions of the Labor Law, the Executive Law and the Civil Rights Law of the State applicable to the completion of the Project Work and shall include in all construction contracts all provisions that shall be required to be inserted therein by such provisions. The Company shall comply with the relevant policies of the Agency with respect to such laws, which are set forth as Exhibit G attached hereto. Except as provided in the preceding two sentences, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 3.5 Identification of Equipment. All Equipment which is or may become the Property of the Agency pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency. The Agency may request, and the Company shall deliver to the Agency within ten (10) days of such request, a schedule listing all such equipment. All Property of whatever nature affixed or attached to the Land or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Lease Agreement and such Property was properly identified by such appropriate records as were approved by the Agency.

Section 3.6 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Agency within ten (10) days after the date of completion of the Facility (i) a certificate signed by an Authorized Representative of the Company in the form set forth in Exhibit J attached hereto, together with all attachments required thereunder, stating (a) that the Project Work has been completed in accordance with the Plans and Specifications therefor, and (b) that payment for all labor, services, materials and supplies used in such Project Work has been made or provided for; (ii) the Final Project Cost Budget, which budget will include a comparison with the project cost budget information listed or made in the Project Application Information and shall include all costs paid or incurred by the Company in connection with the Facility, (iii) a completed Form ST-340 Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA), and (iv) such other certificates and information as may be reasonably satisfactory to the Agency. The Company agrees to pay to the Agency, within ten (10) days of written request, any additional fees owed to the Agency as a result of an increase in the final costs of the Project Work, as evidenced by the Final Project Cost Budget, and not accounted for in the Agency's fee collected on the Closing Date. The Company shall not be entitled to any refund or credit of the Agency's fee if the Final Project Cost Budget is lower than provided in the Project Application Information. The Company agrees that the Completion Date shall be no later than November 30, 2026.

Section 3.7 Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend

any action or proceeding or take any other action involving any such contractor, subcontractor, materialman, surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's sole cost and expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding, provided that the Agency, its members, officers, directors, employees and agents shall not thereby be subjected to risk of loss, liability or expense. The Net Proceeds of any recovery from a contractor or subcontractor or materialman or other person shall be paid to the Company.

Section 3.8 Publicity. The Company hereby authorizes the Agency, without further notice or consent, to use the Company's name and logo and photographs related to the Facility in its advertising, marketing and communications materials. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, the Agency also has the right to publicize its involvement in the Project.

ARTICLE IV LEASE OF FACILITY RENTAL PROVISIONS

Section 4.1 Lease of Facility. The Agency hereby subleases and leases the Facility, consisting of the Land, the Improvements and the Equipment to the Company and the Company hereby takes the Facility from the Agency upon the terms and conditions of this Lease Agreement. The Company shall use and occupy the Facility, and shall permit the use and occupancy of the Facility, for mixed income, multifamily affordable age-restricted rental apartments as described herein and in the Project Application Information, and for no other purpose without the consent of the Agency.

Section 4.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to Sections 8.1 and 10.2 hereof), and the leasehold and subleasehold estate created hereby shall commence, and the Company shall accept possession of the Facility, on the Closing Date.

(b) Except as provided in Sections 10.2 and 11.1 hereof, the estate created hereby shall terminate at 11:58 p.m. on November 11, 2057 (the "**Lease Term**").

(c) Except as provided in Sections 8.1 and 10.2 hereof, the Agency shall not take any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's sole cost and expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

Section 4.3 Rents and Other Amounts Payable.

(a) The Company shall pay to the Agency on the Closing Date the balance of the Agency's administrative fee in the amount of \$222,678.00 (equal to the administrative fee of

\$220,078.00 plus the public hearing notice and transcript costs of \$600.00 and the insurance review costs of \$2,000.00); the Company shall pay to the Agency upon request such additional administrative fees determined by the Agency on account of increased costs of the Project. The Company shall pay basic rent for the Facility as follows: One Dollar (\$1.00) per year commencing on the Closing Date and on each and every January 1 thereafter during the term of this Lease Agreement. In addition, the Company shall pay to the Agency an annual compliance fee as established from time to time by the Agency, currently in the amount of \$2,000, together with an annual compliance fee as established from time to time by the Agency, currently in the amount of \$500, for each subtenant, occupant or user of the Facility (other than residential tenants), on or before January 1 of each year commencing January 1, 2025 and continuing through the Lease Term.

(b) In addition to the payments of basic rent pursuant to Section 4.3(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within ten (10) days of receipt of demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof, including attorneys' fees, incurred (i) by reason of the Agency's ownership, leasing, subleasing, or financing of the Facility, or (ii) in connection with the carrying out of the Agency's duties and obligations under the Agency Documents, the payment of which is not otherwise provided for under this Lease Agreement. The foregoing shall be in addition to any annual or continuing administrative or management fee imposed by the Agency now or hereafter.

(c) The Company, under the provisions of this Section 4.3, agrees to make the above-mentioned payments and all other payments due to the Agency, without set-off or deduction, 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. The payment of the Company or receipt by the Agency of a lesser amount than the rent due shall be applied to such rent due as the Agency may determine; any endorsement or statement on any check or in any letter accompanying any check or payment as rent shall not be deemed an accord and satisfaction; and the Agency may accept such check or payment without prejudice to the Agency's right to recover the balance of such rent or pursue any other remedy provided in this Lease Agreement.

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

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 general obligations of the Company, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The

Company agrees it will not (i) suspend, discontinue or abate any payment required hereunder, or (ii) fail to observe any of its other covenants or agreements in this Lease Agreement.

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 PROJECT WORK. 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

PILOT PAYMENTS; SALES TAX EXEMPTION; MORTGAGE RECORDING TAX EXEMPTION AND RECAPTURE OF BENEFITS

Section 5.1 PILOT Payments.

(a) As long as this Lease Agreement is in effect, the Company agrees to make payments in lieu of all real estate taxes and assessments (the "**PILOT Payments**") (in addition to paying all special ad valorem levies, special assessments or Special District Taxes and service charges against real property located in the, Town of Brookhaven, Patchogue-Medford Union Free School District, Suffolk County (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) (the "**Taxing Authorities**") which are or may be imposed for special improvements or special district improvements) which would be levied upon or with respect to the Facility if the Facility were owned by the Company exclusive of the Agency's leasehold interest (the "**Taxes on the Facility**"). The amounts or method of calculation of such PILOT Payments are set forth in Exhibit C attached hereto. PILOT Payments shall be allocated among the Taxing Authorities in proportion to the amount of real property tax and other taxes which would have been received by each Taxing Authority if the Facility was owned by the Company exclusive of the Agency's leasehold interest.

(b) After the effective date of this Lease Agreement and until the provisions of paragraph 5.1(c) become effective, the Company shall pay to the Taxing Authorities the Tax amounts as when due in accordance with tax bills from the Taxing Authorities for the tax periods prior to the 2025/2026 Tax Year, including interest and penalties for late payments.

(c) Commencing with the 2025/2026 Tax Year, the Company shall pay, as PILOT Payments, the amounts set forth on Exhibit C attached hereto and made a part hereof.

(d) The Company shall pay, or cause to be paid, the amounts set forth in subsections (a), (b) and (c) above, as applicable, after receipt of invoices for PILOT Payments (a "**PILOT Invoice**") from the Agency or tax bills from the Taxing Authorities, as the case may be. Failure to receive a PILOT Invoice or a tax bill shall not relieve the Company of its obligation to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate PILOT Invoice or a tax bill, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Agency and the Taxing Authorities and to have such invoice or bill issued, and thereafter to make payment of the same no later than the due dates provided herein or therein. PILOT Payments shall be made directly to the Agency. PILOT Payments made after the due date(s) as set forth in the applicable PILOT Invoice or herein shall accrue interest (and penalties) at the rates as provided in the GML, including Section 874(5) thereof, which currently provides for an initial penalty of five percent (5%) of the amount due and an additional penalty of one percent (1%) per month on payments more than one month delinquent. In addition, for any PILOT Payment made after the date due, the Company shall pay to the Agency a late fee(s) in accordance with the policy of the Agency then in effect. Anything contained in this paragraph (d) to the contrary notwithstanding, the Company shall have the obligation to make all annual payments required by this paragraph (other than payments of penalties, if any) in two equal semi-annual installments on or prior to January 31 and May 31 of each year of the Lease Term or on such other due dates as may be established from time to time by the Agency during the Lease Term, provided, however, the annual payments required under this paragraph (other than payments of penalties, if any) based upon Shelter Rents shall be paid in one installment on or before May 31 of each year or such other dates as may be established from time to time by the Agency, and further provided that the first year in which the annual installments are based upon Shelter Rents, that is the 2026/2027 Tax Year, shall be based upon the good faith projections for such year submitted by the Company to the Agency by April 1 immediately preceding the PILOT Payment due date for such year and acceptable to the Agency or, if such projections are not timely submitted to the Agency or are unacceptable to the Agency, based upon the projections of the Agency in its sole and absolute discretion.

(e) During the Lease Term, the Company shall continue to pay to the Taxing Authorities all special ad valorem levies, special assessments, special district taxes, and service charges levied (or would be levied except for the Agency's leasehold interest) against the Facility for special improvements or special district improvements.

(f) In the event that any structural addition shall be made to the building or buildings included in the Facility subsequent to the Completion Date, or any additional building or improvement shall be constructed on the Land (such structural additions, buildings and improvements being referred to hereinafter as "**Additional Facilities**"), the Company agrees to make additional payments in lieu of taxes to the Agency in amounts equal to the product of the

then current ad valorem tax rates which would be levied upon or with respect to the Additional Facilities by the Taxing Authorities if the Additional Facilities were owned by the Company exclusive of the Agency's leasehold interest times the assessment or assessments established for that tax year by the respective Taxing Authorities having appropriate assessing jurisdiction. All other provisions of this Section 5.1 shall apply to this obligation for additional payments.

(g) In the event that the Agency's leasehold interest in the Facility or any part thereof terminates or expires at such time in reference to any taxable status date as to make it difficult or impossible to place such Facility or part thereof on the tax rolls of the Taxing Authorities, or appropriate special districts, as the case may be, by such taxable status date, the Company hereby agrees to pay, at the first time taxes or assessments are due following the taxable status date on which such Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Facility or part thereof had it been on the tax rolls from the time of the termination or expiration of the Agency's leasehold interest until the date of the tax rolls following the taxable status date as of which such Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any amounts previously paid pursuant to this Section 5.1 by the Agency or the Company to the respective Taxing Authorities relating to any period of time after the date of termination of the Agency's interest. The provisions of this subsection (g) shall survive the termination or expiration of the Lease Agreement. Any rights the Company may have against its respective designees are separate and apart from the terms of this subsection (g), and this subsection (g) shall survive any transfer from the Agency to the Company.

(h) In the event the Facility or any part thereof is declared to be subject to taxation for taxes or assessments by an amendment to the Act or other legislative change or by a final judgment of a court of competent jurisdiction, the obligations of the Company under this Section 5.1 shall, to such extent, be null and void.

(i) In the event the Company shall enter into a subsequent payment-in-lieu-of-tax agreement or agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities in the jurisdiction of which the Facility is located, the obligations of the Company under this Section 5.1, which are inconsistent with such future agreement or agreements, shall be superseded and shall, to such extent, be null and void.

(j) As long as this Lease Agreement is in effect, the Agency and the Company agree that (i) the Company shall be deemed to be the owner of the Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, administrative or judicial review of an assessment of the real estate with respect to the Facility and of the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Agency, at the request of the Company, shall request the Assessor of the Town of Brookhaven, or any other assessor having jurisdiction to assess the Facility, to take into consideration the value of surrounding properties of like character when assessing the Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility and the Additional Facilities is reduced as a result of any such administrative or judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Facility and the Additional Facilities exclusive of the Agency's leasehold interest therein, such complaining party shall not be entitled to receive a refund or refunds of the

PILOT Payments paid pursuant to this Lease Agreement and the PILOT Payments set forth on Exhibit C hereto shall not be reduced. In no event shall the Agency be required to remit to the Company or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Facility (or any part thereof) due to a certiorari review. If the Company receives a reduction in assessment, the Company acknowledges that it shall look solely to the Taxing Authorities for repayment or for a credit against the first payment(s) of Taxes on the Facility which will be due after the Facility is returned to the tax rolls. The Company hereby agrees that it will notify the Agency if the Company shall have requested a reassessment of the Facility or a reduction in the taxes on the Facility or shall have instituted any tax certiorari proceedings with respect to the Facility. The Company shall deliver to the Agency copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company in connection with any reassessment of the Facility, reduction of taxes with respect to the Facility or tax certiorari proceedings with respect to the Facility.

(k) The Company, in recognition of the benefits provided under the terms hereof, including, but not limited to, the PILOT Payments set forth in Exhibit C hereto and for as long as the Lease Agreement is in effect, expressly waives any rights it may have for any exemption under Section 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title 1 of Article 18-A of the GML) with respect to the Facility. The Company, however, reserves any such rights with respect to the Additional Facilities as referred to in subsection (f) hereof and with respect to the assessment and/or exemption of the Additional Facilities.

Section 5.2 Sales Tax Exemption.

(a) No Sales Tax Exemption. Section 874 of the Act exempts the Agency from paying certain Sales and Use Taxes. The Company has not applied to the Agency for any Sales Tax Exemptions, and the Agency has not authorized the Company to act as the Agency's agent in connection with the Facility for the purpose of effecting purchases and leases of eligible items so that such purchases and leases would be exempt from the imposition of Sales and Use Taxes. The Company acknowledges that no Sales Tax Exemption is available, and the Company (and the Constituents) shall not claim any Sales Tax Exemption, under this Lease Agreement.

(b) 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, and with a copy to the Agency, in a manner consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF (the "**Commissioner**"), stating that the value of all Company Sales Tax Savings claimed by the Company in connection with the Facility during the previous calendar year is zero.

(c) 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 GML Sections 875(1) and (3) (the "**Special Provisions**"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Lease Agreement and the Special Provisions, the Special Provisions shall control.

(ii) The Company acknowledges and agrees that pursuant to GML 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. 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 NYSDTF to assess and determine State Sales and Use Taxes due from the Company under Article 28 of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(d) In the event that the Company or any agent shall utilize the Sales Tax Exemption, 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).

(e) The Company shall make available to the Agency and/or the Independent Accountant within ten (10) days after the Agency's request, at times and places in the Town of Brookhaven reasonably acceptable to the Agency, 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 inquiries by the Agency and/or the Independent Accountant, as shall be reasonably necessary or convenient (y) to indicate in reasonable detail those costs for which the Company or any agent shall have claimed or 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 5.2.

Section 5.3 Mortgage Recording Tax Exemption. Section 874 of the Act exempts the Agency from paying certain mortgage recording taxes except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the Tax Law. The Agency has not granted to the Company any exemption from paying mortgage recording taxes for any Mortgages (the "**Mortgage Recording Tax Exemption**"). The Company acknowledges that no Mortgage Recording Tax Exemption is available, and the Company (and the Constituents) shall not claim any Mortgage Recording Tax Exemption, under this Lease Agreement.

Section 5.4 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this 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 on or after the Closing Date, but on or before December 31, 2032, 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);

(ii) If there shall occur a Recapture Event on or after January 1, 2033 but on or before December 31, 2038, 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, seventy-five percent (75%) of the Recaptured Benefits;

(iii) If there shall occur a Recapture Event on or after January 1, 2039 but on or before December 31, 2044, 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, fifty percent (50%) of the Recaptured Benefits;

(iv) If there shall occur a Recapture Event on or after January 1, 2045 but on or before December 31, 2050, 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, twenty-five percent (25%) of the Recaptured Benefits; and

(v) If there shall occur a Recapture Event on or after January 1, 2051, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(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 Lease Agreement including, but not limited to, the amount equal to 100% of:

(i) the Mortgage Recording Tax Exemption (if any); and

(ii) Sales Tax Exemption savings realized by or for the benefit of the Company (if any), including any savings realized by any agent pursuant to the Lease Agreement in connection with the Facility (if any) (the “**Company Sales Tax Savings**”); and

(iii) real property tax abatements granted pursuant to Section 5.1 hereof (i.e., Taxes on the Facility less PILOT Payments) (the “**Real Property Tax Abatements**”);

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 of an Event of Default under this Lease Agreement (other than as described in clause (v) below or in subsections (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or

(ii) The Facility 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 or condemnation as provided in subsection (e) below or as provided in Section 9.3 hereof; or

(iv) The exercise of the option to terminate this Lease Agreement pursuant to Section 11.1 below; or

(v) Failure of the Company to create or cause to be maintained the number of FTE jobs at the Facility as provided in Section 8.11 of this Lease Agreement, which failure, in the sole judgment of the Agency, is not reflective of the business conditions of the Company or the subtenants of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or

(vi) Any deviations from the Project Application Information which, in the sole judgment of the Agency, would constitute a significant diminution or alteration of the Company's activities in, or commitment to, the Town of Brookhaven, Suffolk County, New York.

(d) Provided, however, if a Recapture Event has occurred due solely to the failure of the Company to create or cause to be maintained the number of FTEs at the Facility as provided in Section 8.11 hereof in any calendar year but the Company has created or caused to be maintained at least 90% of such required number of FTEs for such calendar year, then in lieu of recovering the Recaptured Benefits provided above, the Agency may, in its sole discretion, adjust the PILOT Payments due hereunder on a pro rata basis so that the amounts payable will be adjusted upward retroactively for such calendar year by the same percentage as the percentage of FTEs that are below the required FTE level for such calendar year. Such adjustments to the PILOT Payments may be made each calendar year until such time as the Company has complied with the required number of FTEs pursuant to Section 8.11 hereof.

(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 taking or condemnation by governmental authority of all or part of the Facility, or (ii) 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, and to cause to be furnished to the Agency by each subtenant, occupant and user of the Facility (other than residential tenants), with written notification in such detail as the Agency may require, (i) within thirty (30) days of the end of each calendar year, and at such other times as the Agency may direct, the number of FTEs located at the Facility for such calendar year or such other periods as the Agency may

direct, and (ii) 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 two percent (2%) 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 Company shall pay to the Agency upon demand and the Agency shall be entitled to deduct from the amounts received by the Agency, all expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.4.

ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Facility by Company.

(a) The Company shall not abandon the Facility or cause or permit any waste to the Improvements. During the Lease Term, the Company shall not remove any material part of the Facility outside of the jurisdiction of the Agency and shall (i) keep the Facility or cause the Facility to be kept in a safe condition; (ii) make all necessary repairs and replacements to the Facility to maintain the Facility in good, neat and sound economic condition, and working order, whether such repairs or replacements are ordinary or extraordinary; and (iii) operate the Facility in a sound and economic manner.

(b) The Company shall not make any additions, modifications or improvements to the Facility or any part thereof, including without limitation, any changes to the footprint of the Facility, any additions expanding the square footage of the Facility (including the addition of any stories whether above or below ground), or any additions, modifications or improvements to the Facility which will materially and/or adversely affect the structural integrity or value of the Facility, without the prior written consent of the Agency which consent shall not be unreasonably withheld or delayed. All such additions, modifications or improvements made by the Company after the date hereof shall become a part of the Facility and the Property of the Agency. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to or an interest in such Property.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 3.5 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility, 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 to and shall promptly repair or cause to be repaired such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges.

(a) Subject to the Real Property Tax Abatements as provided hereunder, the Company agrees to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost which may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, PILOT Payments and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Facility or any part or component thereof, or the rental or sale of the Facility or any part thereof, and any taxes levied upon or with respect to the income or revenues of the Agency from the Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges (other than PILOT Payments). In the event of any such proceedings, the Company may permit the taxes, assessments or other charges (but in no event the PILOT Payments) so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings and (ii) the Company shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency.

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

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

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

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

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

(c) Insurance protecting the Agency (and other Indemnified Parties (defined below)), and the Company and each of its members as named insureds, and each permitted sublessee, user or occupant, against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 8.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; business comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 combined single limit or equivalent protecting the Agency (and other Indemnified Parties) and the Company, against any loss, liability or damage for personal injury, including bodily injury or death, and property damage; and umbrella/excess liability coverage, in an amount not less than \$5,000,000 per occurrence, protecting the Agency (and other Indemnified Parties) and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage; abuse and molestation liability insurance of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; professional liability insurance of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; from and after the placement of any sewage treatment plant in operation, pollution liability insurance of not less than \$1,000,000 combined single limit; if requested by the Agency, environmental site liability coverage shall be provided to cover pollution exposures that may be present, anticipated or suspected due to the project location or conditions; the type and the limits of such insurance to be provided will be

determined by the Agency. Except as expressly provided above, the foregoing coverages shall also be in effect during the Construction Period.

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

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

(ii) Comprehensive general liability providing coverage for:

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

Such insurance shall have a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. The general liability coverage provided shall not contain: (A) any limitation or exclusion related to residential construction that would relate to the Project; (B) any limitation or exclusion related to the number of stories that a contractor may work at as it relates to the Project; (C) any limitation or exclusion related to the location of the Project; (D) any limitation or exclusion related to subsidence; (E) any limitation or exclusion related to "Action Over" claims, including claims arising from injury to employees, subcontractors, casual and temporary labor; and (F) a so called, "Hammer Clause," including a provision permitting the insurer to compel the settlement of a claim, however, accomplished, or to deny coverage if certain policy provisions are not fulfilled.

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

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

(v) At the discretion of the Agency, a separate Owners Contractors Protective (OCP) policy may be required of the General Contractor, protecting the interest of the Agency during any construction.

If permitted by the Agency, a combined Tenant (Owner)/General Contractor program may be utilized during Construction Period for the General Liability and Umbrella/Excess coverage subject to all of the above coverages requirements. If this option is approved by the Agency and is elected by the Company, the Agency may require an increased limit of the Umbrella/Excess coverage.

Each subcontractor of every tier shall provide the insurance required under Section 6.4(d)(i), (ii), (iii) and (iv) and name the Agency as an additional insured under the insurance required under Section 6.4(d)(ii), (iii) and (iv).

The insurance prescribed by (ii), (iii), (iv) and (v) of this Section 6.4(d) shall be provided during the Construction Period and for one (1) year following completion of the contractor's work. All such insurance shall provide additional insured status for the Agency and the Company on a primary/non-contributory basis to the Company, the Agency and all other Indemnified Parties; using ISO Additional Insured Endorsement CG 2010 04/13, or CG 2038 04/13 and CG 2037 04/13, or equivalents, may be used. All parties shall be specifically identified as additional insureds on the endorsements provided. All insurance provided under this Section 6.4(d) shall contain waivers of subrogation in favor of the Company, the Agency and all other Indemnified Parties.

The General Contractor shall enter into an executed contract with each subcontractor, and each subcontractor of any tier shall enter into an executed contract with each of its sub-subcontractors, prior to such contractor undertaking any work with respect to the Project, and each such contract shall contain and impose upon the contractor as an indemnitor and insured the indemnification provisions and insurance requirements of this Lease Agreement with respect to the construction and require that the General Contractor, the Company, the Agency and all Indemnified Parties be named as additional insured on a primary/noncontributory basis, including completed operations.

(e) A policy or policies of flood insurance in an amount not less than the greater of \$1,000,000 or the amount that may be required by any Lender or the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Agency that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

(f) Such other insurance on or in connection with the Facility as the Agency may require.

(g) Notwithstanding the foregoing provisions of this Section 6.4, if the Company maintains, or is required to maintain whether by contract, applicable law or otherwise, more extensive or expansive insurance, including by example, insurance covering additional risks, insurance with greater limits, or insurance with less deductibles or self-insured retentions, then the Company shall maintain same for the benefit of the Agency, and the foregoing provisions shall be considered amended thereby, provided, however, such additional insurance shall not be construed to limit or obviate the insurance required above.

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

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall at all times be in form and substance satisfactory to the Agency, and procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State, selected by the entity required to procure the same, and approved by the Agency. The company issuing the policies required by Section 6.4(a), (b), (c) and (d) shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance shall be written with deductible amounts acceptable to the Agency. All policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days' prior written notice to the Agency of the restriction, cancellation or modification thereof and contain waivers of subrogation in favor of the Company, the Agency and all Indemnified Parties. The policies evidencing the insurance required by Section 6.4(c) hereof shall name the Agency and all Indemnified Parties as scheduled additional insureds on a primary/non-contributory basis, including completed operations. The policies evidencing the insurance under Section 6.4(d)(ii), (iii) and (iv) shall name the Agency and the Company as additional insureds. The coverages provided under Section 6.4 shall not contain any exclusions or limitations related to construction or renovation activities, or so-called "Action Over" claims, including claims which result in injury to employees, contractors, subcontractors, or casual or temporary labor. The Agency acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Company to any Lender pursuant to the Mortgage, and the Agency consents thereto. The Agency hereby acknowledges that upon request of any Lender, the Company will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under any Mortgage) to any Lender the policies of insurance required under Section 6.4(a), so and in such manner and form that any Lender shall at all times, upon such request and until the payment in full of any Loan, have and hold said policies and the Net Proceeds thereof as collateral and further security under any Mortgage for the payment of any Loan. The policies required under Section 6.4 shall contain appropriate waivers of subrogation, shall provide that such coverages shall be primary, irrespective of any other insurance that may be maintained by the Company, the Agency or otherwise, and shall be specific to the Facility, and no other locations, and non-contributory.

(b) The policies of insurance required by Section 6.4(a), (b), (c) and (e) hereof shall be deposited with the Agency on or before the Closing Date. The policies of insurance required by Section 6.4(d) as well as up to date policies of insurance required by Section 6.4(a), (b), (c) and (e) hereof shall be delivered to the Agency on or before the commencement of any Construction Period. The Company shall deliver to the Agency before the first Business Day of each calendar year thereafter satisfactory evidence, 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. At least thirty (30) days prior to the expiration or termination of each such policy or policies, the Company shall furnish to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that

such policy or policies have been renewed or replaced or are no longer required by this Lease Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Lease Agreement as the Agency may from time to time reasonably require. While certificates are acceptable for deposit with the Agency on the Closing Date and periodically thereafter as set forth above, the Company shall provide to the Agency within ten (10) days after demand by the Agency the insurance policies.

(c) The insurance requirements under Section 6.4 and this Section 6.5 shall not limit, abridge, or modify the Company's obligations under this Lease Agreement, including under Section 8.2 hereof to indemnify and hold harmless the Agency and the Indemnified Parties from and against certain damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses, as more fully set forth in Section 8.2.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) and (e) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Section 6.4(b), (c), (d) and (e) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.7 Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails, beyond the expiration of any applicable notice and cure periods, (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, PILOT Payment, assessment or other governmental charge required to be paid by Section 6.3 hereof (unless contested in accordance with the provisions of Section 6.3), (ii) to maintain any insurance required to be maintained by Sections 6.4 or 6.5 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Facility or any part thereof (unless contested in accordance with the provisions of Section 8.8(b) hereof), or (v) to pay any other amount or perform any act required to be paid or performed by the Company hereunder, the Agency may pay or cause to be paid such tax, PILOT Payment, assessment or other governmental charge, premium for such insurance or any such other payment, or may perform any such act. No such payment shall be made or act performed by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency, except, however, in the case of the failure to maintain any insurance required to be maintained by Sections 6.4 or 6.5 hereof, the Agency may make such payment or perform such act at any time, and in the case of any tax, assessment or governmental charge or the amounts specified in clauses (i) and (iv) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Lease Agreement, unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Agency for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon, from the date of payment of such amount, expense

or cost by the Agency at a rate equal to two percent (2%) plus the Prime Rate, but in no event higher than the maximum lawful prevailing rate.

ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Facility.

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

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement, including, without limitation, the PILOT Payments (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated);

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

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

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

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

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

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

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

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

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance

with the terms of the applicable contracts and shall automatically become a part of the Facility as if the same were specifically provided herein.

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

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

Section 7.2 Condemnation.

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

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement including, without limitation, the PILOT Payments (whether or not the Facility is repaired, replaced, rebuilt, restored or relocated or Substitute Facilities are acquired);

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

(iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be (A) paid to the Company or the Lender, as applicable, for the replacement, repair, rebuilding, restoration or relocation of the Facility or acquisition of Substitute Facilities as provided in Section 7.2(b) hereof or (B) applied pursuant to Section 7.2(e) hereof; and

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

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

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

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

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

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

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

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

(e) If the Company shall not repair, replace, rebuild or restore the Facility or acquire Substitute Facilities, it shall be deemed to have exercised its option to terminate this Lease Agreement pursuant to Section 11.1 hereof. Any Net Proceeds derived from the Condemnation shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof and any balance remaining thereafter shall belong to the Company.

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

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

ARTICLE VIII
SPECIAL COVENANTS

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

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company and any agents of the Company), and employees (the “**Indemnified Parties**”) shall not be liable for and agrees to protect, defend, indemnify, save, release and hold harmless the Indemnified Parties 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 Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Facility or the Land, (ii) the Project Work or the Agency’s acquisition, owning, leasing and subleasing of the Facility, including, without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, 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 in connection herewith) 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 Facility, (iv) the Project Work or the operation or use of the Facility 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 Facility, (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 Project Work, the condition of the Facility 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 misrepresentation or inaccuracy in any representation or warranty or a breach of or failure to perform any covenant made by the Company in this Lease Agreement or

the Company Lease, or (xi) the costs of any required or necessary investigation, assessment, testing, repair, cleanup, or detoxification of the Facility 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.

(b) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, the payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Indemnified Parties, 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 Facility, (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 Facility, (vii) the sale, assignment or foreclosure of any mortgage relating to all or any part of the Facility, but only with respect to a Release that has occurred prior to any such event, (viii) the sale, assignment, subleasing, transfer or conveyance of all or part of the Land or the Facility or the Company's interests and rights in, to, and under the Lease Agreement or the termination of the Lease Agreement, but only with respect to a Release that has occurred prior to any such event, (ix) the death or legal incapacity of the Company, (x) 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 (xi) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Company under the Lease Agreement, or any other Transaction Document.

(c) 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.

(d) Notwithstanding any provisions of this Section 8.2, the Agency retains the right to defend itself, and in any such defense of itself, the Agency may select its own counsel, and any and all costs of such defense, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, shall be paid by the Company.

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

Section 8.3 Company to Maintain Its Existence. The Company covenants and agrees that at all times during the Lease Term, it will (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Lease Agreement, (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it, and (v) not change, directly or indirectly, however accomplished, whether in a single transaction or in a series of related or unrelated transactions, more than 49% of the ownership or control of the Company or sell or transfer, directly or indirectly, however accomplished, whether in a single transaction or in a series of related or unrelated transactions, more than 49% of the equity interests in the Company, except with consent of the Agency and after prior notice thereof to the Agency. The Agency acknowledges the right of USA WellLife Medford Gardens LLC (the "Investor Member"), the Investor Member pursuant to the Company's Amended and Restated Operating Agreement, dated November 1, 2024 (the "Operating Agreement"), a true, accurate and complete copy of which has been provided to the Agency, to (i) transfer its non-managing member interests in the Company in accordance with the Operating Agreement, and to transfer ownership interest in the Investor Member, without the consent of the Agency, provided the Investor Member delivers to the Agency prior written notice thereof, including the identity and address of the transferee, and (ii) remove and replace the managing member of the Company in accordance with the Operating Agreement provided that the Agency, in advance thereof, consents thereto which consent shall not be unreasonably withheld or delayed.

Section 8.4 Qualification in State. The Company throughout the Lease Term 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 NYSDTF 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 GML as provided in Section 5.2(b) hereof. The Company shall submit a copy of such annual statement to the Agency at the time of filing with NYSDTF. The Company shall also provide the Agency with the information the Agency deems necessary for the Agency to comply with Section 874(9) of the GML. Annually, and upon request from time to time, 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 to provide and certify, and cause to be provided and certified by each permitted sublessee, user and occupant (other than residential tenants), as and when requested (x) its New York State Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return (currently, Form NYS-45), including the attachments thereto (the Company, and each sublessee, user and occupant, shall redact employees' social security numbers), for the fourth quarter of such calendar year (if such form shall be superseded or cease to be used, the Agency may designate another form or other method by which to obtain such information reported thereon), together with a detailed analysis satisfactory to the Agency of the full time equivalency employment, and (y) such information concerning the Company and each sublessee, user and occupant, its finances, its operations, its employment and its affairs as the Agency deems necessary, including to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or Company Documents. The information required under this Section shall be provided within thirty (30) days following written request from the Agency. The Company shall cause any and all sublessees, users and occupants at the Facility to comply with the requirements of this Section 8.5, including by requiring each such sublessee, user and occupant (other than a residential tenant) to enter into a Tenant Agency Compliance Agreement.

Section 8.6 Books of Record and Account; Financial Statements. The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with GAAP, of all transactions and events relating to the business and financial affairs of the Company.

Section 8.7 Compliance with Orders, Ordinances, Etc.

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

(b) Notwithstanding the provisions of subsection (a) above, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a) (except those requirements pertaining to the environment, health or safety) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by

failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, or the Agency, or any of its members, directors, officers, agents, or employees, may be threatened with a fine, liability, expense or imprisonment, or the Agency may be subject to loss, damage or expense, in which event the Company shall promptly take such action with respect thereto and provide such security as shall be satisfactory to the Agency. If at any time the then existing use or occupancy of the Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Company shall use its best efforts not to cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency.

Section 8.8 Discharge of Liens and Encumbrances.

(a) The Company, throughout the Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof, without the Agency's consent, including without limitation, by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) above, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company in writing that by nonpayment of any such item or items, the Facility or any part thereof may be subject to loss or forfeiture. In the event of such notice 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 with respect to any depreciable property comprising a part of the Facility and to any investment credit with respect to any part of the Facility.

Section 8.10 Employment Opportunities; Notice of Jobs. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which the Company is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300), as superseded by the Workforce Innovation and Opportunity Act (PL 113-128), in which the Facility is located (collectively, the "**Referral Agencies**"). The Company also agrees, and shall cause any and all sublessees, occupants and users to, where practicable and except as otherwise prohibited under collective bargaining contracts or agreements, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 8.11 **Employment at the Facility.** The Company hereby agrees to create and maintain at all times at the Facility: seven (7) full time equivalent employees as of December 31, 2026 and thereafter throughout the Lease Term, calculated on the basis of 35 hours per week who are employees of the Company or any subsidiary or affiliates of the Company, or any consultants, contractors or subcontractors of the Company, or any subsidiary or affiliates of the Company, whose place of employment or workplace is located at the Facility (including the full time equivalent employees of all tenants at the Facility) (“FTE”).

Section 8.12 **Annual Compliance Certificate and Financial Statements.** The Company shall deliver to the Agency each year no later than February 1st a certificate signed by an Authorized Representative of the Company in the form attached hereto as Exhibit K, together with all attachments referenced therein. The Company shall also deliver to the Agency, within thirty (30) days after receipt thereof, but in any event within one hundred twenty (120) days after the end of the Company’s fiscal year, true, accurate and complete copies of its annual audited or, if annual audited financial statements are not prepared for the Company, reviewed financial statements for such fiscal year, prepared in accordance with GAAP, including balance sheets with related statements of income and retained earnings and statements of cash flows of the Company, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, together with all supplemental information and an unqualified opinion, prepared by independent certified public accountants selected by the Company and who are approved by the Agency, which such approval shall not be unreasonably withheld.

Section 8.13 **Compliance with Labor Law Section 224-a.**

(a) The Agency hereby informs the Company that, effective January 1, 2022, certain construction work done under contract in connection with financial assistance from the Agency may be subject to the requirements of Section 224-a of the Labor Law of the State, including but not limited to the requirement that such construction shall be subject to prevailing wage requirements of Section 220 and 220-b of the Labor Law of the State. In addition, such construction work may be required by Section 224-a of the Labor Law to comply with the objectives and goals of minority and women-owned business enterprises pursuant to Article Fifteen-A of the Executive Law and service-disabled veteran-owned business pursuant to Article Seventeen-B of the Executive Law.

(b) The Company represents and warrants that Project is not, and at all times during the Lease Term shall not be, a “covered project” with the meaning of Labor Law Section 224-a, and the regulations and requirements promulgated thereunder, and is therefore exempt in all respects from compliance with Labor Law Sections 224-a, 224-b and 224-c.

Section 8.14 **Residential Tenants.**

(a) The Company represents and warrants that: (i) upon completion of the acquisition, construction and equipping of the Facility, the Facility shall be operated and maintained as a one hundred percent (100%) qualified low-income housing project with the meaning ascribed thereto in 26 USCS §42 (together with the regulations promulgated thereunder, the “**Tax Credit Law**”) pursuant to a certain New York State State and Federal Low-Income Housing Tax Credit Regulatory Agreement, dated November 22, 2024 (the “**Regulatory Agreement**”), by and

between the New York State Division of Housing and Community Renewal (“DHCR”) and the Company, which such Regulatory Agreement modified the allocation of the dwelling units amongst the Area Median Gross Incomes for the Nassau-Suffolk region as more particularly set forth at paragraph (c) below, (ii) a true, accurate and complete copy of the Regulatory Agreement has been provided to the Agency, (iii) if, at any time, the Regulatory Agreement shall be amended, modified or terminated, the Company shall deliver to the Agency with ten (10) days thereafter, a true, accurate and complete copy of such amendment or modification or satisfactory evidence of such termination; (iv) the Company shall fully and faithfully observe and perform the Regulatory Agreement, as amended; (v) the Company shall provide to the Agency within ten (10) days (x) after issuance true, accurate and complete copies of each compliance report submitted by or on behalf of the Company under, in connection with or related to any of the Regulatory Agreement, (y) after submission, true, accurate and complete copies of certifications and other information and documentation submitted to DHCR or any other governmental authority pertaining to the Facility or its compliance with the Tax Credit Law or the Regulatory Agreement, as amended, and (z) after request such additional information and documentation as the Agency may require.

(b) The Company shall deliver to the Agency after January 1, but no later than April 1 of each year a Shelter Rents Certificate signed by an Authorized Representative of the Company and duly acknowledged, in the form attached hereto as Exhibit M, together with all attachments referenced therein, pertaining to the Shelter Rents for the previous calendar year. The Company shall also deliver such substantiation of the Shelter Rents as the Agency may require within ten (10) business days after notice from the Agency. In addition to any other rights and remedies available to the Agency, the failure of the Company to provide such certificate or substantiation when due shall render the Facility ineligible for the benefits of the real property tax abatement for the current calendar year and in such event, the Company shall pay to the Agency within ten (10) days after demand, the amount equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Facility by the Taxing Authorities if the Facility were owned by the Company exclusive of the Agency’s leasehold interest times the assessment or assessments established for that current Tax Year by the respective Taxing Authorities having appropriate assessing jurisdiction.

(c) If at time the Regulatory Agreement shall cease to be in effect, whether by termination, expiration or otherwise, then thereafter during the Lease Term,

(i) (A) one (1) dwelling unit shall be occupied by a project superintendent;

(B) thirty three (33) dwelling units at the Facility shall be supported by the Empire State Supportive Housing Initiative (the “Supportive Units”) of which (1) nineteen (19) of the Supportive Units shall be occupied (but not on a transient basis) by individuals who are age 55 or over whose income per unit based upon family size (provided that for purposes of determining the income of a unit, a unit which does not have a separate bedroom shall be deemed to have one occupant, and a unit which has one or more separate bedrooms shall be deemed to have one and one-half occupants for each separate bedroom), does not exceed 30% of the Area Median Gross Income for the Nassau-Suffolk region (“AMGI”) for the current year (or if the AMGI shall cease to be issued, then such other index as the Agency may select) and the gross rent for such dwelling unit (as determined under the Tax Credit Law) shall not exceed 30%

of 30% of the AMGI, and (2) fourteen (14) of the Supportive Units shall be occupied (but not on a transient basis) by individuals who are age 55 or over whose income per unit based upon family size (provided that for purposes of determining the income of a unit, a unit which does not have a separate bedroom shall be deemed to have one occupant, and a unit which has one or more separate bedrooms shall be deemed to have one and one-half occupants for each separate bedroom), does not exceed 50% of the AMGI for the current year (or if the AMGI shall cease to be issued, then such other index as the Agency may select) and the gross rent for such dwelling unit (as determined under the Tax Credit Law) shall not exceed the 30% of 50% of the AMGI;

(C) ten (10) dwelling units at the Facility shall be occupied (but not on a transient basis) by individuals who are age 55 or over whose income per unit based upon family size (provided that for purposes of determining the income of a unit, a unit which does not have a separate bedroom shall be deemed to have one occupant, and a unit which has one or more separate bedrooms shall be deemed to have one and one-half occupants for each separate bedroom), does not exceed 40% of the AMGI for the current year (or if the AMGI shall cease to be issued, then such other index as the Agency may select) and the gross rent for such dwelling unit (as determined under the Tax Credit Law) shall not exceed 30% of 40% of the AMGI;

(D) ten (10) dwelling units at the Facility shall be occupied (but not on a transient basis) by individuals who are age 55 or over whose income per unit based upon family size (provided that for purposes of determining the income of a unit, a unit which does not have a separate bedroom shall be deemed to have one occupant, and a unit which has one or more separate bedrooms shall be deemed to have one and one-half occupants for each separate bedroom), does not exceed 50% of the AMGI for the current year (or if the AMGI shall cease to be issued, then such other index as the Agency may select) and the gross rent for such dwelling unit (as determined under the Tax Credit Law) shall not exceed 30% of 50% of the AMGI;

(E) thirteen (13) dwelling units at the Facility shall be occupied (but not on a transient basis) by individuals who are age 55 or over whose income per unit based upon family size (provided that for purposes of determining the income of a unit, a unit which does not have a separate bedroom shall be deemed to have one occupant, and a unit which has one or more separate bedrooms shall be deemed to have one and one-half occupants for each separate bedroom), does not exceed 60% of the AMGI for the current year (or if the AMGI shall cease to be issued, then such other index as the Agency may select) and the gross rent for such dwelling unit (as determined under the Tax Credit Law) shall not exceed 30% of 60% of the AMGI.

(ii) The Company shall retain, at the Company's sole cost and expense, a local not-for-profit housing advocacy group acceptable to the Agency to audit the Company's compliance with the provisions of (i) of this paragraph (c) above and who shall certify to the Agency in such detail as the Agency may require within one hundred twenty (120) days after the end of each calendar year, that it has audited the Company's compliance during such calendar year with the provisions of (i) of this paragraph (c) during such calendar year, and that the Company was in full compliance with such provisions.

(d) The Company shall provide the Agency within ten (10) days after request such additional information pertaining to the housing and services at the Facility and compliance with the provisions of this Section 8.14 as the Agency may from time to time require.

(e) At all times during the Lease Term the Facility shall be used and occupied as a one hundred percent (100%) affordable housing facility as described in the Project Application Information, the Agency's Authorizing Resolution and this Lease Agreement.

ARTICLE IX
RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

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

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

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

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

Section 9.2 Removal of Equipment.

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

(b) Upon the request of the Company, the Agency shall execute and deliver to the Company all instruments, in form and substance satisfactory to the Agency, 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 attorneys' fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

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

Section 9.3 Assignment and Subleasing.

(a) This Lease Agreement shall not be assigned, in whole or in part, and the Facility shall not be subleased (other than residential leases, but including successive generation non-residential subleases and including any licenses or concessions), or used or occupied (other than by the residents of the dwelling units pursuant to residential leases), in whole or in part, without the prior written consent of the Agency, in each instance, and which consent may be fully and effectively given by the execution and delivery of a Tenant Agency Compliance Agreement by an Authorized Representative of the Agency in form and substance satisfactory to the Agency. Any assignment or sublease shall be on the following conditions, as of the time of such assignment or sublease:

(i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder unless the Agency consents thereto, and which consent may be conditioned upon the Agency being indemnified and held harmless to its reasonable satisfaction;

(ii) except with respect to residential leases, the assignee or sublessee (except in the case of a true sublessee in the ordinary course of business) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

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

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

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

(vi) each commercial sublessee, user or occupant will execute and deliver a Tenant Agency Compliance Agreement, in form and substance satisfactory to the Agency;

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

(c) In accordance with Section 862(1) of the Act, no assignment or sublease shall cause the Facility to be occupied by an assignee or sublessee whose occupancy would result in the removal of a facility or plant of the proposed assignee or sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such assignee or sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

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

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

Section 9.4 Merger of Agency.

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

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to the Company and shall, upon request, furnish to the Company, at the sole cost and expense of the Company, a favorable opinion of Independent Counsel as to compliance with the provisions of Section 9.4(a) hereof. 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 Lease Agreement:

(i) the failure by the Company to pay or cause to be paid, on the date due, the amounts specified to be paid pursuant to Section 4.3(a) and (b) hereof;

(ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(e), (g) or (h), 4.4, 5.2, 6.3, 6.4, 6.5, 8.2, 8.3, 8.4, 8.5, 8.11, 8.12, 8.14, 9.3, 10.4, and Article XIII hereof;

(iii) the failure by the Company to pay or cause to be paid PILOT Payments or the Recaptured Benefits, in each case on the dates due;

(iv) the occurrence of a Recapture Event;

(v) any representation or warranty of the Company herein, in any of the Company Documents, in the Project Application Information, or in any other statement, document or instrument furnished to the Agency, shall prove to have been false or misleading in any material respect;

(vi) the dissolution or liquidation of the Company or a Constituent; or the failure by the Company or a Constituent 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 or a Constituent generally to pay its debts as they become due; or an assignment by the Company or a Constituent for the benefit of creditors; or the commencement by the Company or a Constituent (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 or a Constituent (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company or a Constituent as the debtor, or such case or proceeding is consented to by the Company or a Constituent or remains undismissed for forty (40) days, or the Company or a Constituent consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company or a Constituent 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;

(vii) the Company, a Constituent or any officer, director, manager, member or principal of the Company or a Constituent shall be convicted of a crime;

(viii) a default under any Mortgage shall have occurred which remains uncured beyond any applicable notice and/or grace period provided thereunder; or

(ix) a default under the Regulatory Agreement shall have occurred which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or

(x) a default by any commercial tenant, user or occupant under its respective Tenant Agency Compliance Agreement shall have occurred; or

(xi) a default by the Company under the Company Lease, or

(xii) the failure by the Company to observe and perform or to default under any other covenant, condition or agreement hereunder on its part to be observed or performed (other than those covenants, conditions or agreements referred to in the preceding provisions of this Section 10.1(a)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, has been given to the Company by the Agency.

(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, 6.1 and 8.11 of this Lease Agreement, and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuation of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred, 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, (B) all unpaid and past due PILOT Payments, (C) all due and owing Recaptured Benefits, and (D) all other payments due under this Lease Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vii) hereof shall have occurred, such installments of rent and other payments due under this Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;

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

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

(b) No action taken pursuant to this Section 10.2 (including termination of the Lease Agreement) shall relieve the Company from its obligation to make all payments required by Section 4.3 hereof or due and owing PILOT Payments or Recaptured Benefits.

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

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

Section 10.5 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. The Company hereby irrevocably and unconditionally waives any and every right to interpose any counterclaim or set-off, or any defense based upon any statute of limitations, claim of laches, course of conduct, or course of dealings, in any such action or proceeding defense.

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

Section 11.1 Early Termination of Lease Agreement. The Company shall have the option to terminate this Lease Agreement and the Company Lease at any time upon filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and stating the date upon which such payments required by Section 11.2 hereof shall be made (which date shall not be less than forty five (45) nor more than ninety (90) days from the date such certificate is filed) and upon compliance with the requirements set forth in Section 11.2 hereof. The exercise of this option to terminate this Lease Agreement or the Company Lease under this Section 11.1 shall constitute a Recapture Event.

Section 11.2 Conditions to Termination of Lease Agreement. In the event of the termination or expiration of this Lease Agreement in accordance with the provisions of Sections 4.2, 10.2 or 11.1 hereof, the Company shall make or cause to be made the following payments:

(a) To the Agency or the Taxing Authorities, as appropriate pursuant to Section 5.1 hereof: all PILOT Payments due and payable hereunder as of the date of the termination or expiration of this Lease Agreement;

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

(c) To the Agency: all amounts due and payable under Section 5.4 hereof;

(d) To the Agency: an amount certified by the Agency to be sufficient to pay all unpaid fees and expenses of the Agency incurred or anticipated to be incurred under the Agency Documents; and

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

Section 11.3 Conveyance on Termination. At the closing of any expiration or termination of the Lease Agreement, the Agency shall, upon receipt of the amounts payable pursuant to Section 11.2 hereof, deliver to the Company the documents, in form and substance satisfactory to the Agency, (i) to terminate this Lease Agreement and the Company Lease 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 Property was subject when leased 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, (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default hereunder, (E) any Liens created other than due to the fault of the Agency; and (ii) to release and convey to the Company all of the Agency's rights and interest in and to any Net Proceeds of insurance or Condemnation awards with respect to the Facility (but not including any rights to indemnification or defense). At the closing of any expiration or termination of the Lease Agreement, and unless otherwise waived by the Agency, as a condition to such termination or expiration, the Company shall require each Lender to release the Agency from any Mortgage and any other documents related thereto to which it is a party in writing and cause such releases to be recorded as applicable.

ARTICLE XII LENDER PROVISIONS

Section 12.1 Subordination of Lease Agreement. The encumbrance of this Lease Agreement and any and all modifications, amendments, renewals and extensions thereof on the Facility is subject and subordinate to the lien of any Mortgage which may be granted by the Agency and the Company, or the Company with the consent of the Agency, on the Facility or any portion

thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 12.2 Notices to Lenders. Provided that the Agency shall have received the notice of the name and address of a Lender, the Agency agrees that simultaneously with its giving of any notice to the Company of an Event of Default under this Lease Agreement (each a "Notice") it will send a copy of such Notice to each Lender. Each Notice shall be sent to each Lender by regular mail at the address provided to the Agency by each Lender for such purpose. Each such Lender may change such address from time to time by written notice to the Agency in accordance herewith.

Section 12.3 References to Lender, Loan or Mortgage. All references herein to Lender, Loan or Mortgage or other similar words, whether in the singular or the plural, may be in anticipation of future Loans to be made by future Lenders. Such references shall only be effective if such Loans have been made and are still outstanding. If such Loans are never made or have been repaid, such references shall not be of any force or effect.

ARTICLE XIII ENVIRONMENTAL MATTERS

Section 13.1 Environmental Representations of the Company. Except as otherwise shown on Exhibit H attached hereto, the Company hereby represents and warrants to the Agency that:

(a) Neither the Facility nor, to the best of Company's knowledge, any property adjacent to or within the immediate vicinity of the Facility is being or 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) Underground storage tanks are not and have not been located on the Facility.

(c) The soil, subsoil, bedrock, surface water and groundwater of the Facility are free of Hazardous Substances, in violation of Environmental Law, other than any such substances that occur naturally.

(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 Facility or any property adjacent to or within the immediate vicinity of the Facility which through soil, subsoil, bedrock, surface water or groundwater migration could come to be located on or at the Facility, and the Company has not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee, occupant, or user, of the Facility or any property adjacent to or within the immediate vicinity of the Facility or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility in violation of any applicable law.

(e) All Environmental Permits necessary for the Project Work and the ownership, use or operation of the Facility have been obtained and are in full force and effect.

(f) No event has occurred with respect to the Facility 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) 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 construction, renovation, equipping, ownership, use, operation, sale, transfer or conveyance of the Facility which require any change in the present condition of the Facility or any work, repairs, construction, containment, clean up, investigations, studies, removal or remedial action or capital expenditures in order for the Facility to be in compliance with any applicable Environmental Law or Environmental Permit.

(h) There are no 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 Facility, (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 Facility 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 Facility, the Project Work or the ownership, use, operation, sale, transfer or conveyance of the Facility.

Section 13.2 Environmental Covenants of the Company. The Company hereby covenants and agrees with the Agency as follows:

(a) The Company shall perform the Project Work and use, operate and manage the Facility in accordance with all applicable Environmental Laws and Environmental Permits, and shall cause all operators, tenants, subtenants, licensees, occupants, or users, of the Facility to perform the Project Work and to use, operate and manage the Facility in accordance with any applicable Environmental Laws and Environmental Permits, and shall not cause, allow or permit the Facility 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, occupants, or users, of the Facility 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 Project Work or use or operation of the Facility 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 Project Work or use or operation of the Facility 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 Facility, any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility. 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 Facility of which the Agency has not previously been advised in writing; (ii) any remedial action taken by, or on behalf of, the Company in response to any Hazardous Substance on, under or about the Facility or to any environmental proceedings of which the Company has not previously been advised in writing; and (iii) the occurrence or condition on any real property adjoining or in the vicinity of the Facility that could reasonably be expected to cause the Facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Facility under any Environmental Law. 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 Facility or real property or bodies of water adjoining or in the vicinity of the Facility 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 Facility 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 Facility. 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 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 Facility, or the use or operation thereof or the Project Work 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 Facility 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 Facility, a records search, a visual inspection of any property adjacent to or within the immediate vicinity of the Facility, 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 Facility 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 13.2(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, and that the release of the environmental reports, or any information contained therein, to prospective bidders at any foreclosure sale of the Facility may have a material and adverse effect upon the amount which a party may bid at such sale. 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 13.3 Survival Provision. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and indemnifications of the Company contained in this Article XIII shall survive any termination, conveyance, assignment, subleasing or defeasance of any right, title or interest of the Company in and to the Facility or in, to or under the Lease Agreement.

ARTICLE XIV MISCELLANEOUS

Section 14.1 Notices. All notices and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered (i) in the case of a

Lender, as provided in Section 12.2, and (ii) in the case of the Agency or the Company, personally with acknowledgement of receipt therefor, or sent by registered or certified mail, return receipt requested, postage prepaid, or sent by recognized national overnight courier for next business day delivery for the account of the sender, to the parties at the following addresses (or at such other address for a party as such party may designate in a notice given pursuant to this paragraph):

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:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 2nd Floor
Farmingville, New York 11738
Attention: General Counsel

To the Company:

Medford Gardens LLC
Medford Gardens Housing Development Fund Corporation
1985 Marcus Avenue, Suite 100
New Hyde Park, New York 11042
Attention: Sherry Tucker

With a copy of notices of default by regular mail to:

Barclay Damon LLP
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202
Attention: Heather Sunser, Esq.

and

USA WellLife Medford Gardens, LLC
777 West Putnam Avenue
Greenwich, CT 06830
Attention: General Counsel

Notice shall be deemed effective with respect to personal delivery, upon personal delivery with an acknowledgment of receipt therefor, with respect to registered, certified mail or regular mail at 12:00 p.m. on the third Business Day after mailing, and with respect to overnight courier, one Business Day after deposit of such notice into the custody of the recognized national overnight courier.

Section 14.2 Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 14.3 Severability. In the event any provision of this Lease Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.4 Amendments, Changes and Modifications. This 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 14.5 Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.6 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles. Any actions, suits or proceedings arising under or by virtue of this Lease Agreement shall be commenced, prosecuted or maintained by the Company solely in the State of New York, County of Suffolk, and the Company consents to the jurisdiction of the courts of said State in said County and of the United States sitting within said County in any action, suit or proceedings commenced, prosecuted or maintained under or in connection with this Lease Agreement.

Section 14.7 Survival of Obligations. This Lease Agreement shall survive the performance of the obligations of the Company to make the payments required by Section 4.3, and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement.

Section 14.8 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

Section 14.9 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Lease Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Lease Agreement.

Section 14.10 No Liability.

(a) Neither the Agency, nor any member, officer, agent, servant or employee of the Agency, nor a successor in interest to any of the foregoing, shall be under any personal liability with respect to any of the provisions of this Lease Agreement or any other Agency Document or any matter arising out of or in connection with this Lease Agreement or any other Agency Document, or the Company's or any other person's occupancy or use of the Facility, and in the event of any breach or default with respect to the Agency's obligations under this Lease Agreement or any claim arising out of or in connection with this Lease Agreement or the Company's or any other person's occupancy or use of the Facility, the Company's sole remedy shall be an action or

proceeding to enforce such obligation, or for specific performance, injunction or declaratory judgment, and the Company hereby waives any right to recover from, and releases, the Agency, its members, officers, agents and employees from any and all monetary damages, whether known, unknown, foreseeable, unforeseeable, ordinary, extraordinary, compensatory or punitive, and in no event shall the Company attempt to secure any personal judgment against the Agency or any of the Agency's members, officers, agents or employees, or successors thereto.

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

Section 14.11 Joint and Several Liability.

(a) Notwithstanding anything contained in this Lease Agreement or elsewhere, including that certain Declaration of Interest and Nominee Agreement, dated as of November 21, 2024, by and between Medford Gardens and HDFC, or provided by law to the contrary, Medford Gardens and HDFC shall be jointly and severally liable for the obligations of the Company under, by virtue of, or arising in connection with, this Lease Agreement, and such liability shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event, including any of the following, whether or not with notice to or the consent of either or both Medford Gardens or HDFC: (1) the waiver, compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of Medford Gardens or HDFC; (2) the extension of the time for performance of any obligations, covenants or agreements under or arising out of this Lease Agreement, the extension or the renewal thereof; (3) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in this Lease Agreement; (4) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting Medford Garden or HDFC or any of their respective assets; (5) the default or failure of either Medford Garden or HDFC to fully perform any of the Company's or their respective obligations set forth in this Lease Agreement; (6) the release, sale, exchange, surrender or other change in, or resort or attempted resort to, any security for the performance of this Lease Agreement; (7) any failure, omission or delay on the part of the Agency to enforce, assert or exercise any right, power or remedy conferred on the Agency in this Lease Agreement or any other agreement or by law; (8) the taking of, or the omission to take, any of the actions provided in this Lease Agreement or available by law; and (9) the assignment of this Lease Agreement or the subletting of the all or any portion of the Facility.

(b) Notwithstanding anything contained in this Lease Agreement or provided by law to the contrary, the agreement, consent, approval, acceptance, waiver, release, modification, amendment or other act or omission of either Medford Gardens or HDFC shall be deemed also the act or omission of the other without the necessity of a separate act or omission of the other.

Section 14.12 Recordation. This Lease Agreement shall not be recorded by either party hereto. The Agency, at the sole expense and effort of the Company, shall cause a memorandum of lease with respect hereto to be recorded in the office of the Suffolk County Clerk.

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

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

**TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT AGENCY**

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

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

On the 15th day of November in the year 2024, before me, the undersigned, personally appeared **LISA MG MULLIGAN**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

Joelyn B. Linse
Notary Public

**JOCELYN B. LINSE
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01LI6351400
QUALIFIED IN SUFFOLK COUNTY
MY COMMISSION EXPIRES DECEMBER 5, 2028**

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

MEDFORD GARDENS, LLC

By: Medford Gardens MM, LLC
its Managing Member

By: WellLife Network Inc., its Manager

By: Sherry Tucker
Sherry Tucker, Chief Executive Officer

**MEDFORD GARDENS HOUSING
DEVELOPMENT FUND CORPORATION**

By: Sherry Tucker
Sherry Tucker, Authorized Signatory

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

On the 14th day of November in the year 2024, before me, the undersigned, personally appeared **SHERRY TUCKER** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

Jennifer Arevalo
Notary Public

JENNIFER AREVALO
Notary Public - State of New York
No. 01AR6291843
Qualified in Nassau County
My Commission Expires November 30, 2025

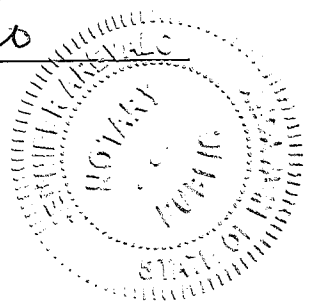


EXHIBIT A

Legal Description of Real Property

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING AT MEDFORD IN THE TOWN OF BROOKHAVEN, COUNTY OF SUFFOLK AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY SIDE OF HORSEBLOCK ROAD DISTANT 657.20 FEET WESTERLY FROM THE EXTREME WESTERLY END OF AN ARC OF A CURVE CONNECTING THE NORTHERLY SIDE OF HORSEBLOCK ROAD WITH THE WESTERLY SIDE OF EAGLE AVENUE;

RUNNING THENCE ALONG THE NORTHERLY SIDE OF HORSEBLOCK ROAD ALONG AN ARC OF CURVE HAVING A RADIUS OF 3852.83 AND A LENGTH OF 114.17 FEET;

THENCE NORTH 58 DEGREES 27 MINUTES 20 SECONDS WEST 247.65 FEET TO A POINT;

THENCE NORTH 10 DEGREES 09 MINUTES 35 SECONDS EAST, 782.10 FEET TO A POINT;

THENCE NORTH 88 DEGREES 04 MINUTES 35 SECONDS EAST 344.00 FEET TO A POINT;

THENCE SOUTH 10 DEGREES 09 MINUTES 35 SECONDS WEST, 987.36 FEET TO THE NORTHERLY SIDE OF HORSEBLOCK ROAD, THE POINT OR PLACE OF BEGINNING.

SCTM #200-700.00-01.00-004.002

EXHIBIT B

Equipment

All equipment, machinery and other personal property acquired, constructed, renovated or installed and/or to be acquired, constructed, renovated or installed by or on behalf of the Company, in connection with the completion of the Town of Brookhaven Industrial Development Agency's **MEDFORD GARDENS, LLC 2024 Facility** located on Horseblock Road approximately 700 feet northwesterly from the intersection of the westerly side of Eagle Avenue and the northerly side of Horseblock Road, Medford, New York (SCTM #0200-700.00-01.00-004.002), and leased to the Company pursuant to the Lease Agreement.

EXHIBIT C

PILOT Schedule

Schedule of payments-in-lieu-of-taxes: Town of Brookhaven (including any existing incorporated village and any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Patchogue-Medford School District, Suffolk County and Appropriate Special Districts

Property Address: Horseblock Road approximately 700 feet northwesterly from the intersection of the westerly side of Eagle Avenue and the northerly side of Horseblock Road, Medford, New York

Tax Map No.: 0200-700.00-01.00-004.002

School District: Patchogue-Medford Union Free School District

Formula:

"**Shelter Rents**" shall mean the total rents received for the use and occupancy of the Facility by the residential tenants less the Company's cost of providing to the residential occupants of the Facility electricity, gas, heat, and other utilities. Total rents shall include rent supplements and subsidies received from the federal government, the state or a municipality on behalf of such occupants, but shall not include (i) any rent subsidies from the government pursuant to section eight of the United States Housing Act of nineteen hundred thirty-seven, as amended, or (ii) interest reduction payments pursuant to subdivision (a) of section two hundred one of the Federal Housing and Urban Development Act of nineteen hundred sixty-eight, or (iii) any fee for a supportive service (within the meaning ascribed thereto in 26 USCS §42(g)(2)(B)) which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in 26 USCS §501(c)(3) and exempt from tax under 26 USCS §501(a) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services.

The Company will make payments in lieu of taxes ("**PILOT Payments**") for the Facility as follows:

- a. For the Tax Year 2025/26, an amount equal to equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Land by the Taxing Authorities if the Facility were owned by the Company exclusive of the Agency's leasehold interest times the assessment or assessments established for that tax year by the respective Taxing Authorities having appropriate assessing jurisdiction.
- b. For a period of thirty (30) years (the "**PILOT Period**") commencing with the 2026/2027 Tax Year in amounts equivalent to ten per centum (10%) of the annual Shelter Rents of the Facility in the calendar year preceding the year in which any such payment is

due, provided that the first year of the PILOT Period, PILOT Payments shall be calculated based on a good faith estimate of the Shelter Rents submitted by the Company to the Agency by April 1 immediately preceding the PILOT Payment due date and acceptable to the Agency or, if such projections are not timely submitted to the Agency or are unacceptable to the Agency, based upon the projections of the Agency in its sole and absolute discretion.

Thereafter, 100% of all taxes and assessments, including special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be for special improvements or special district improvements, that the Company would pay without exemption as if the Facility was owned by the Company exclusive of the Agency's leasehold interest therein.

In addition, at all times, 100% of all special ad valorem levies, special assessments, special district taxes and service charges levied (or would be levied if the Facility were owned by the Company exclusive of the Agency's leasehold interest therein) against the Facility for special improvements or special district improvements.

PILOT Payments shall be allocated among the Taxing Authorities in proportion to the amount of real property tax and other taxes which would have been received by each Taxing Authority if the Facility was owned by the Company exclusive of the Agency's leasehold interest.

EXHIBIT D

RESERVED

EXHIBIT E

RESERVED

EXHIBIT F

RESERVED

EXHIBIT G

Compliance with Labor Law, Executive Law and Civil Rights Law

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

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

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

I. The Company agrees that:

- (a) no laborer, workman or mechanic, in the employ of the Company or any contractor, subcontractor or other person doing or contracting to construct and equip the Facility shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in compliance with the Labor Law; and
- (b) to the extent applicable and required by law, the Company shall comply with the provisions of the Labor Law of the State of New York (the "**Labor Law**"), including Section 220 thereof. While such Labor Law does not presently require or obligate the Company to pay the prevailing rate of wages as such term is defined in Section 220-d thereof, the Company acknowledges that it has been advised that it is the policy of the Agency to encourage the Company to voluntarily comply with such provisions.

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

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

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

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

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

EXHIBIT H

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES OF COMPANY

[NONE]

EXHIBIT I

RESERVED

EXHIBIT J

**PROJECT COMPLETION CERTIFICATE OF COMPANY AS
REQUIRED BY SECTION 3.6 OF THE LEASE AGREEMENT**

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of _____ (the "Company"), a _____ organized and existing under the laws of the State of _____, HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.6 of that certain Lease and Project Agreement, dated as of _____ 1, 20__ (the "Lease Agreement"), between the Town of Brookhaven Industrial Development Agency (the "Agency") and the Company. If the Company's Final Cost Budget deviates from the information provided in the Project Application Information (as defined in the Lease Agreement), the Company shall provide a written statement explaining the difference to the Agency. The Agency may in its sole discretion, adjust the benefits to reflect any deviation.

THE COMPANY HEREBY FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

(i) the Project Work has been completed in accordance with the Plans and Specifications therefor;

(ii) attached hereto as Appendix A is a copy of one of the following (check only one and attach a copy of the indicated document):

- certificate of occupancy, or
- temporary certificate of occupancy, or
- amended certificate of occupancy, or
- letter of no objection;

(iii) there is no certificate, license, permit, written approval or consent or other document required to permit the occupancy, operation and use of the Facility that has not already been obtained or received, except for such certificates, licenses, permits, authorizations, written approvals and consents that will be obtained in the ordinary course of business and the issuance of which are ministerial in nature, which certificates, licenses, permits, authorizations, written approvals and consents are attached hereto as Appendix B;

(iv) check as applicable:

- all costs for Project Work have been paid, or
- all costs for Project Work have been paid except for
 - amounts not yet due and payable (attach itemized list) and/or
 - amounts the payments for which are being contested in good faith (attach itemized list with explanations);

(v) attached hereto as Appendix C is the Final Cost Budget, including a comparison with the project cost budget information listed in the Project Application Information;

(vi) attached hereto as Appendix D is a copy of the ST-340 filed with the New York State Department of Taxation and Finance in compliance with Section 874(8) of the General Municipal Law evidencing the value of all sales and use tax exemptions claimed in connection with the Facility for the current year; and

(vii) there are no municipal violations outstanding on the premises.

In the event that the Final Project Cost Budget indicates that the final costs of the Project Work are greater than the estimated costs provided in the Project Application Information, the Company agrees to pay to the Agency, within ten (10) days of written request, any additional fees owed to the Agency related to such an increase of final costs of the Project Work and not accounted for in the Agency's fee collected on the Closing Date.

This Certificate is given without prejudice to any rights of the Company against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this _____ day of _____, _____.

[NAME OF COMPANY]

By: _____

Name:

Title:

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

EXHIBIT K

ANNUAL COMPLIANCE CERTIFICATE

[_____], being duly sworn, deposes and says:

1. That s/he is the duly appointed [_____] of [_____], a [_____] duly organized and existing under the laws of the State of [_____], having its office at [_____], New York (the "Company").
2. That the Company has previously entered into a straight-lease transaction with the Town of Brookhaven Industrial Development Agency pursuant to a certain Company Lease Agreement, dated as of [_____] 1, 20[] (the "Company Lease") whereby the Company leased the Facility (as such term is defined in the hereinafter defined Lease Agreement) to the Agency, and a Lease and Project Agreement, dated as of [_____] 1, 20[] (the "Lease Agreement"), whereby the Agency subleased and leased the Facility to the Company.
3. That the Company is not in default under the Lease Agreement and that no Event of Default exists under this Lease Agreement or any other Company Document (as such term is defined in the Lease Agreement).
4. That there is no 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 the Lease Agreement or any other Company Document.
5. That the Company has not received written notice of default in payment of any taxes, PILOT Payments, sewer rents or water charges which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.
6. That there are no mechanics liens or other liens by reason of any labor, services or materials on the Facility, except in compliance with the provisions in the Lease Agreement.
7. That there are no municipal violations outstanding on the premises.
8. That the amount of the mortgage recording tax exemption realized during the immediately preceding calendar year as a result of the Agency's financial assistance was \$ _____.
9. That attached hereto as Appendix A are copies of the certificates of insurance required to be provided to the Agency pursuant to Sections 6.4 and 6.5 of the Lease Agreement.
10. That attached hereto as Appendix B is a certified statement of the Company and documentation (i) enumerating the FTE (as such term is defined in the Lease Agreement) jobs, by

category, retained and/or created at the Facility during the immediately preceding calendar year as a result of the Agency's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of such FTE jobs created and/or retained during the immediately preceding calendar year.

11. That attached hereto as Appendix C is a copy of the Form NYS-45 for the fourth quarter of the immediately preceding calendar year filed with respect to the New York State Department of Labor.

12. That attached hereto as Appendix D is a copy of the ST-340 for the immediately preceding calendar year filed with the New York State Department of Taxation and Finance in compliance with Section 874(8) of the General Municipal Law evidencing the annual value of all sales and use tax exemptions claimed in connection with Facility.

13. That attached hereto as Appendix E is a certified statement of the Company enumerating the FTE (as such term is defined in the Lease Agreement) construction/renovation jobs, retained and/or created at the Facility during the immediately preceding calendar year as a result of the Agency's financial assistance.

14. That attached hereto as Appendix F is a certified statement of the Company (i) identifying all non-residential tenants, subtenants, occupants and users of the Facility during the immediately preceding calendar year, (ii) enumerating the FTE (as such term is defined in the Lease Agreement) jobs of each tenant, subtenant, occupant and user of the Facility, by category, retained and/or created at the Facility, and the average annual salary and average annual fringe benefits, or ranges, for each category of such jobs, as a result of the financial assistance of the Agency, during the immediately preceding calendar year, (iii) a copy of the Form NYS-45 for the fourth quarter of the immediately preceding calendar year filed by each tenant, subtenant, occupant and user of the Facility with respect to the New York State Department of Labor, and (iv) if the Company failed to create and/or retain during the immediately preceding calendar year the requisite FTE jobs, a statement in detail explaining the reasons therefor.\

15. That the Company is not in default under the Regulatory Agreement (as such term is defined in the Lease Agreement) or Mortgage (as such term is defined in the Lease Agreement) and that no event has occurred or is continuing that either immediately or with the lapse of time, or with notice, or both, constitutes a default under the Regulatory Agreement or Mortgage.

16. That attached hereto as Appendix G is a certified statement of the Company enumerating the residential tenants of the Facility, categorized by dwelling size (that is, number of bedrooms), and by rents amounts, including market rents and restricted rent amounts, that is, rents subject to AMGI (as such term is defined in the Lease Agreement), as prescribed by the Lease Agreement, during the immediately preceding calendar year, and further certifying that the rents received for the restricted rent units do not exceed 30% of the applicable AMGI for the Nassau-Suffolk region for the previous year.

_____]

By:

Name:

Title:

Subscribed and sworn to before
me this ___ day of _____, 202[]

Notary Public

Appendix A

Insurance Certificates

Appendix C

Form NYS-45

Appendix D

Form ST-340

Appendix E

Certified Statement Regarding Construction/Renovation FTEs

Appendix F

Certified Statement: Identifying All Tenants, Subtenants, Occupants and Users of the Facility (other than residential tenants); Regarding FTEs of All Tenants, Subtenants, Occupants and Users of the Facility (other than residential tenants); Form NYS-45 of All Tenants, Subtenants, Occupants and Users of the Facility (other than residential tenants)

Appendix G

Certified Statement: Identifying enumerating the residential tenants of the Facility, categorized by dwelling size (that is, number of bedrooms), and by rents, that is, market rents and restricted rent amounts, that is, rents subject to AMGI (as such term is defined in the Lease Agreement), as prescribed by the Lease Agreement, during the immediately preceding calendar year.

EXHIBIT L

RESERVED

EXHIBIT L- 1

EXHIBIT M

SHELTER RENTS CERTIFICATE

[_____] , being duly sworn, deposes and says:

1. That s/he is the duly appointed [_____] of [_____] , a [_____] duly organized and existing under the laws of the State of [_____] , having its office at [_____] , New York (the “**Company**”).

2. That the Company has previously entered into a straight-lease transaction with the Town of Brookhaven Industrial Development Agency pursuant to a certain Company Lease Agreement, dated as of [_____] 1, 20[_____] (the “**Company Lease**”) whereby the Company leased the Facility (as such term is defined in the hereinafter defined Lease Agreement) to the Agency, and a Lease and Project Agreement, dated as of [_____] 1, 20[_____] (the “**Lease Agreement**”), whereby the Agency subleased and leased the Facility to the Company.

3. That the Facility is comprised of the following number of dwelling units:

A. Supportive Units (as defined in the Lease Agreement) –

_____ studio apartments,
_____ one bedroom apartments, and
_____ two bedroom apartments,

each of which such Supportive Units are for occupancy by individuals age 55 or over whose income per unit based upon family size does not exceed 30% of the AMGI (as such term is defined in the Lease Agreement) for the immediately preceding year (“30% Supportive Units”); and

_____ studio apartments,
_____ one bedroom apartments, and
_____ two bedroom apartments,

each of which such Supportive Units are for occupancy by individuals age 55 or over whose income per unit based upon family size does not exceed 50% of the AMGI (as such term is defined in the Lease Agreement) for the immediately preceding year (the (“50% Supportive Units”).

B. Other Units –

_____ studio apartments,
_____ one bedroom apartments, and
_____ two bedroom apartments,

each of which are for occupancy by individuals age 55 or over whose income per unit based upon family size does not exceed 40% of the AMGI (as such term is defined in the Lease Agreement) for the immediately preceding year ("40% Units"); and

_____ studio apartments,
_____ one bedroom apartments, and
_____ two bedroom apartments,

each of which are for occupancy by individuals age 55 or over whose income per unit based upon family size does not exceed 50% of the AMGI (as such term is defined in the Lease Agreement) for the immediately preceding year ("50% Units" (non-Supportive Units)); and

_____ studio apartments,
_____ one bedroom apartments, and
_____ two bedroom apartments,

each of which are for occupancy by individuals age 55 or over whose income per unit based upon family size does not exceed 60% of the AMGI (as such term is defined in the Lease Agreement) for the immediately preceding year ("60% Units");

1 one bedroom apartment, for occupancy by the onsite superintendent.

4. That the total rent (from all sources) received for the immediately preceding calendar year for each of the above described dwelling units (other than the superintendent's unit) was:

30% Supportive Units –

\$ _____ studio apartments,
\$ _____ one bedroom apartments, and
\$ _____ two bedroom apartments.

Total Rent for 30% Supportive Units: \$ _____.

50% Supportive Units –

\$ _____ studio apartments,
\$ _____ one bedroom apartments, and
\$ _____ two bedroom apartments.

Total Rent for 50% Supportive Units: \$ _____.

40% Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Rent for 40% Units: \$ _____.

50% Units (non-Supportive Units) –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Rent for 50% Units: \$ _____.

60% Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Rent for 60% Units: \$ _____.

Total Rent for 30% Supportive Units, 50% Supportive Units, 40% Units, 50% (non-Supportive) Units, and 60% Units: \$ _____.

5. The rent subsidies for such dwelling units received for such calendar year from the government pursuant to Section 8 of the United States Housing Act of 1937, as amended, was:

30% Supportive Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Section 8 Rent subsidies for 30% Supportive Units: \$ _____.

50% Supportive Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Section 8 Rent subsidies for 50% Supportive Units: \$ _____.

40% Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Section 8 Rent subsidies for 40% Units: \$ _____.

50% (non-Supportive) Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Section 8 Rent subsidies for 50% Units: \$ _____.

60% Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Section 8 Rent subsidies for 60% Units: \$ _____.

Total Section 8 Rent subsidies for 30% Supportive Units, 50% Supportive Units, 40% Units, 50% (non-Supportive) Units, and 60% Units: \$ _____.

6. The interest reduction payments for such calendar year pursuant to subdivision (a) of section 201 of the Federal Housing and Urban Development Act of 1968, as amended, was:

30% Supportive Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Section 201 interest reduction payments for 30% Supportive Units

\$ _____.

50% Supportive Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Section 201 interest reduction payments for 50% Supportive Units:

\$ _____.

40% Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Section 201 interest reduction payments for 40% Units:

\$ _____.

50% Units (non-Supportive Units) –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Section 201 interest reduction payments for 50% (non-Supportive) Units:

\$ _____.

60% Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Section 201 interest reduction payments for 60% Units: \$ _____.

Total Section 201 interest reduction payments for 30% Supportive Units, 50% Supportive Units, 40% Units, 50% (non-Supportive) Units, and 60% Units: \$ _____.

7. The Company's cost of providing to the occupants of such dwelling units electricity, gas, heat, and other utilities for such calendar year, was:

30% Supportive Units

Unit	Electricity	Gas	Heat	Other (Explain)	
Studio					
1 Bedroom					
1 Bedroom					
Total					

50% Supportive Units

Unit	Electricity	Gas	Heat	Other (Explain)	
Studio					
1 Bedroom					
1 Bedroom					
Total					

40% Units

Unit	Electricity	Gas	Heat	Other (Explain)	
Studio					
1 Bedroom					
1 Bedroom					
Total					

50% (non-Supportive) Units

Unit	Electricity	Gas	Heat	Other (Explain)	
Studio					
1 Bedroom					
1 Bedroom					
Total					

60% Units

Unit	Electricity	Gas	Heat	Other (Explain)	
Studio					
1 Bedroom					
1 Bedroom					
Total					

Total for 30% Supportive Units, 50% Supportive Units, 40% Units, 50% (non-Supportive) Units, and 60% Units

All Units	Electricity	Gas	Heat	Other	
—					

Total costs of utilities provided to the occupants of such dwelling units for such calendar year

\$ _____.

8. The fees for such calendar year for supportive services (within the meaning ascribed thereto in 26 USCS §42(g)(2)(B)) which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in 26 USCS §501(c)(3) and exempt from tax under 26 USCS §501(a) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services is:

Supportive Units (as defined in the Lease Agreement)

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Fees for Supportive Units: \$ _____.

9. The Shelter Rents (as defined in the Lease Agreement) for the current year based upon the foregoing is:

30% Supportive Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Shelter Rents for 30% Supportive Units \$ _____.

50% Supportive Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Shelter Rents for 50% Supportive Units: \$ _____.

40% Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Shelter Rents for 40% Units: \$ _____.

50% Units (non-Supportive Units) –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Shelter Rents for 50% (non-Supportive) Units: \$ _____.

60% Units –

\$ _____ studio apartments,

\$ _____ one bedroom apartments, and

\$ _____ two bedroom apartments.

Total Shelter Rents for 60% Units: \$ _____.

Total Shelter Rents for 30% Supportive Units, 50% Supportive Units, 40% Units, 50 (non-Supportive) Units, and 60% Units: \$ _____.

10. No event has occurred or is continuing that immediately or with the lapse of time, or with notice, or both, constitutes a default under the Regulatory Agreement (as defined in the Lease Agreement).

By: _____

Name:

Title:

Subscribed and sworn to before
me this ____ day of _____, 202[]

Notary Public

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 Company Lease and the Lease Agreement.

“Area Median Gross Income” shall have the meaning ascribed thereto under 26 U.S.C. §42.

“Authorized Representative” means, in the case of the Agency, the Chairman, the Vice Chairman, the Secretary, the Assistant Secretary, the Chief Executive Officer or any member or officer of the Agency and such additional persons as, at the time, are designated to act on behalf of the Agency; and in the case of the Company, Sherry Tucker and such additional persons as, at the time, are designated to act on behalf of the Company.

“Authorizing Resolution” means the resolution adopted by the Agency on October 23, 2023, authorizing the Project and the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

“Bill of Sale” means the 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.

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

“Closing Date” means November 21, 2024.

“Company” means Medford Gardens, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York (“**Medford Gardens**”), and Medford Gardens Housing Development Fund Corporation, a housing development fund company duly organized and validly existing under the laws of the State of New York (“**HDFC**”), and their respective successors and assigns. Each of Medford Gardens and HDFC may be referred to as a “Constituent”.

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

“Company Lease” means the Company Lease Agreement, dated as of November 1, 2024, by and between the Company and the Agency, as the same may be amended from time to time.

“Company 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 on behalf of the Company, pursuant to this Lease Agreement.

“Completion Date” means the date of completion of the Facility as certified pursuant to Section 3.6 of the Lease Agreement.

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

“Construction Period” means (i) the period beginning on the earlier of (a) Closing Date and (b) the date of commencement of the Project Work of the Facility, and ending on the Completion Date, and (ii) the period during which any construction or renovation requiring any governmental permits or approvals occurs and ending upon the issuance of all required government approvals of such construction or renovation.

“Disposal” has the same meaning as given to that term in the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 *et seq.*)

“Environment” means any water or water vapor, any land, including land surface or subsurface, air, fish, wildlife, flora, fauna, biota and all other natural resources.

“Environmental Laws” means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection, preservation or remediation of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, written and published policies, guidelines, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

“Environmental Permits” means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, construction, renovation, equipping, use and/or operation of the Facility, for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance 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 Lease Agreement.

“Event of Default” means (a) when used with respect to the Lease Agreement, any of the events defined as Events of Default by Section 10.1 of the Lease Agreement, and (b) when used with respect to any Mortgage, any of the events defined as defaults in such Mortgage after giving effect to any grace or notice provisions thereof.

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

“Final Project Cost Budget” means that certain budget of costs paid or incurred by the Company in connection with the Project, which shall be submitted by the Company pursuant to Section 3.6 hereof upon completion of the Project.

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

“FTE” shall have the meaning set forth in Section 8.11 of the Lease Agreement.

“GAAP” shall mean generally accepted accounting principles in the United States of America as in effect from time to time.

“GML” means the General Municipal Law of the State.

“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 (i) affixed or attached to the Land, and (ii) not part of the Equipment, all as they may exist from time to time.

“Independent Accountant” shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency.

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

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

“Lease Agreement” means the Lease and Project Agreement, dated as of November 1, 2024 by and between the Agency, as lessor, and the Company, as lessee, with respect to the Facility, as the same may be amended from time to time.

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

“Lender” means any lender making a Loan to the Company to finance in whole or in part the Project Work, the acquisition and/or development of the Facility or any portion thereof.

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

“Loan” means one or more loans to finance or refinance the costs of the acquisition of the Facility and/or the Project Work or to reimburse the Company for the cost of acquiring the Facility and/or the Project Work.

“Loss Event” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

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

“Mortgage Recording Tax Exemption” has the meaning ascribed to such term in Section 5.3 of the Lease Agreement.

“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” means the New York State Department of Taxation and Finance.

“Organizational Documents” means (i) in the case of an entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such entity, and (iii) in the case of an entity constituting a general or limited partnership, the partnership agreement of such entity.

“Permitted Encumbrances” means, with respect to the Facility, (i) exceptions to title set forth in the Title Report, (ii) the Company Lease, (iii) the Lease Agreement, (iv) utility, access and other easements and rights-of-way, restrictions and exceptions that do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (v) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens which are approved in writing by the Lender, if any, or its counsel and, if no Lender, then by the Agency or its counsel, (vi) Liens for taxes not yet delinquent, (vii) any Mortgage granted to a Lender with the

consent of the Agency. and (viii) purchase money security interests and blanket liens granted with the consent of the Agency.

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

“PILOT Payments” has the meaning ascribed to such term in Section 5.1 of the Lease Agreement.

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

“Project” has the meaning set forth in the recitals hereto.

“Project Application Information” means the application and questionnaire submitted to the Agency and dated September 29, 2023, by or on behalf of the Company, for approval by the Agency of the Project, together with all amendments thereto and all other letters, documentation, reports, financial information, and presentations, submitted or made to the Agency in connection therewith by or on behalf of the Company.

“Project Work” means the work required to complete the Project.

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

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

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

“Real Property Tax Abatements” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Recaptured Benefits” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Recapture Event” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Regulatory Agreement” has the meaning ascribed to such term in Section 8.14 of the Lease Agreement.

“Release” has the meaning given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), and the regulations promulgated thereunder.

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

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

“Sales 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.

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

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

“Shelter Rents” means the total rents received for the use and occupancy of the Facility by the residential tenants less the Company’s cost of providing to the residential occupants of the Facility electricity, gas, heat, and other utilities. Total rents shall include rent supplements and subsidies received from the federal government, the state or a municipality on behalf of such occupants, but shall not include (i) any rent subsidies from the government pursuant to section eight of the United States Housing Act of nineteen hundred thirty-seven, as amended, or (ii) interest reduction payments pursuant to subdivision (a) of section two hundred one of the Federal Housing and Urban Development Act of nineteen hundred sixty-eight, or (iii) any fee for a supportive service (within the meaning ascribed thereto in 26 USCS §42(g)(2)(B)) which is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in 26 USCS §501(c)(3) and exempt from tax under 26 USCS §501(a) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services.

“Special Provisions” has the meaning ascribed to such term in Section 5.2 of the Lease Agreement.

“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 Lease Agreement.

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

“Tax Year” means the lien period for which real estate taxes are assessed, that is, December 1, through the following November 30.

“Taxes on the Facility” has the meaning ascribed to such term in Section 5.1 of the Lease Agreement.

“Taxing Authorities” has the meaning ascribed to such term in Section 5.1 of the Lease Agreement.

“Tenant Agency Compliance Agreement” means an agreement in the form and substance satisfactory to the Agency between the Agency and a sublessee, user or occupant of the Facility, including that certain Tenant Agency Compliance Agreement, dated as of November 1, 2024, by and between the Agency and WellLife Network Inc.

“Termination Date” shall mean such date on which the Sales Tax Exemption authorization may terminate pursuant to the terms and conditions of Section 5.2 of the Lease Agreement.

“Title Report” means Certificate of Title No. 2417-1942EC issued by Chicago Title Insurance Company to the Agency on March 14, 2024 and redated and recertified on the Closing Date.

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

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

Except as otherwise expressly provided or unless the context otherwise requires, (i) the plural includes the singular, the singular includes the plural, and the use of any gender herein shall be deemed to include the other genders; (ii) “including,” “included” and words of similar import are deemed followed by “but not limited to”; (iv) the words “herein,” “hereof,” “hereunder” and other words of similar import refer to the document as a whole and not to any particular provision, (v) the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of the document, (vi) “or” is not exclusive, (vii) “any” shall include “any and all”, and (viii) “shall” is mandatory, “will” shall have the same meaning as “shall” and “may” is permissive.