

DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY
(DUTCHESS COUNTY, NEW YORK)

AND

HARLEM VALLEY HOMESTEAD LLC

EQUIPMENT LEASE AGREEMENT

Dated as of December 1, 2024

Dutchess County Industrial Development Agency
(Harlem Valley Homestead 2024 Facility)

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	3
ARTICLE II REPRESENTATIONS AND COVENANTS	3
Section 2.1 Representations and Covenants of Agency.....	3
Section 2.2 Representations and Covenants of Sublessee	4
ARTICLE III CONVEYANCE OF THE EQUIPMENT; EQUIPPING OF THE FACILITY	5
Section 3.1 Agreement to Convey to Agency.....	5
Section 3.2 Public Authorities Law Representations.....	5
Section 3.3 Equipping of Facility	5
Section 3.4 Certificates of Completion.....	6
Section 3.5 Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties.....	6
ARTICLE IV DEMISING CLAUSES AND RENTAL PROVISIONS	6
Section 4.1 Demise of Equipment	6
Section 4.2 Duration of Equipment Lease Term; Quiet Enjoyment.....	6
Section 4.3 Rents and Other Amounts Payable	7
Section 4.4 Obligations of Sublessee Hereunder Unconditional.....	7
Section 4.5 No Warranty of Condition or Suitability by Agency.....	7
ARTICLE V SALES TAX EXEMPTION AND MORTGAGE RECORDING TAX EXEMPTION	8
Section 5.1 Sales Tax Exemption and Mortgage Recording Tax Exemption.....	8
Section 5.2 Recapture of Agency Benefits.	13
ARTICLE VI MAINTENANCE AND INSURANCE.....	15
Section 6.1 Maintenance and Modifications of Equipment by Sublessee.....	15
Section 6.2 Installation of Additional Equipment.....	15
Section 6.3 Reserved.....	15
Section 6.4 Insurance Required	15
Section 6.5 Additional Provisions Respecting Insurance	16
Section 6.6 Application of Net Proceeds of Insurance	17
ARTICLE VII DAMAGE OR DESTRUCTION OF THE EQUIPMENT	17
Section 7.1 Damage or Destruction of the Equipment	17
ARTICLE VIII SPECIAL COVENANTS	18
Section 8.1 Right to Inspect Equipment	18
Section 8.2 Hold Harmless Provisions.....	18
Section 8.3 Sublessee to Maintain Its Existence.....	20
Section 8.4 Qualification in State	20
Section 8.5 Agreement to File Annual Statements and Provide Information.....	21
Section 8.6 Books of Record and Accounts; Financial Statements	21
Section 8.7 Compliance With Orders, Ordinances, Etc.....	21
Section 8.8 Discharge of Liens and Encumbrances.....	22
Section 8.9 Depreciation Deductions and Investment Tax Credit.....	22

Section 8.10	Security Agreements and Leasing of Equipment.....	22	
Section 8.11	Employment at the Facility.....	24	
Section 8.12	Compliance with the Act	25	
ARTICLE IX RELEASE OF CERTAIN EQUIPMENT; ASSIGNMENTS AND SUBLEASING; SECURITY INTEREST AND PLEDGE OF INTERESTS			25
Section 9.1	Restriction on Sale of Equipment; Release of Certain Equipment	25	
Section 9.2	Removal of Equipment	26	
Section 9.3	Assignment and Subleasing	26	
Section 9.4	Merger of Agency	27	
ARTICLE X EVENTS OF DEFAULT AND REMEDIES			27
Section 10.1	Events of Default Defined	27	
Section 10.2	Remedies on Default.....	29	
Section 10.3	Remedies Cumulative	29	
Section 10.4	Agreement to Pay Attorneys' Fees and Expenses	29	
Section 10.5	No Additional Waiver Implied by One Waiver	29	
ARTICLE XI EARLY TERMINATION OF EQUIPMENT LEASE AGREEMENT; OPTION IN FAVOR OF SUBLESSEE.....			30
Section 11.1	Early Termination of Equipment Lease Agreement	30	
Section 11.2	Conditions to Termination of Equipment Lease Agreement	30	
Section 11.3	Conveyance on Termination	30	
ARTICLE XII ENVIRONMENTAL MATTERS			30
Section 12.1	Environmental Representations of the Sublessee	30	
Section 12.2	Environmental Covenants of the Sublessee.....	31	
Section 12.3	Survival Provision.....	33	
ARTICLE XIII MISCELLANEOUS			34
Section 13.1	Notices	34	
Section 13.2	Binding Effect.....	34	
Section 13.3	Subordination of Equipment Lease Agreement.....	34	
Section 13.4	Severability	35	
Section 13.5	Amendments, Changes and Modifications	35	
Section 13.6	Execution of Counterparts	35	
Section 13.7	Applicable Law	35	
Section 13.8	List of Additional Equipment; Further Assurances	35	
Section 13.9	Survival of Obligations.....	35	
Section 13.10	Table of Contents and Section Headings not Controlling	35	
EXHIBIT A - Description of Equipment			
EXHIBIT B - Form of Sales Tax Agent Authorization Letter			
EXHIBIT C - Sales Tax Registry			
EXHIBIT D - Exceptions to Representations and Warranties of Sublessee			
EXHIBIT E Annual Compliance Certificate			
EXHIBIT F Local Workforce Utilization Policy			

THIS EQUIPMENT LEASE AGREEMENT, dated as of December 1, 2024 (this “**Equipment Lease Agreement**”), is between the DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at Three Neptune Road, Poughkeepsie, New York 12601 (the “**Agency**”), and HARLEM VALLEY HOMESTEAD LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having its principal office at 147 Old Forge Road, Wingdale, New York 12594 (the “**Sublessee**”).

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 335 of the Laws of 1977 of the State, as amended (collectively, the “**Act**”), the Agency was created and is empowered under the act to undertake the Project Work as defined below and the leasing of the Equipment defined below; and

WHEREAS, NONNO’S GARDEN, LLC, a Delaware limited liability company having offices at 147 Old Forge Road, Wingdale, New York 12594 (“**Nonno’s Garden, LLC**”), ANRA’S NEST, LLC, a Delaware limited liability company having offices at 147 Old Forge Road, Wingdale, New York 12594 (“**Anra’s Nest, LLC**”, and together with Nonno’s Garden LLC, the “**Companies**”), and the Sublessee have submitted an application to the Agency requesting the Agency provide certain “financial assistance” (within the meaning of the Act) with respect to the Facility (hereinafter defined), including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes for the following project (the “**Project**”):

- (A) the acquisition of approximately 247.99 acres on five parcels of land all located in the Town of Dover, Dutchess County, New York, more particularly described as follows (collectively, the “**Land**”):
 - i. an approximately 60.3-acre parcel located on Old Forge Road bearing Tax

- Map Grid No. 132600-7260-00-062777-0000;
- ii. an approximately 100-acre parcel located at 132 Old Forge Road bearing Tax Map Grid No. 132600-7260-00-123597-0000;
 - iii. an approximately 1.17-acre parcel located on Old Forge Road bearing Tax Map Grid No. 132600-7260-00-167790-0000;
 - iv. an approximately 11.44-acre parcel located on Old Forge Road bearing Tax Map Grid No. 132600-7160-00-981478-0000; and
 - v. an approximately 75.08-acre parcel located at 30 Old Forge Road bearing Tax Map Grid No. 132600-7260-00-089448-0000; and
- (B) the renovation of approximately 14,600 square feet within seven (7) buildings (the existing farmhouse, the three-barn complex (Gathering Barn, Farm Store and Propagation House), and Horse Barn, minor renovations of the Old Hill Barn, and Library) located on a portion of the Land (Tax Map No. 132600-7260-00-123597-0000) and approximately 71,400 square feet of new construction comprised of 25 +/- Buildings to include 42 lodging guest units consisting of four types of lodging including seasonal cabins, year-round cabins, suites located within the Farmhouse, traditional hotel-style, and as well as the construction of a new Homestead House, Hospitality Hub, Spa, Sauna, and Pond Dock located on a portion of the Land (Tax Map Nos. 132600-7260-00-123597-0000 and 132600-7260-00-062777-0000) (the “**Improvements**”) and the acquisition and installation of certain equipment and personal property, not part of the Equipment (hereinafter defined) (the “**Facility Equipment**,” and together with the Land and the Improvements, the “**Company Facility**”), which Company Facility is to be leased by the Agency to the Companies and further subleased by the Companies to the Sublessee; and
- (C) the acquisition and installation of certain equipment and personal property (the “**Equipment**,” and together with the Company Facility, the “**Facility**”), which Equipment is to be leased by the Agency to the Sublessee, and which Facility is to be used by the Sublessee as a farm and agritourism resort; and

WHEREAS, the Companies have agreed to lease their respective interest in the Land and the Improvements to the Agency pursuant to certain Company Lease Agreements, dated as of December 1, 2024 (the “**Company Leases**”), by and between each of the Companies and the Agency; and

WHEREAS, the Agency has agreed to lease and sublease the Company Facility to the Companies, pursuant to certain Lease and Project Agreements, dated as of December 1, 2024 (the “**Lease Agreements**”), by and between the Agency and each of the Companies; and

WHEREAS, the Companies have agreed to sub-sublease the Company Facility pursuant to the terms of certain Lease Agreements, each dated as of January 22, 2018, as amended (collectively, the “**Sublease Agreement**”), by and between each of the Companies and the Sublessee; and

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

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

AGREEMENT

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

ARTICLE I DEFINITIONS

All capitalized terms used in this Equipment Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached as Schedule A to the Lease Agreements, which definitions are incorporated herein and made a part hereof by reference.

ARTICLE II REPRESENTATIONS AND COVENANTS

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

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

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

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

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

(e) The Agency has been induced to enter into this Equipment Lease Agreement by the undertaking of the Sublessee to utilize the Equipment in Dutchess County, New York in furtherance of the Public Purposes of the Agency.

(f) The undertaking of the Project is anticipated to serve the Public Purposes of the State by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

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

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

(b) Neither the execution and delivery of any of the Sublessee 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 Sublessee Documents and the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Sublessee's Organizational Documents, as amended, or any restriction or any agreement or instrument to which the Sublessee 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 Sublessee under the terms of any such law, ordinance, Organizational Documents, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

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

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

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

(f) There is no action or proceeding pending or, to the best of the Sublessee's knowledge, after diligent inquiry, threatened, by or against the Sublessee by or before any court or administrative agency that would adversely affect the ability of the Sublessee to perform its obligations under this Equipment Lease Agreement or any other Sublessee Document.

(g) The Sublessee 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 Equipment Lease Agreement and each other Sublessee Document or in connection with the performance of its obligations hereunder and under each Sublessee Document.

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

ARTICLE III CONVEYANCE OF THE EQUIPMENT; EQUIPPING OF THE FACILITY

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

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

Section 3.3 Equipping of Facility.

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

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

(c) The Agency shall enter into, and accept the assignment of, such contracts or leases as the Sublessee may request in order to effectuate the purposes of this Section 3.3.

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

Section 3.4 Certificates of Completion. To establish the Equipment Completion Date, the Sublessee shall deliver to the Agency (i) a certificate signed by an Authorized Representative of the Sublessee (a) stating that the acquisition, leasing, subleasing and installation of the Equipment in the Facility has been completed; and (b) stating that the payment of all labor, services, materials and supplies used in such acquisition and installation has been made or provided for; and (ii) such other certificates as may be requested by the Agency. The Sublessee agrees to complete the acquisition, leasing and installation of the Equipment in the Facility on or before December 31, 2026, or such other date as may be extended by the Agency.

Section 3.5 Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Equipment or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Sublessee 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 Sublessee, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety or other Person which the Sublessee deems reasonably necessary, and in such event the Agency, at the Sublessee's expense, hereby agrees to cooperate fully with the Sublessee and to take all action necessary to effect the substitution of the Sublessee for the Agency in any such action or proceeding.

ARTICLE IV DEMISING CLAUSES AND RENTAL PROVISIONS

Section 4.1 Demise of Equipment. The Agency hereby leases the Equipment to the Sublessee and the Sublessee hereby takes the Equipment from the Agency upon the terms and conditions of this Equipment Lease Agreement.

Section 4.2 Duration of Equipment Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Sublessee sole and exclusive possession of the Equipment (subject to Sections 8.1 and 10.2 hereof) and the leasehold interest or subleasehold interest created hereby shall commence on the Closing Date and the Sublessee shall accept possession of the Equipment on the Closing Date.

(b) Except as provided in Section 10.2 hereof, the leasehold interest created hereby shall terminate at 11:59 p.m. on December 31, 2029 or on such earlier date as may be permitted by Section 11.1 and Article XI hereof (the "**Equipment Lease Term**").

(c) Except as provided in Sections 8.1 and 10.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Sublessee during the Equipment Lease Term from having quiet and peaceable possession and enjoyment of the Equipment and will, at the request of the Sublessee and at the Sublessee's sole expense, cooperate with the Sublessee in order that the Sublessee may have quiet and peaceable possession and enjoyment of the Equipment as hereinabove provided.

Section 4.3 Rents and Other Amounts Payable.

(a) The Sublessee shall pay basic rent for the Equipment throughout the term of this Equipment Lease Agreement as follows: One Dollar (\$1.00) per year commencing on the Closing Date and continuing on the first Business Day of each and every January thereafter during the term of this Equipment Lease Agreement.

(b) In addition to the payments of basic rent pursuant to Section 4.3(a) hereof, throughout the Equipment Lease Term, the Sublessee shall pay to the Agency as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to, without duplication, the sum of the expenses of the Agency and the members thereof, including attorneys' fees, incurred (i) by reason of the Agency's ownership, financing, leasing or subleasing of the Equipment or (ii) in connection with the carrying out of the Agency's duties and obligations under the Agency Documents, the payment of which is not otherwise provided for under this Equipment Lease Agreement. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Agency.

(c) The Sublessee, under the provisions of this Section 4.3, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Sublessee shall fail to timely make any payment required in Section 4.3(a) or 4.3(b), the Sublessee shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

Section 4.4 Obligations of Sublessee Hereunder Unconditional. The obligations of the Sublessee to make the payments required in Section 4.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Sublessee, 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 Sublessee agrees it will not (i) suspend, discontinue or abate any payment required hereunder, (ii) fail to observe any of its other covenants or agreements in this Equipment Lease Agreement or (iii) terminate this Equipment Lease Agreement for any cause whatsoever unless and until all obligations of the Sublessee to the Agency have been satisfied.

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 SUBLESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE SUBLESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE FACILITY. THE SUBLESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE SUBLESSEE, ON

BEHALF OF ITSELF, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE SUBLESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE SUBLESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

ARTICLE V
SALES TAX EXEMPTION AND MORTGAGE RECORDING TAX EXEMPTION

Section 5.1 Sales Tax Exemption and Mortgage Recording Tax Exemption.

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

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

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

- (i) The Sales Tax Exemption shall be effective only for a term commencing on the Closing Date and expiring upon the earliest of (A) the termination of this Equipment Lease Agreement, (B) the Completion Date, (C) failure of the Sublessee to file Form ST-340, as described in Section 5.1(g) below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 or (E) the date upon which the Sublessee received the Maximum Sublessee Sales Tax Savings Amount.
- (ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Sublessee that the Sublessee is in default under this Equipment Lease Agreement until such default is cured to the satisfaction of the Agency.
- (iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Equipment Lease Agreement.
- (iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for use only by the Companies and the Sublessee at the Facility (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item to a Person as shall not constitute the Sublessee), it being the intention of the Agency and the Sublessee that the sales and use tax exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Companies and the Sublessee at the Facility.
- (v) The Sales Tax Exemption shall not be used for any Ineligible Item.
- (vi) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Companies or the Sublessee, without the prior written consent of the Agency.
- (vii) By execution by the Sublessee of this Equipment Lease Agreement, the Sublessee agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Sublessee or by any Agent is strictly for the purposes stated herein.
- (viii) Upon the Termination Date, the Sublessee and each Agent shall cease being agents of the Agency, and the Sublessee shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated.
- (ix) The Sublessee agrees that the aggregate amount of Sales Tax Savings realized by the Sublessee and by each Agent in connection with the Facility shall not exceed in the aggregate the Maximum Sublessee Sales Tax Savings Amount.

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

- (i) For each Agent, the Sublessee must complete and submit Form ST-60 to the Agency. The foregoing is required pursuant to GML Section 874(9) and Form ST-60 and the regulations relating thereto which require that within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity.
- (ii) Following receipt by the Agency of the completed Form ST-60, such Agent must be appointed as Agent by the Agency, by execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Exhibit B. The determination whether to approve the appointment of an Agent shall be made by the Agency, in its sole discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Sublessee. The Sublessee must also provide a copy of an executed Sales Tax Agent Authorization Letter together with a copy of this Equipment Lease Agreement to the Agent within five (5) Business Days after receipt thereof by the Sublessee.
- (iii) The Sublessee shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Equipment Lease Agreement.

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

(f) Form ST-123 Requirement. As an agent of the Agency, the Sublessee agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed

Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Sublessee or by any Agent, as agent for the Agency, for the Project Work. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Sublessee, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state, "I, [Sublessee/Agent], certify that I am duly appointed agent of the Dutchess County Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the Harlem Valley Homestead 2024 Project located at Old Forge Road, 132 Old Forge Road, and 30 Old Forge Road, bearing tax identification numbers 132600-7260-00-062777-0000, 132600-7260-00-123597-0000; 132600-7260-00-167790-0000 132600-7160-00-981478-0000; and 132600-7260-00-089448-0000, Town of Dover, Dutchess County, New York, IDA Project Number 1302[]." The Sublessee shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six years from the date thereof. For each Agent the Form ST-123 shall be completed as follows: (i) the "Project information" section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

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

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

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

(i) The Sublessee 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 Equipment Lease Agreement and the Special Provisions, the Special Provisions shall control.

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

(j) Subject to the provisions of Section 5.1(h) hereof, in the event that the Sublessee or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Equipment Lease Agreement or any Sales Tax Agent Authorization Letter, the Sublessee shall promptly deliver notice of same to the Agency, and the Sublessee 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 Sublessee or any Agent (as applicable).

(k) Upon request by the Agency with reasonable notice to the Sublessee, the Sublessee shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Sublessee and any Agent, and require all appropriate officers and employees of the Sublessee to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Sublessee or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Sublessee under this Section 5.1.

(l) 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 hereby grants to the Sublessee exemption from mortgage recording taxes for one or

more Mortgages on the Facility securing an aggregate principal amount not to exceed \$30,000,000.00, or such greater amount as approved by the Agency in its sole and absolute discretion, in connection with the financing of the Project Work and any future financing, refinancing or permanent financing of the costs of the Project Work for the Facility (the “**Mortgage Recording Tax Exemption**”). The Sublessee represents and warrants (1) that the Facility is located within a transportation district referenced in Section 253(2)(a) of the Tax Law, and (2) that upon recording the Mortgage, the Sublessee shall pay the mortgage recording tax allocated to transportation districts referenced in Section 253(a)(2) of the Tax Law.

Section 5.2 Recapture of Agency Benefits

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

(i) If there shall occur a Recapture Event after the Closing Date, but on or before December 31, 2029, the Sublessee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below).

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

(i) the Mortgage Recording Tax Exemption; and

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

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

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

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

- (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 Sublessee; or
- (iii) The sale of the Facility/Equipment or closure of the Facility and/or departure of the Sublessee from Dutchess County, except as due to casualty, condemnation or force majeure as provided in subsection (d) below; or
- (iv) Failure of the Sublessee to create or cause to be maintained at least ninety percent (90%) of the number of FTE jobs at the Facility as provided in Section 8.11 of this Equipment Lease Agreement, which failure is not reflective of the business conditions of the Sublessee, 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
- (v) Any significant deviations from the Project Application Information which would constitute a significant diminution of the Sublessee's activities in, or commitment to Dutchess County, New York; or
- (vi) The Sublessee receives Sales Tax Savings in connection with the Project Work in excess of the Maximum Sublessee Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits.

(d) Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event, (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Sublessee after the Facility/Equipment shall have been destroyed or damaged in whole or in part (such occurrence a "Loss Event") to rebuild, repair, restore or replace the Facility/Equipment to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Sublessee or any of its affiliates so long as the Sublessee 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/Equipment or part thereof.

(e) The Sublessee covenants and agrees to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year of the number of FTEs located at the Facility for such Tax Year, 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 Sublessee of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(f) In the event any payment owing by the Sublessee under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Sublessee 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).

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

(h) Notwithstanding the foregoing, the Board of Directors of the Agency may waive the provisions of this Section in its sole discretion based upon its review of the circumstances of the Sublessee.

ARTICLE VI MAINTENANCE AND INSURANCE

Section 6.1 Maintenance and Modifications of Equipment by Sublessee. The Sublessee shall not abandon the Equipment or cause or permit any waste to the Equipment. During the Equipment Lease Term, the Sublessee shall not remove any part of the Equipment outside of the jurisdiction of the Agency and shall (i) keep the Equipment in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Equipment; and (iii) operate the Equipment in a sound and economic manner.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 3.3 hereof, the Sublessee or any permitted sublessee of the Sublessee 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 Equipment, so long as such additional property is properly identified by such appropriate records, including computerized records, as approved by the Agency. The Sublessee from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Sublessee 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 Sublessee agrees promptly to repair or cause to be repaired such damage at its own expense.

Section 6.3 Reserved.

Section 6.4 Insurance Required. At all times throughout the Equipment Lease Term, the Sublessee shall, at its sole cost and expense, maintain or cause to be maintained insurance

with respect to the Equipment against such risks and for such amounts as are customarily insured by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Equipment, as determined by a recognized appraiser or insurer selected by the Sublessee.

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

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

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

Section 6.5 Additional Provisions Respecting Insurance.

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

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

(c) The minimum insurance requirements set forth under Section 6.4 and this Section 6.5 shall not limit, abridge, or modify the Sublessee's obligation under Section 8.2 hereof to indemnify and hold the Agency harmless 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.

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

ARTICLE VII
DAMAGE OR DESTRUCTION OF THE EQUIPMENT

Section 7.1 Damage or Destruction of the Equipment.

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

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

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

(iii) the Sublessee 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 Sublessee for the replacement,

repair, rebuilding or restoration of the Equipment as provided in Section 7.1(b) hereof or (B) applied pursuant to Section 7.1(d) hereof; and

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

(b) All such repair, replacement, rebuilding or restoration of the Equipment shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Sublessee in accordance with the terms of the applicable contracts, and shall automatically become a part of the Equipment as if the same were specifically described herein. Any balance of such Net Proceeds remaining after payment of all costs of replacement, repair, rebuilding or restoration shall be retained by the Sublessee.

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

(d) If the Sublessee shall not repair, replace, rebuild or restore the Equipment, it shall be deemed to have exercised its option to terminate this Equipment Lease Agreement pursuant to Section 11.1 hereof. Any Net Proceeds derived from insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof and the balance shall be delivered to the Sublessee. If an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

ARTICLE VIII SPECIAL COVENANTS

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

Section 8.2 Hold Harmless Provisions.

(a) The Sublessee agrees that the Agency or any of its members, directors, officers, agents (except the Sublessee) or employees (the “**Indemnified Parties**”) shall not be liable for and agrees to defend, indemnify, release and hold the Indemnified Parties harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses (including, without limitation, reasonable attorneys’ and experts’ fees, expenses and disbursements, incurred whether by reason of third party claims or to enforce the terms, conditions and provisions of this Lease Agreement) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Agency relating to, resulting from or arising out of: (i) loss or damage to Property or injury to or death of any and all Persons that may be

occasioned by, directly or indirectly, any cause whatsoever pertaining to the Equipment or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Facility, (ii) the Agency's acquisition, leasing, subleasing, use and operation of the Equipment, including without limiting the generality of the foregoing, all claims arising from the breach by the Sublessee of any of its covenants contained herein, the exercise by the Sublessee of the authority conferred upon it pursuant to this Equipment Lease Agreement and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Lease Agreement (including without limitation this Section) or any of the other documents delivered on the Closing Date by the Agency) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, (iii) the conditions of the Environment at, on or in the vicinity of the Facility, (iv) the operation or use of the Equipment in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production or Disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, except in compliance with all applicable Environmental Laws, (v) the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance or waste on, at or from the 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 condition of the Equipment or the ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law, (viii) a violation of any applicable Environmental Law, (ix) non-compliance with any Environmental Permit, (x) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Sublessee in this Equipment Lease Agreement, or (xi) the costs of any required or necessary investigation, assessment, testing, repair, cleanup, or detoxification of the Equipment and the preparation of any closure or other required plans; provided that any such losses, damages, liabilities or expenses of the Agency are not incurred on account of and do not result from the gross negligence or intentional or willful wrongdoing of the Indemnified Parties. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of any of the Indemnified Parties, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

Notwithstanding any other provisions of this Equipment Lease Agreement, the obligations of the Sublessee pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Equipment Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency, or its respective members, directors, officers,

agents and employees, relating to the enforcement of the provisions herein specified. The liability of the Sublessee 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 Sublessee or any subsequent owners or users of the Equipment, (ii) any extensions of time for payment or performance required by any of the Transaction Documents, (iii) the release of the Sublessee 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 Sublessee, (vi) any investigation or inquiry conducted by or on the behalf of the Agency or any information which the Agency may have or obtain with respect to the condition of the Environment at, or ecological condition of, the Equipment, (vii) the sale, assignment, subleasing, transfer or conveyance of all or part of the Equipment or the Sublessee's interests and rights in, to, and under the Equipment Lease Agreement or the termination of the Equipment Lease Agreement, but only with respect to a Release that has occurred prior to any such event, (viii) the death or legal incapacity of the Sublessee, (ix) the release or discharge, in whole or in part, of the Sublessee in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, or (x) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Sublessee under the Equipment Lease Agreement, or any other Transaction Document.

(b) In the event of any claim against the Indemnified Parties by any employee or contractor of the Sublessee or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Sublessee hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 8.3 Sublessee to Maintain Its Existence. The Sublessee covenants and agrees that at all times during the term of this Equipment Lease Agreement, it will (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Equipment 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 more than 49% of the ownership and control of the Sublessee or sell or transfer more than 49% of the equity interests in the Sublessee, except in the case of clauses (iv) and (v), with consent of the Agency, which consent shall not be unreasonably withheld or delayed or conditioned.

Section 8.4 Qualification in State. The Sublessee throughout the term of this Equipment Lease Agreement shall continue to be duly authorized to do business in the State.

Section 8.5 Agreement to File Annual Statements and Provide Information. The Sublessee 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 5.1(g) hereof. The Sublessee shall submit a copy of such annual statement to the Agency at the time of filing with NYSDTF. The Sublessee shall also provide the Agency with the information necessary for the Agency to comply with Section 874(9) of the GML. Annually, the Sublessee shall provide the Agency with a certified statement and documentation (i) enumerating the full time equivalent employee (“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 Sublessee further agrees to provide and certify or cause to be provided and certified such information concerning the Sublessee, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or Sublessee Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

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

Section 8.7 Compliance With Orders, Ordinances, Etc.

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

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

Section 8.8 Discharge of Liens and Encumbrances.

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

(b) Notwithstanding the provisions of subsection (a) hereof, the Sublessee may in good faith contest any such Lien. In such event, the Sublessee 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 Sublessee that by nonpayment of any such item or items, the Equipment or any part thereof may be subject to loss or forfeiture, in which event the Sublessee 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 Sublessee shall be entitled to all depreciation deductions, if any, with respect to any depreciable property comprising a part of the Equipment and to any investment credit with respect to any part of the Equipment.

Section 8.10 Security Agreements and Leasing of Equipment.

(a) The Agency and the Sublessee agree to grant a security interest in any Equipment financed with the proceeds of a loan to the lender of such loan (in which event the Lien thereby created shall be deemed a Permitted Encumbrance), if the security agreement is in a standard form and substance pre-approved by the Agency and acceptable to the Agency (and the Agency agrees to not unreasonably withhold or delay its approval of such standard form security agreement) and if the security agreement contains the Agency Provisions (as hereinafter defined).

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

Section ____ . No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of the loan or any amount due and owing under the loan or the security agreement. The lender will not look to the Agency or any principal, member, director, officer or employee of the Agency

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

Section [___]. Hold Harmless Provisions. (a) The Sublessee agrees that the Agency, its directors, members, officers, agents (except the Sublessee) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Sublessee) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Equipment or arising by reason of or in connection with the use thereof or under this security agreement or any of the loan documentation, or (ii) liability arising

from or expense incurred by the Agency's acquisition, installation, owning, leasing or financing of the Equipment, including without limiting the generality of the foregoing, all claims arising from the breach by the Sublessee of any of its covenants contained herein or under any of the loan documentation and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the security agreement (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Sublessee) or employees. The foregoing indemnities shall apply irrespective of the breach of a statutory obligation on the part of the Agency, or any of its members, directors, officers, agents, or employees or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

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

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

Section 8.11 Employment at the Facility. The Sublessee hereby agrees to create and maintain at all times or cause to be created and maintained at all times at the Facility by its operators, affiliates or subsidiaries: seventy-one (71) FTEs as of December 31, 2028 (within two (2) years of the Completion Date). The Sublessee acknowledges any failure of the Sublessee to maintain the required FTEs shall trigger recapture obligations under this Equipment Lease Agreement, the Lease Agreements and any other Agency agreements related to the Project.

Section 8.12 Employment Opportunities; Notice of Jobs. The Sublessee 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 Sublessee is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300), as superseded by the Workforce Innovation and Opportunity Act (PL. 113-128), in which the Facility is located (collectively, the “**Referral Agencies**”). The Sublessee agrees to comply with the Agency’s “Local Workforce Utilization Policy” a copy of which is attached hereto as Exhibit F and made a part hereof. The Sublessee also agrees, and shall cause any and all sublessees to agree, that they will, where practicable, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 8.13 Compliance with the Act. The Sublessee hereby agrees to comply with New York General Municipal Law Section 875. The Sublessee further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Sublessee as agent of the Agency pursuant to Section 5.1 hereof is subject to termination and recapture of benefits pursuant to Section 875.

Section 8.14 Annual Compliance Certificate. The Sublessee shall deliver to the Agency each year no later than January 15th, a certificate signed by an Authorized Representative of the Sublessee in the form attached hereto as Exhibit E, together with all attachments referenced therein.

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

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

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

(b) The Agency and the Sublessee from time to time shall release from the provisions of this Equipment Lease Agreement and the leasehold or subleasehold estate created hereby any part of, or interest in, the Equipment which is not necessary, desirable or useful for the Facility. In such event, the Agency, at the Sublessee’s sole cost and expense, shall execute and deliver

any and all instruments necessary or appropriate to so release such part of, or interest in, the Equipment.

Section 9.2 Removal of Equipment.

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

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

Section 9.3 Assignment and Subleasing.

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

(i) no assignment or sublease shall relieve the Sublessee from primary liability for any of its obligations hereunder unless consented to by the Agency, which consent shall not be unreasonably withheld or delayed subject to the dates of the Agency’s board meetings and which consent shall be conditioned upon the Agency being indemnified and held harmless to its reasonable satisfaction;

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

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

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

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

(b) If the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 9.3, the Sublessee at its sole cost and expense shall furnish to the Agency, with an opinion, in form and substance satisfactory

to the Agency (i) of Agency Counsel as to item (v) above, and (ii) of Independent Counsel as to items (i), (ii), and (iv) above.

(c) Notwithstanding the foregoing, the Agency hereby consents to the assignment of this Equipment Lease Agreement, in whole or in part, and the transfer of the Equipment, in whole or in part, to Anra's Nest, LLC or to Nonno's Garden, LLC, each a limited liability company duly organized under the laws of the State of Delaware and authorized to transact business in the State of New York and each a Related Person to the Sublessee.

Section 9.4 Merger of Agency.

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

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to the Sublessee. The Agency promptly shall furnish such additional information with respect to any such transaction as the Sublessee may reasonably request.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

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

(i) the failure by the Sublessee to pay or cause to be paid on the date due or within the applicable grace period, the amount specified to be paid pursuant to Section 4.3(a) or 4.3(b) hereof;

(ii) the failure by the Sublessee to observe and perform any covenant contained in Sections 2.2(c), 4.4, 5.1, 6.4, 6.5, 8.2, 8.4, 8.5, 8.11, 9.3 and 10.4 hereof;

(iii) the failure by the Sublessee to pay or cause to be paid the Recaptured Benefits, on the date due;

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

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

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

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

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 3.4 or 6.1 of this Equipment Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Equipment Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2 Remedies on Default.

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

(i) declare, by written notice to the Sublessee, 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 due and owing Recaptured Benefits and (C) all other payments due under this Equipment Lease Agreement;

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

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

(b) No action taken pursuant to this Section 10.2 shall relieve the Sublessee from its obligation to make all payments required by Section 4.3 hereof or due and owing 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 Equipment Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency, as appropriate, to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Equipment Lease Agreement.

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

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

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

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

Section 11.2 Conditions to Termination of Equipment Lease Agreement. In the event of the termination or expiration of this Equipment Lease Agreement in accordance with the provisions of Sections 4.2, 10.2 or 11.1 hereof, the Sublessee shall pay or cause to be paid to the Agency all amounts due and payable under Section 5.2 hereof together with the amount certified by the Agency as equal to all reasonable unpaid fees and expenses of the Agency incurred under the Agency Documents to the date of termination.

Section 11.3 Conveyance on Termination. At the closing of any termination of the Equipment Lease Agreement pursuant to Section 11.1 hereof, the Agency shall, upon receipt of the amounts payable pursuant to Section 11.2 hereof, deliver to the Sublessee all necessary documents (i) to terminate this Equipment Lease Agreement and to convey the Equipment to the Sublessee, subject in each case only to the following: (A) any Liens to which leasehold estate or title to such Equipment was subject when conveyed to the Agency, (B) any Liens created at the request of the Sublessee, to the creation of which the Sublessee consented or in the creation of which the Sublessee acquiesced, (C) any Permitted Encumbrances and (D) any Liens resulting from the failure of the Sublessee to perform or observe any of the agreements on its part contained in this Equipment Lease Agreement or arising out of an Event of Default hereunder, and (ii) to release and convey to the Sublessee all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance with respect to the Equipment.

ARTICLE XII
ENVIRONMENTAL MATTERS

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

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

(b) Reserved.

(c) Reserved.

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

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

(f) To the best of Sublessee's knowledge no event has occurred with respect to the Equipment which, with the passage of time or the giving of notice, or both, would constitute a violation of or non-compliance with any applicable Environmental Law or Environmental Permit.

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

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

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

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

production, management or Disposal of any Hazardous Substances other than in accordance with all applicable Environmental Laws and Environmental Permits.

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

(c) The Sublessee shall not cause or permit any change to be made in the present or intended acquisition, installation, use or operation of the Equipment which would (i) involve the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance other than in accordance with any applicable Environmental Law, or the use or operation of the Equipment as a landfill or waste management or disposal site or for manufacturing or industrial purposes or for the storage of petroleum or petroleum based products other than in accordance with any applicable Environmental Law, (ii) violate any applicable Environmental Law, (iii) constitute a violation or non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance.

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

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

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

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

ARTICLE XIII
MISCELLANEOUS

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

To the Agency:

Dutchess County Industrial Development Agency
Three Neptune Road
Poughkeepsie, New York 12601
Attention: Executive Director

With a copy to:

Cappillino, Rothschild & Egan LLP
7 Broad Street
Pawling, New York 12564
Attention: Elizabeth A. Cappillino, Esq.

To the Sublessee:

Harlem Valley Homestead LLC
147 Old Forge Road
Wingdale, New York 12594
Attention: Joshua Viertel

With a copy to:

Cuddy & Feder LLP
445 Hamilton Avenue, 14th Floor
White Plains, New York 10601
Attention: Richard Sandor, Esq.

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

Section 13.2 Binding Effect. This Equipment Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 13.3 Subordination of Equipment Lease Agreement. This Equipment Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage or Security Agreement which may be granted by the Agency and/or the Sublessee on the Equipment or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases

thereof.

Section 13.4 Severability. In the event any provision of this Equipment Lease Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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

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

Section 13.7 Applicable Law. This Equipment Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 13.8 List of Additional Equipment; Further Assurances. Upon the Completion Date and the installation of all of the Equipment in the Facility, the Sublessee shall prepare and deliver to the Agency a schedule listing all of the Equipment not previously described in this Equipment Lease Agreement. If requested by the Agency, the Sublessee shall thereafter furnish to the Agency, within sixty (60) days after the end of each calendar year, a schedule listing all of the Equipment not theretofore previously described herein or in the aforesaid schedule.


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

Section 13.10 Table of Contents and Section Headings not Controlling. The Table of Contents and the headings of the several Sections in this Equipment Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Equipment Lease Agreement.

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

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

**DUTCHESS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Sarah Lee
Title: Executive Director

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

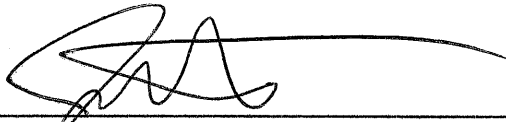
On the 12 day of December in the year 2024, before me, the undersigned, personally appeared **SARAH LEE**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the 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.


Notary Public

JASMIN D. HAYLETT
NOTARY PUBLIC-STATE OF NEW YORK
No. 01HA6161058
Qualified in Dutchess County
My Commission Expires 02-12-2027

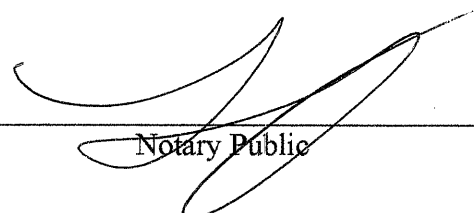
HARLEM VALLEY HOMESTEAD LLC,
a Delaware limited liability company

By: O HORIZON, LLC, a Delaware limited
liability company, its sole member

By: 
Name: Joshua Viertel
Title: Authorized Signatory

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

On the 13 day of December in the year 2024, before me, the undersigned, personally appeared **JOSHUA VIERTEL**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public

SKYLAR P STRANGE
NOTARY PUBLIC STATE OF NEW YORK
DUTCHESS COUNTY
LIC. #01ST6298855
COMM. EXP. 08/19/2026

EXHIBIT A

Equipment

All Eligible Items acquired and installed and/or to be acquired and installed by or on behalf of the Sublessee in connection with the completion of the Dutchess County Industrial Development Agency's Harlem Valley Homestead 2024 Facility located at Old Forge Road, 132 Old Forge Road, and 30 Old Forge Road, bearing tax identification numbers 132600-7260-00-062777-0000, 132600-7260-00-123597-0000; 132600-7260-00-167790-0000 132600-7160-00-981478-0000; and 132600-7260-00-089448-0000, Town of Dover, Dutchess County, New York, and leased to the Sublessee pursuant to the Equipment Lease Agreement.

EXHIBIT B

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: [December 31, 2026]

ELIGIBLE LOCATION:

[Address]

_____, 20__

TO WHOM IT MAY CONCERN:

Re: Dutchess County Industrial Development Agency
(Harlem Valley Homestead 2024 Facility)

Ladies and Gentlemen:

The Dutchess County Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. Pursuant to a certain Equipment Lease Agreement, dated as of December 1, 2024 (the "Equipment Lease Agreement"), between the Agency and HARLEM VALLEY HOMESTEAD LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having its principal office at 147 Old Forge Road, Wingdale, New York 12594 (the "Sublessee"), the Agency has authorized the Sublessee to act as its agent in connection with the Facility described therein located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Equipment Lease Agreement.

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

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

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

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

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 “IDA Agent or Project Operator Exempt Purchase Certificate”** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes (“Form ST-123”) for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the construction, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Sublessee, as project operator of the Agency, was the purchaser. “I, [Sublessee/Agent], certify that I am duly appointed agent of the Dutchess County Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the Harlem Valley Homestead 2024 Project located at Old Forge Road, 132 Old Forge Road, and 30 Old Forge Road, bearing tax identification numbers 132600-7260-00-062777-0000, 132600-7260-00-123597-0000; 132600-7260-00-167790-0000 132600-7160-00-981478-0000; and 132600-7260-00-089448-0000, Town of Dover, Dutchess County, New York, IDA Project Number 1302[___].” The Agent shall complete Form ST-123 as follows: (i) the “Project information” section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent’s Sales Tax Agent Authorization Letter; and (iii) the “Exempt purchases” section of Form ST-123 should be completed by marking “X” in box “A” only.

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

Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

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

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

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

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

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

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

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

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

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

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

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

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

**DUTCHESS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

Name:

Title: Executive Director

ACCEPTED AND AGREED TO BY:

_____ **[AGENT]**

By: _____

Name:

Title:

Schedule A
to
SALES TAX AGENT AUTHORIZATION LETTER

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

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

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

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

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

Schedule B
to
SALES TAX AGENT AUTHORIZATION LETTER

SALES TAX REGISTRY

Please Complete: **REPORTED PERIOD:** SEMI-ANNUAL PERIOD FROM
[JANUARY 1/JULY 1], 20__ to [JUNE 30/DECEMBER 31], 20__

Description of Item (include serial #, if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL REPORTED PERIOD:						

Certification: I, the undersigned, an authorized officer or principal owner of the company identified below, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sublessee Sales Tax Savings realized by the company identified below and its principals, affiliates, tenants, subtenants, contractors and subcontractors. This form and information provided pursuant hereto may be disclosed to the Dutchess County Industrial Development Agency (“DCIDA”), and may be disclosed by DCIDA in connection with the administration of the programs by DCIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Sublessee Name: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

EXHIBIT C

Sales Tax Registry

Please Complete: **REPORTED PERIOD:** ANNUAL PERIOD FROM
 JULY 1, 20__ to JUNE 30, 20__

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

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

Sublessee Name: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

EXHIBIT D

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES OF SUBLESSEE

[NONE.]

EXHIBIT E

ANNUAL COMPLIANCE CERTIFICATE

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

1. That s/he is the duly appointed [_____] of HARLEM VALLEY HOMESTEAD LLC, a limited liability company duly organized and existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having its office at 147 Old Forge Road, Wingdale, New York 12594 (the “**Sublessee**”).

2. That the Sublessee has previously entered into an equipment-lease transaction with the Dutchess County Industrial Development Agency (the “**Agency**”) pursuant to a certain Equipment Lease Agreement, dated as of December 1, 2024 (the “**Equipment Lease Agreement**”) whereby the Agency leased the Equipment (as such term is defined in the Equipment Lease Agreement) to the Sublessee.

3. That the Sublessee is not in default under the Equipment Lease Agreement and that no Event of Default exists under the Equipment Lease Agreement or any other Sublessee Document (as such term is defined in the Equipment Lease Agreement).

4. That there is no action or proceeding pending or, to the best of the Sublessee’s knowledge, after diligent inquiry, threatened, by or against the Sublessee by or before any court or administrative agency that would adversely affect the ability of the Sublessee to perform its obligations under the Equipment Lease Agreement or any other Sublessee Document.

5. Reserved.

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 Equipment Lease Agreement.

7. That there are no municipal violations outstanding on the premises.

8. That attached hereto as Exhibit A hereto are copies of the certificates of insurance required to be provided to the Agency pursuant to Sections 6.4 and 6.5 of the Equipment Lease Agreement.

9. That attached hereto as Exhibit B hereto is a certified statement of the Sublessee and documentation (i) enumerating the FTE (as such term is defined in the Equipment Lease Agreement) 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.

10. That attached hereto as Exhibit C is a copy of the Form NYS-45 filed with respect to the New York State Department of Labor.

11. That attached hereto as Exhibit D hereto 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 annual value of all sales and use tax exemptions claimed in connection with Facility.

**HARLEM VALLEY
HOMESTEAD LLC**

By: _____
Name:
Title:

Subscribed and sworn to before
me this ___ day of _____, 20__

Notary Public

Exhibit A

Insurance Certificates

Exhibit B

Form of Certified Statement and Documentation Regarding FTEs

Sublessee Name and Address:

Project Name:

Project Number:

Include employees of Sublessee, contractors, subcontractors, affiliates and tenant employees—anyone working at the facility location.

	FTEs to be created or retained within 2 years of Completion Date (as set forth in Application)	<u>FTEs created</u> for year ending 12/31/20__	Average Hourly Wage/Salary and/or Fringe Benefits of FTEs <u>created</u>	<u>FTEs retained</u> for year ending 12/31/20__	Average Hourly Wage/Salary and/or Fringe Benefits of FTEs <u>retained</u>	<u>Headcount</u> for year ending 12/31/20__
Owner/Executive						
Professional						
Management						
Administrative						
Production						
Other						
TOTAL						
Construction Jobs in 20__						

FTE (full-time equivalent) employees are calculated based on a 35-hour work week. If there are two administrative employees working 40 hours per week and one administrative employee working 15 hours per week, there are 2.7 FTEs. $(40+40+15)/35=2.7$.

Headcount: For the above example, the Headcount would be 3, for three people.

In accordance with the Equipment Lease Agreement between the Sublessee and the Dutchess County Industrial Development Agency, I certify that to the best of my knowledge and belief all of the information on this form is correct. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential recapture of benefits.

(Authorized Sublessee Representative)

Date

Title

Phone Number

Exhibit C

Form NYS-45

Exhibit D

Form ST-340

EXHIBIT F

DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Local Workforce Utilization Policy

Construction jobs, though limited in time duration, are vital to the overall employment opportunities in Dutchess County. The Dutchess County Industrial Development Agency (the “Agency”) has determined that Project Applicants (the “Company”), as a condition to receiving a real property tax abatement also referred to a Payment in Lieu of Taxes (PILOT) from the Agency, will be required to utilize qualified Workforce, as defined below, for all projects involving the construction, expansion, equipping, demolition and/or remediation of new, existing, expanded or renovated facilities (collectively, the “Project Site”).

For Projects \$10,000,000 and Above

Local Area Defined

For projects equal to or greater than \$10,000,000 the Local Area is defined as individuals residing in the following Counties (collectively, the “Local Area”): Columbia County, Dutchess County, Greene County, Orange County, Putnam County, Rockland County, Sullivan County, Ulster County and Westchester County.

Local Workforce Requirement

Companies receiving a PILOT as part of their financial assistance shall ensure that at least 80% of total work hours of the general contractor, subcontractor, or subcontractor to a subcontractor (collectively the “Workers”) working on the Project Site must reside within the Local Area. The 80% shall be measured by hours in total at the time of completion of the project. Companies do not have to be local companies as defined herein, but must employ local Workers residing within the Local Area to qualify under the 80% local Workforce criteria.

Local Workforce Reporting Requirement

The Local Workforce criteria will be verified based on employment, payroll and related records.

In addition, the Agency, or its designated agents, shall have the right, during normal business hours, to examine and copy records of the Company and to perform spot checks of all Workers at the Project Site to verify compliance with the Local Workforce requirement throughout the construction period.

Enforcement

If Agency staff determines that: (1) The Local Workforce Requirement is not being met; or (2) Agency Staff, upon use of its reasonable discretion, discovers or becomes aware of a compliance issue related to the Local Workforce Requirement, then a written warning delivered by Certified Mail of said Local Workforce Requirement violation (the “Warning of Violation”) shall be provided to the Company.

In the event a subsequent violation of the policy has occurred, then written notice delivered by Certified Mail of said Local Workforce Requirement violation (the “Notice of Violation”) shall be provided to the Company and the Executive Director shall bring the information to the Board of Directors which may, in its discretion, take action to revoke IDA benefits.

The Company has the primary obligation for the adherence to all the conditions of this policy. This obligation cannot be relieved, evaded or diminished by assigning a Contractor or through subcontracting. Should the project applicant assign a Contractor, the Company shall continue to have primary obligation.

Projects with multiple phases or projects with multiple owner entities will be considered in whole during the enforcement period.

Waiver Request

It is understood that at certain times, Workers residing within the Local Area may not be available with respect to a Project. Under this condition, the Company is required to contact the Agency to request a waiver of the Local Utilization Requirement (the “Local Workforce Utilization Waiver Request”) based on the following circumstances:

- Warranty issues related to installation of specialized equipment or materials whereby the manufacturer requires installation by only approved installers
- Specialized construction for which qualified Local Workforce Area workers are not available;
- Significant cost differentials in bid prices whereby the use of local Workforce significantly increases the cost of the project. A cost differential of 10% is deemed significant. Every effort should be made by the contractor or applicant to get below the 10% cost differential including, but not limited to, meeting with local construction trade organizations and local contractor associations
- Documented lack of workers meeting the Local Workforce Area requirement

The Agency shall evaluate the Local Workforce Utilization Waiver Request and make its determination related thereto based upon the supporting documentation received with such waiver request.

The foregoing terms have been read, reviewed and understood by the Company and all appropriate personnel. The undersigned agrees and understands that the information contained herein must be transmitted and conveyed in a timely fashion to all applicable subcontractors, suppliers and materialmen. Furthermore, the undersigned realizes and understands that failure to abide by the terms herein could result in the Agency revoking all or any portion of Financial Assistance, whether already received or to be received by the Company, as it deems reasonable in its sole discretion for any violation hereof.

Name of Company: _____

Name: _____

Title: _____

*Adopted 10/18/2016
Amended 11/13/2018
Readopted 1/9/2019
Amended 5/8/2019
Adopted 1/8/2020
Readopted 1/13/2021
Readopted 1/12/2022
Readopted 1/11/2023
Readopted 1/10/2024*