

FINAL AUTHORIZING RESOLUTION
(International Business Machines Corporation 2026 Project)

At a special meeting of the Dutchess County Industrial Development Agency (the “Agency”) convened in public session on September 29, 2026 at 8:00 a.m., local time at Three Neptune Road, Poughkeepsie, New York, the following members of the Agency were:

PRESENT: Mark Doyle, Chairman
Ronald J. Piccone, II, Vice Chairman/Treasurer
Thomas J. LeCount, Secretary
Amy L. Bombardieri
Brian C. Berryann
Kristofer Munn

ABSENT:

ALSO PRESENT: Robin Mack, Executive Director
Jane Denbaum, Chief Financial Officer
Donald Cappillino, Counsel
Elizabeth A. Cappillino, Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of title to, or a leasehold interest in, a certain industrial development facility (International Business Machines Corporation 2026 Project) and the leasing of the facility as more particularly described below:

**RESOLUTION OF THE DUTCHESS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY APPROVING THE ACQUISITION,
CONSTRUCTION, IMPROVEMENT, RECONSTRUCTION, REPAIR,
RENOVATION, INSTALLATION, FURNISHING AND EQUIPPING OF
A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY FOR
INTERNATIONAL BUSINESS MACHINES CORPORATION AND
APPROVING THE FORM, SUBSTANCE AND EXECUTION OF
RELATED DOCUMENTS.**

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively, the “Act”), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation having offices at 1 New Orchard Road, Armonk, New York 10504 (the “Company”), has 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 and real property taxes

(collectively, the “**Financial Assistance**”) for the following project (the “**Project**”) in connection with the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing and equipping of a certain advanced research, development and manufacturing facility (the “**Facility**”) consisting of the following:

- (A) (i) the construction of an approximately 300,000 square foot quantum facility for the development, integration, test and delivery of quantum-computing systems; (ii) the construction of an approximately 12,000 square foot cryogenic plant and generator building; (iii) the installation of associated site, civil, utility, power, water and cooling infrastructure to support the quantum facility; (iv) the installation of specialized fixed equipment and proprietary hardware; and (v) the renovation of approximately 44,000 square feet of an existing building (Building 416) (collectively, the “**Improvements**”), all located on approximately 308.67 acres of land located at 2455 South Road, 477-708 Innovation Way, 29-31 Sand Dock Road, Sand Dock Road, and 98 Cliff House Lane in the Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid Nos. 134689-6060-04-840280, 134689-6060-02-820506, 134689-6060-04-824101, 134689-6060-04-745089 and 134689-6060-04-648240 (collectively, the “**Land**”); and
- (B) the acquisition and installation of new equipment, machinery and other personal property for use in the premises described above (collectively the “**Equipment**”) to be owned by the Agency and leased to the Company to be used as part of the Facility; and

WHEREAS, the Project includes the following, as they relate to the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing, equipping, and completion of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquisition, construction, improvement, reconstruction, repair, and renovation of the Facility; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with acquisition, construction, improvement, reconstruction, repair and renovation of the Facility and installation of the equipment; and

WHEREAS, the Agency by resolution duly adopted on September 16, 2026 (the “**Preliminary Resolution**”), decided to proceed under the provisions of the Act; and

WHEREAS, the Agency will acquire a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of September 1, 2026 or such other date as the Chairman or the Executive Director of the Agency and counsel to the Agency shall agree (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Agency will acquire title to the Equipment pursuant to a certain Bill of Sale, dated the Closing Date (as defined in the hereinafter defined Lease Agreement) (the “**Bill of Sale**”), from the Company to the Agency; and

WHEREAS, the Agency will sublease and lease the Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of September 1, 2026 or such other

date as the Chairman or Executive Director of the Agency and counsel to the Agency shall agree (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company consistent with the policies of the Agency, in the form of (i) exemptions from sales and use taxes in an amount not to exceed \$104,161,688 in connection with the purchase or lease of equipment, building materials, services or other personal property with the respect to the Facility; and (ii) abatement of real property taxes on the Facility as set forth in the PILOT Schedule attached as Exhibit A hereof; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as “**SEQRA**”), the Project has undergone a coordinated review under SEQRA by the Town of Poughkeepsie Planning Board (the “**Planning Board**”), as Lead Agency under SEQRA and the Agency was named as an involved agency; and

WHEREAS, on August 20, 2026, the Planning Board made a Negative Declaration and Determination of Non-Significance (the “**Negative Declaration**”) determining that the Project will not have a “significant impact” or “significant effect” on the environment as defined under SEQRA with the reasons for its determination stated therein and the Agency, as an involved agency, is bound by their determination; and

WHEREAS, the proposed real property tax abatement requested by the Company deviates from the Standard PILOT Schedule in the Agency’s Uniform Tax Exemption and Criteria Policy (the “**UTEP**”); and

WHEREAS, in compliance with §859-a of the Act, the Agency on September 28, 2026, held a public hearing on the grant of financial assistance as set forth herein following publication in the *Poughkeepsie Journal* on September 18, 2026 of a notice of the public hearing; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company; and

WHEREAS, the Company has requested a waiver from the Agency’s Local Workforce Utilization Policy as there are insufficient workers meeting the local workforce area requirement due to the highly technical and specialized nature of the Project.

NOW, THEREFORE, BE IT RESOLVED, by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) As set forth in the Planning Board’s Negative Declaration, the Project will not have a “significant adverse impact” or “significant adverse effect” on the environment as

defined under SEQRA and the Agency, as an involved agency, is bound by the Planning Board's determination.

Section 2. The Agency further hereby finds and determines:

(a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) The public hearing held by the Agency on September 28, 2026, concerning the grant of Financial Assistance as set forth herein and the nature and location of the Facility was duly held in accordance with the laws of the State of New York, including but not limited to the giving of public notice of the meeting a reasonable time before the meeting and affording a reasonable opportunity for persons with differing views to be heard on Agency's providing the financial assistance contemplated herein and the location and nature of the Facility; and

(d) The Project Work and the leasing of the Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Dutchess County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(e) the proposed real property tax abatement requested by the Company deviates from the Standard PILOT in the Agency's UTEP, but the conditions of the Agency's UTEP have been met and a deviation is warranted; and

(f) The Project will serve the Agency's public purposes as set forth in the Act by preserving or increasing the number of permanent, private sector jobs in Dutchess County and the State of New York; and

(g) Based upon representations of the Company and counsel to the Company, the Facility conforms with the local zoning laws and planning regulations of Dutchess County and all regional and local land use plans for the area in which the Facility is located; and

(h) It is desirable and in the public interest for the Agency to approve the requested Financial Assistance for this Project; and

(i) The Company Lease will be an effective instrument whereby the Agency leases the Land and Improvements from the Company; and

(j) The Lease Agreement will be an effective instrument whereby: (1) the Agency leases and subleases the Facility to the Company; (2) the Agency and the Company set forth the terms and conditions of their agreement regarding the Company's payments-in-lieu of real property taxes; (3) the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and (4) the Agency and the Company set forth the

circumstances in which the Agency may recapture some or all of the benefits granted to the Company in the event any enumerated Recapture Event (as defined therein) occurs.

Section 3. In consequence of the foregoing, the Agency hereby determines to: (i) lease the Land and Improvements from the Company pursuant to the Company Lease, (ii) execute, deliver and perform the Company Lease, (iii) sublease and lease the Facility to the Company pursuant to the Lease Agreement, and (iv) execute, deliver and perform the Lease Agreement.

Section 4. The Agency is hereby authorized to acquire the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Lease Agreement, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 5. The form and substance of the Company Lease and the Lease Agreement, (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 6. Agency has retained certain recapture rights under the terms and conditions of the Lease Agreement upon the occurrence of a Recapture Event as defined therein. Section 5.4 of the Lease Agreement relating to recapture rights by the Agency against the Company is attached hereto and made a part hereof as Exhibit B.

Section 7. Based upon the representation and warranties made by the Company in the Application, the Agency hereby authorizes and approves the following economic benefits to be granted to the Company in connection with the Project Work in the form of: (i) exemptions from sales and use taxes in an approximate amount not to exceed \$104,161,688 in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility; and (ii) abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof). The Agency agrees to consider any requests by the Company for increases to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s). In furtherance of the foregoing sentence, in connection with the construction of any Additional Facilities (as such term is defined in Exhibit A hereof), the Company shall have the right, subject to and in accordance with applicable laws, to apply to the Agency for an additional sales and use tax exemption for such Additional Facilities and any additional equipment, and the Agency shall: (i) accept such application in the form of a letter amendment to the Company's application for this Project; and (ii) promptly review and consider such request in good faith; provided, however, that any approval of such request shall be in the sole discretion of the Agency and subject to compliance with all applicable legal requirements, including, without limitation, any required public hearing, environmental review, and approval by the members of the Agency.

Section 8. Subject to (i) execution of the Agency Documents by the Company and (ii) the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Facility satisfactory to the Agency, the Agency hereby authorizes the Company to

proceed with the Project Work and appoints the Company as the true and lawful agent of the Agency.

Section 9. The Agency hereby grants the Company a waiver from the Local Workforce Utilization Policy to the extent there are insufficient workers meeting the local workforce area requirement.

Section 10.

(a) The Chairman, Vice Chairman, any member of the Agency, the Executive Director and the Chief Financial Officer are each hereby authorized, on behalf of the Agency, to execute and deliver the Company Lease and the Lease Agreement, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, any member of the Agency, the Executive Director or the Chief Financial Officer shall approve, and such other related documents as may be, in the judgment of the Executive Director or the Chief Financial Officer and Agency Counsel necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Vice Chairman, any member of the Agency, the Executive Director or the Chief Financial Officer of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, any member of the Agency, the Executive Director and the Chief Financial Officer of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement). The Agency hereby appoints each Member of the Agency, Agency Counsel and Transaction Counsel to serve as an Assistant Secretary of the Agency for purposes of this transaction.

Section 11. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 12. This resolution shall take effect immediately.

This resolution was duly moved by Ronald J. Piccone, II, subject to the modification that the Lease Agreement shall be revised to provide for 2,565 full-time equivalent ("FTE") jobs at the Facility in lieu of the 2,780 FTE jobs set forth in the form of Lease Agreement presented to the Agency, and the approvals set forth in Sections 5 and 10(a) hereof shall be of the Lease Agreement as so revised. The motion was seconded by Brian C. Berryann, discussed and adopted with the following members voting:

Mark Doyle, Chairman

VOTING “Aye”

Ronald J. Piccone, II, Vice Chairman/Treasurer	VOTING	“Aye”
Thomas J. LeCount, Secretary	VOTING	“Aye”
Amy L. Bombardieri	VOTING	“Aye”
Brian C. Berryann	VOTING	“Aye”
Kristofer Munn	VOTING	“Nay”

The Resolution was thereupon declared duly adopted.

Adopted: September 29, 2026

[illegible]

I, the undersigned Secretary of the Dutchess County Industrial Development Agency, **DO HEREBY CERTIFY:**

That I have compared the annexed extract of minutes of the meeting of the Dutchess County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on September 29, 2026, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of and original insofar as the same related to the subject matters herein referred to.

That the Agency Documents contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and that public notice of the time and place of said meeting was only given in accordance with such Article 7.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 29th day of September, 2026.


Thomas J. LeCount, Secretary

[SEAL]

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EXHIBIT A

PILOT SCHEDULE

Formula for Payments-In-Lieu-of-Taxes (“PILOTS”): Town of Poughkeepsie (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located), Spackenkill Union Free School District, and Dutchess County (collectively the “**Taxing Jurisdictions**”).

Section 1 - Definitions: In this PILOT Schedule, the following terms shall have the meanings specified as follows, unless the context otherwise requires:

“PILOT” shall mean the payment-in-lieu-of-taxes required hereunder to be paid by the Company with respect to the Facility. The PILOTS are more particularly described as follows:

“Annual PILOT” shall mean, for each PILOT Year, the sum set forth in the Schedule of PILOT Payments.

“Apportioned Share of the Annual PILOT” shall mean the percentage of each Annual PILOT each Taxing Jurisdiction is entitled to receive, to be determined ratably using the ratio that the Taxing Jurisdiction’s tax rate bears to the total tax rate of all of the Taxing Jurisdictions, using the tax rates from the year prior to the Taxable Status Date.

“Assessment Year” shall mean the calendar year in which the Taxable Status Date for a PILOT Year occurs, as set forth in the Schedule of PILOT Payments.

“Construction AV” shall mean \$109,232,700, being the assessed value of the Land and the Improvements to be used in determining the Annual PILOT for PILOT Years 1 through 4 (Assessment Years 2027 through 2030), during construction of the Project.

“Final AV” shall mean \$145,000,000, being the assessed value of the Land and the Improvements to be used in determining the Annual PILOT for PILOT Years 5 through 30 (Assessment Years 2031 through 2056), upon completion of the Project, subject to adjustment only as provided in Section 4 hereof.

“Frozen Tax Rates” shall mean the 2026 Town of Poughkeepsie and Dutchess County tax rates and the 2025-2026 Spackenkill Union Free School District tax rate, which rates were used to calculate the Schedule of PILOT Payments.

“County PILOT” shall mean Dutchess County’s Apportioned Share of the Annual PILOT due on February 28 of the calendar year next following the Assessment Year for that PILOT Year.

“Town PILOT” shall mean the Town of Poughkeepsie’s Apportioned Share of the Annual PILOT due on February 28 of the calendar year next following the Assessment Year for that PILOT Year.

“School District PILOT” shall mean the Spackenkill Union Free School District’s Apportioned Share of the Annual PILOT due on October 1 of the Assessment Year for that PILOT Year.

“Special District Charges” shall mean all special ad valorem levies, special assessments and service charges levied or imposed against the Land, the Facility and any Additional Facilities by or on behalf of the Arlington Fire District, the Consolidated Lighting District, the Poughkeepsie Public Library District, the Arlington Sewer District, the Arlington Sewer Service Area, the Townwide Drainage Improvement District and the Townwide Water Improvement District, and any other special district, special improvement district or improvement area in which the Land is now or hereafter located. Special District Charges are not included in the Annual PILOT, and are not reduced or otherwise affected by this PILOT Schedule.

“PILOT Year” shall mean each of the thirty (30) consecutive years designated as PILOT Years 1 through 30 in the Schedule of PILOT Payments, corresponding to Assessment Years 2027 through 2056.

“Schedule of PILOT Payments” shall mean the schedule set forth in Section 2 hereof.

“Taxable Status Date” shall mean March 1 of each Assessment Year.

Section 2 - Schedule of PILOT Payments. The Annual PILOT for each PILOT Year shall be the amount set forth below, which amounts have been calculated by applying the Frozen Tax Rates to the Construction AV (PILOT Years 1 through 4) and to the Final AV (PILOT Years 5 through 30), with annual escalations of 0.25% commencing in Assessment Year 2032 and continuing through Assessment Year 2056:

PILOT Year	Assessment Year	PILOT Payment
1	2027	\$6,620,644
2	2028	\$6,620,644
3	2029	\$6,620,644
4	2030	\$6,620,644
5	2031	\$8,788,516
6	2032	\$8,810,487
7	2033	\$8,832,512
8	2034	\$8,854,594
9	2035	\$8,876,731
10	2036	\$8,898,923
11	2037	\$8,921,171
12	2038	\$8,943,473
13	2039	\$8,965,831
14	2040	\$8,988,246
15	2041	\$9,010,717
16	2042	\$9,033,243
17	2043	\$9,055,827
18	2044	\$9,078,466
19	2045	\$9,101,163
20	2046	\$9,123,915
21	2047	\$9,146,726
22	2048	\$9,169,592
23	2049	\$9,192,515
24	2050	\$9,215,497
25	2051	\$9,238,535
26	2052	\$9,261,632
27	2053	\$9,284,786
28	2054	\$9,307,997

29	2055	\$9,331,268
30	2056	\$9,354,597

Section 3 - Billing, Apportionment and Distribution of PILOTs

(a) **Annual PILOT.** After the Taxable Status Date in each Assessment Year, the Agency shall determine the County PILOT, the Town PILOT and the School District PILOT for the corresponding PILOT Year in proportion to the amount of real property tax and other taxes which would have been received by each Taxing Jurisdiction had the Project not been tax exempt due to the status of the Agency involved in the Project. The School District PILOT shall be invoiced, billed and paid separately from the County PILOT and the Town PILOT. Amounts received by the Agency shall be distributed to the appropriate Taxing Jurisdiction timely in accordance with law.

(b) **Special District Charges.** The Special District Charges shall not be billed by the Agency and shall not be included in any invoice for the Annual PILOT. The Special District Charges shall be levied against the Land and the Facility at the assessed value thereof as determined by the Assessor of the Town of Poughkeepsie, and shall be billed to the Company directly by the Town of Poughkeepsie or by such other municipality or entity as is responsible for levying and collecting the same. If the Town of Poughkeepsie or such other municipality or entity determines not to bill the Special District Charges directly, or fails to bill the same for any PILOT Year, the Agency shall have the right, but not the obligation, upon written notice to the Company, to send the Company written notice of the amounts due with respect to the Special District Charges, and the Company shall pay such amounts directly to the Receiver of Taxes of the Town of Poughkeepsie or other officer charged with collection thereof. Nothing in this PILOT Schedule shall relieve the Company of its obligation to pay the Special District Charges in full, regardless of which party issues the bill.

Section 4 - Adjustment of the Final AV for Additional and Removed Facilities.

(a) Following the Completion Date, any alteration to the existing structures and improvements on the Land shall not result in any change in the Final AV or in the Annual PILOT.

(b) In the event the Company shall construct a new improvement on the Land (“**Additional Facilities**”) or shall demolish an existing structure on the Land (“**Removed Facilities**”), the Final AV shall be adjusted as follows:

- (i) The Final AV shall be adjusted based on 10,000 square foot cumulative increments, measured from the total square footage of the campus upon completion of the Project, which the parties agree is 3,600,000 square feet;
- (ii) Should Additional Facilities or Removed Facilities total less than 10,000 square feet in the aggregate, there shall be no adjustment to the Final AV or to the Annual PILOT;
- (iii) Additional Facilities or Removed Facilities totaling more than 10,000 square feet shall increase or decrease the Final AV, as applicable, at the rate of \$40.00 per square foot; and

(iv) The Annual PILOT for the next occurring PILOT Year shall thereupon be adjusted proportionately to reflect the adjusted Final AV, and the County PILOT, the Town PILOT and the School District PILOT for such PILOT Year and each PILOT Year thereafter shall each be adjusted in the same proportion based on the following calculations:

- (1) The Annual PILOT for the next occurring PILOT Year after completion of the Additional Facilities or Removed Facilities is divided by the Final AV, resulting in an amount defined as the “PILOT Rate;”
- (2) The total size of the Additional Facilities or Removed Facilities is multiplied by \$40.00 per square foot and thereafter added to or subtracted from the Final AV, as the case may be, resulting in an amount defined as the “Revised Final AV;”
- (3) The PILOT Rate is then multiplied by the Revised Final AV, resulting in an amount defined as the “Revised Annual PILOT;” and
- (4) Annual escalations of 0.25% shall apply to the Revised Annual PILOT for each PILOT Year thereafter.¹

¹ Example: Additional Facilities of 100,000 SF are completed in PILOT Year 9:

- (1) PILOT Rate = \$8,898,923 (Annual PILOT, PILOT Year 10) / \$145,000,000 (Final AV) = 0.0613719;
- (2) Revised Final AV = (\$40.00 / SF x 100,000 SF) + \$145,000,000 = \$149,000,000;
- (3) Revised Annual PILOT (PILOT Year 10) = 0.0613719 x \$149,000,000 = \$9,144,413
- (4) Annual PILOT for PILOT Year 11 = \$9,144,413 x 1.0025 = \$9,167,274

EXHIBIT B

EXCERPT FROM LEASE AGREEMENT

Section 5.4 Recapture of Agency Benefits.

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

(i) With respect to the recapture of Real Property Tax Abatements (as defined below):

(A) If there shall occur a Recapture Event on or prior to December 31, 2030, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Real Property Tax Abatements;

(B) If there shall occur a Recapture Event on or after January 1, 2031 and on or prior to December 31, 2033, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ninety percent (90%) of the Real Property Tax Abatements;

(C) If there shall occur a Recapture Event on or after January 1, 2034 and on or prior to December 31, 2036, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, eighty percent (80%) of the Real Property Tax Abatements;

(D) If there shall occur a Recapture Event on or after January 1, 2037 and on or prior to December 31, 2039, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy percent (70%) of the Real Property Tax Abatements; and

(E) If there shall occur a Recapture Event on or after January 1, 2040 and on or prior to December 31, 2042, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, sixty percent (60%) of the Real Property Tax Abatements; and

(F) If there shall occur a Recapture Event on or after January 1, 2043 and on or prior to December 31, 2045, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Real Property Tax Abatements;

(G) If there shall occur a Recapture Event on or after January 1, 2046 and on or prior to December 31, 2048, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, forty percent (40%) of the Real Property Tax Abatements; and

(H) If there shall occur a Recapture Event If there shall occur a Recapture Event on or after January 1, 2049 and on or prior to December 31, 2050, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, thirty percent (30%) of the Real Property Tax Abatements; and

(I) If there shall occur a Recapture Event on or after January 1, 2051 and on or prior to December 31, 2052, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty percent (20%) of the Real Property Tax Abatements; and

(J) If there shall occur a Recapture Event on or after January 1, 2053 and on or prior to December 31, 2054, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ten percent (10%) of the Real Property Tax Abatements; and

(K) If there shall occur a Recapture Event on or after January 1, 2055, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Real Property Tax Abatements.

(ii) With respect to recapture of Company Sales Tax Savings (as defined below):

(A) If there shall occur a Recapture Event on or prior to December 31, 2030, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Company Sales Tax Savings;

(B) If there shall occur a Recapture Event on or after January 1, 2031 and on or prior to December 31, 2031, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ninety percent (90%) of the Company Sales Tax Savings;

(C) If there shall occur a Recapture Event on or after January 1, 2032 and on or prior to December 31, 2032, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, eighty percent (80%) of the Company Sales Tax Savings;

(D) If there shall occur a Recapture Event on or after January 1, 2033 and on or prior to December 31, 2033, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy percent (70%) of the Company Sales Tax Savings; and

(E) If there shall occur a Recapture Event on or after January 1, 2034 and on or prior to December 31, 2034, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, sixty percent (60%) of the Company Sales Tax Savings; and

(F) If there shall occur a Recapture Event on or after January 1, 2035 and on or prior to December 31, 2035, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Company Sales Tax Savings;

(G) If there shall occur a Recapture Event on or after January 1, 2036 and on or prior to December 31, 2036, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, forty percent (40%) of the Company Sales Tax Savings; and

(H) If there shall occur a Recapture Event If there shall occur a Recapture Event on or after January 1, 2037 and on or prior to December 31, 2037, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, thirty percent (30%) of the Company Sales Tax Savings; and

(I) If there shall occur a Recapture Event on or after January 1, 2038 and on or prior to December 31, 2038, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty percent (20%) of the Company Sales Tax Savings; and

(J) If there shall occur a Recapture Event on or after January 1, 2039 and on or prior to December 31, 2039, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ten percent (10%) of the Company Sales Tax Savings; and

(K) If there shall occur a Recapture Event on or after January 1, 2040, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Company Sales Tax Savings.

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

- (i) Reserved; and
- (ii) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the “**Company Sales Tax Savings**”); and
- (iii) real property tax abatements granted pursuant to Section 5.1 hereof (the “**Real Property Tax Abatements**”);

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within thirty (30) days after such notice.

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

- (1) The occurrence and continuation of an Event of Default under this Lease Agreement (other than as described in clause (4) below or in subsection (d) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or
- (2) The Facility shall cease to be a “project” within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Company; or
- (3) The sale of the Facility or closure of the Facility and/or departure of the Company from Dutchess County, except as due to casualty, condemnation or force majeure as provided in subsection (d) below or as provided in Section 9.3 hereof; or
- (4) Failure of the Company to create or cause to create or maintain 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 the Lease Agreement, which failure is not reflective of the business conditions of the Company or the subtenants of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or
- (5) Any significant deviations from the Project Application Information which would constitute a significant diminution of the Company’s activities in, or commitment to Dutchess County, New York; or

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

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

(e) The Company covenants and agrees to furnish, and to the extent the Company intends to include the employees of a sublessee to meet the employment requirements of Section 8.11 herein, shall cause such sublessees to furnish to 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 Company 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 Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(g) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred in connection with the recovery of all amounts due under this Section 5.4, from amounts received by the Agency pursuant to this Section 5.4.

(h) The Company acknowledges that Section 5.4 is intended to reflect the Agency’s “Policy on Maintaining Performance Based Incentives (MPBI)” a copy of which is attached hereto as Exhibit G and made a part hereof, and that such policy includes the process by which the Agency will review any performance based incentive deficiencies, the Company’s explanations and proposed cures thereof and exercise any remedies hereunder or waiver of same.