SUPPLEMENTAL AUTHORIZING RESOLUTION
(NRI Hyde Park LLC 2024 Project)

At a regular meeting of the Dutchess County Industrial Development Agency (the "Agency") convened in public session on July 8, 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
Kristofer Munn

ABSENT: Brian C. Berryann

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 (NRI Hyde Park LLC 2024 Project) and the leasing of the facility as more particularly described below:

RESOLUTION OF THE DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY APPROVING AN AMENDED SCOPE AND INCREASE IN THE EXEMPTION FROM SALES AND USE TAXES AND THE EXEMPTION FROM MORTGAGE RECORDING TAXES WITH RESPECT TO A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY FOR NRI HYDE PARK LLC 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, NRI Hyde Park LLC, a Delaware limited liability company authorized to transact business in the State of New York, having offices at 1340 S. Dixie Highway, Suite 140, Coral Gables, Florida 33146 (the "**Company**"), previously submitted an application to the Agency requesting the Agency provide certain "financial assistance" (within the meaning of the Act) including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the "**Financial Assistance**") in connection with a hotel resort project in the Town of Hyde Park, as more particularly described in the Authorizing Resolution (as defined below) (the "**Original Project**").

CAPPILLINO, ROTHSCHILD & EGAN LLP
Attorneys at Law
Seven Broad Street
P.O. Box 390
Pawling, New York
12564-0390
(845) 855-5444

WHEREAS, in compliance with §859-a of the Act, the Agency held a public hearing on the Original Project on November 7, 2024 following publication in the *Poughkeepsie Journal* on October 27, 2024 of a notice of the public hearing; and

WHEREAS, by Authorizing Resolution duly adopted on November 13, 2024 (the **"Authorizing Resolution"**), the Agency authorized and approved, among other things, the Financial Assistance for the Original Project, including (i) exemptions from sales and use taxes in an amount not to exceed $14,092,613.03 in connection with the Resort Facility (as defined in the Authorizing Resolution) (the **"Original Sales Tax Exemption"**); (ii) exemptions from mortgage recording taxes for one or more mortgages securing an amount not to exceed $134,651,766 in connection with the Project Work (the **"Original MRT Exemption"**); and (iii) a deviated fifteen (15) year abatement of real property taxes as set forth in the PILOT Schedule attached to the Authorizing Resolution (the **"PILOT"**); and

WHEREAS, although the Authorizing Resolution authorized the execution and delivery of the Company Lease, the Lease and Project Agreement and the other Agency Documents, the closing for the Original Project has not occurred and the authorized Agency Documents have not been executed or delivered;

WHEREAS, after the adoption of the Authorizing Resolution by the Agency, the Company partnered with a luxury hotel operator which requested certain revisions to the Facility layout to meet brand and operational requirements and additional modifications were made to the Original Project which required amendments to the site plan approved by the Town of Hyde Park Planning Board (the "**Planning Board**"); and

WHEREAS, the Planning Board has granted Final Plat Approval and Site Plan Amendment Approval for the amended Project pursuant to Resolution #2019-39N adopted on March 4, 2026 (the **"Subdivision and Amended Site Plan Resolution"**) and reaffirmed and amended the previously issued SEQRA Determination of Negative Declaration pursuant to Resolution #2019-39M adopted on January 21, 2026; and

WHEREAS, as a result of the foregoing modifications (collectively, the **"Amended Project"**), the total costs associated with the Amended Project have increased from approximately $254,615,968.00 to approximately $364,792,480.00; and

WHEREAS, the Amended Project consists of the construction, improvement, reconstruction, repair, renovation, installation, furnishing and equipping of certain lodging facilities with associated accessory uses (the "**Facility**") as follows:

(A) the construction of the following improvements to be located on an approximately 26.22-acre portion of an approximately 127.25-acre parcel of land located at 1995-2066 Campus Road, Town of Hyde Park, County of Dutchess, State of New York, bearing Tax Map Grid No. 133200-6063-02-889857 in accordance with that certain subdivision plat entitled "Lot Consolidation Plan Minor Subdivision Final Plat" prepared by LaBella Associates, dated September 23, 2025, and filed in the Dutchess County Clerk's Office on April 29, 2026 as Filed Map No. 10481B (the "**Property**") to be leased by the Company

CAPPILLINO, ROTHSCHILD & EGAN LLP
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Seven Broad Street
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i. a hotel resort complex containing (i) hotel guest rooms, including within a lower-rise hotel building comprised of approximately 13,723 gross square feet (GSF) with approximately 18 guest rooms and approximately 19 individual hotel villas or cabins comprised of approximately 48,409 GSF; (ii) an approximately 39,603 GSF Hearth Building containing a reception area, lobby bar, retail shops and restaurant; (iii) an approximately 26,359 GSF events "barn" building; and (iv) additional hotel amenities including an approximately 5,398 GSF hilltop amenity building, an approximately 28,169 GSF Wellness Building (including a fitness center and spa), an approximately 1,403 GSF Kid's Club, an approximately 44,750 GSF Retail and Service Building, an approximately 8,717 GSF Teaching Kitchens and back of house building, a pro shop associated with the proposed pickle ball and padel courts of approximately 1,250 GSF, two service buildings totaling approximately 3,453 GSF, as well as balconies, terraces, parking facilities, garages and outdoor spaces and recreational facilities throughout the development (the "**Resort**"); and

ii. approximately 52 leasehold units comprised of approximately 28 detached leasehold villas and approximately 24 duplex (6) or triplex (18) leasehold villas, all totaling approximately 164,391 GSF, to be sub-leased by individual sub-tenants and included as part of the hotel resort's rental program (the "**Leasehold Villa(s)**");

(B) the construction of a main access road and emergency access road located on a portion of the Property which the Company shall have an easement over in accordance with a Reciprocal Easement Agreement (the "**Access Road**"); and

(C) the acquisition and installation of new equipment, machinery and other personal property for use in the premises (excluding the Leasehold Villa(s)) described above (collectively the "**Equipment**", and together with the Resort and the Access Road, the "**Resort Facility**") to be owned by the Agency and leased to the Company to be used as part of the Facility for use as a comprehensive resort-style destination combining hospitality, residential, and recreational elements; and

WHEREAS, the Leasehold Villa(s) continue to be included as part of the Facility, but any exemptions from certain sales and use taxes and mortgage recording taxes granted by the Agency for the Amended Project will not apply to the Leasehold Villa(s) portion of the Amended Project, but shall apply to the remainder of the Amended Project; and

WHEREAS, in connection with the Amended Project, the Company has submitted a revised application to the Agency requesting an increase in the Financial Assistance previously authorized (the **"Additional Financial Assistance"**), consisting of (i) an increase in the exemption from sales and use taxes from $14,092,613.03 to an amount not to exceed $29,639,354.00, and (ii) an increase in the exemption from mortgage recording taxes from one or more mortgages securing an amount not to exceed $134,651,766 to one or more mortgages securing an amount not to exceed $200,000,000; and

WHEREAS, the Company is not requesting any change to the previously authorized PILOT; and

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Seven Broad Street
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WHEREAS, in connection therewith, the Agency intends to modify the Agency Documents to reflect the Amended Project and Additional Financial Assistance set forth herein; and

WHEREAS, in compliance with §859-a of the Act, the Agency on July 7, 2026, held a public hearing on the grant of the Additional Financial Assistance and the location and nature of the Amended Project as set forth herein following publication in the *Poughkeepsie Journal* on June 24, 2026 of a notice of the public hearing.

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

Section 1. The Agency hereby reaffirms and readopts the findings and determinations set forth in the Authorizing Resolution with regard to the Facility, including, without limitation, its findings that the Facility constitutes a "project" within the meaning of the Act; that, based upon the representations and warranties of the Company and the application materials submitted, the Facility will be a tourism destination as described in §862(2)(a) of the Act and is therefore not subject to the prohibitions on providing financial assistance to retail facilities; and that the requested deviation from the Agency's UTEP is warranted, except in each case as supplemented and modified by this Resolution.

Section 2. The Agency 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 July 7, 2026, concerning the Additional Financial Assistance as set forth herein and the nature and location of the Amended Project 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 Additional Financial Assistance contemplated herein and the location and nature of the Amended Project; and

(d) The modifications comprising the Amended Project will not have a significant adverse impact on the environment, as confirmed by the Town of Hyde Park Planning Board, as Lead Agency, in its Resolution #2019-39M adopted January 21, 2026 reaffirming and amending the previously issued Negative Declaration; and

(e) The Amended Project 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 will serve the public purposes of the Act by preserving and increasing the number of permanent, private sector jobs in Dutchess County and the State of New York; and

CAPPILLINO, ROTHSCHILD & EGAN LLP
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(845) 855-5444

(f) It is desirable and in the public interest for the Agency to approve the requested Additional Financial Assistance for this Project and to authorize the execution and delivery of the Company Lease, the Lease Agreement, the Bill of Sale and the other Agency Documents, each conformed to reflect the Amended Project and the increased amounts of Financial Assistance set forth herein.

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, each conformed to reflect the Amended Project and the Amended Financial Assistance set forth herein.

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), each conformed to reflect the Amended Project and the Amended Financial Assistance set forth herein, are hereby approved.

Section 6. Recapture Provisions. The 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) an increase in the exemptions from sales and use taxes in an approximate amount not to exceed $29,639,354.00 in the aggregate (inclusive of the original sales and use tax exemption of $14,092,613.03 previously authorized) in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Resort Facility; (ii) an increase in the exemption from mortgage recording taxes for one or more mortgages securing an amount not to exceed $200,000,000 in the aggregate (inclusive of the original exemption from mortgage recording taxes for mortgages not to exceed $134,651,766 previously authorized) in connection with the financing of the acquisition, construction, renovation and equipping of the Resort Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing, renovating and equipping of the Resort Facility; and (iii) an abatement of real property taxes (as set forth in the PILOT Schedule attached as Exhibit A hereof), which is unchanged from the previously authorized PILOT. 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). Consistent with the Authorizing Resolution, any exemptions

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from sales and use taxes and mortgage recording taxes granted by the Agency will not apply to the Leasehold Villa(s) portion of the Project.

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.

(a) The Chairman, Vice Chairman, any member of the Agency or the Executive Director are 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 or the Executive Director shall approve, and such other related documents as may be, in the judgment of the Executive Director 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 or the Executive Director of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, any member of the Agency and the Executive Director 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 10. 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 11. This resolution shall take effect immediately.

This resolution was duly moved by Ronald J. Piccone, II, seconded by Amy L. Bombardieri, 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"

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Amy L. Bombardieri	VOTING	“Aye”
Brian C. Berryann	being	ABSENT
Kristofer Munn	VOTING	“Aye”

Adopted: July 8, 2026

CAPPILLINO, ROTHSCHILD & EGAN LLP
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STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

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 July 8, 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 duly given in accordance with such Article 7.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 8th day of July, 2026.

Thomas J. LeCount, Secretary

[SEAL]

CAPPILLINO, ROTHSCHILD & EGAN LLP
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EXHIBIT A

PILOT SCHEDULE

Formula for Payments-In-Lieu-of-Taxes ("**PILOTs**"): Town of Hyde Park, (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), Hyde Park Central School District, Dutchess County and Special Districts (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 to the Agency. The PILOTs are more particularly described as follows:

"Annual PILOT" shall mean the sum of the County PILOT and the Town PILOT due hereunder in a PILOT year.

"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. The Special District PILOTs shall not be apportioned but shall be billed with the Annual PILOT invoice. The School District PILOT shall not be apportioned but shall be calculated, billed and paid separately.

"County PILOT" shall mean the Dutchess County's Apportioned Share of the Annual PILOT due on February 28 of each year.

"School District PILOT" shall mean the PILOT for the Hyde Park Central School District due on October 1 of each year.

"Town PILOT" shall mean the Town of Hyde Park's Apportioned Share of the Annual PILOT due on February 28 of each year.

"Special Districts PILOTs" shall mean the PILOTs for the Hyde Park Library District, any Roosevelt Fire District and any Dutchess County Water and Wastewater Authority District.

"PILOT Year" shall mean the first tax year following the Taxable Status Date after the Completion Date (collectively the "**Initial PILOT Year**") and each year thereafter for a total of not more than fifteen (15) years in accordance with the Schedule of PILOT Payments. For example, if the Completion Date was prior to March 1, 2028, the Initial PILOT Year would include the

2028/2029 School District PILOT, the
2029 County PILOT, the
2029 Town PILOT, the
2029 Hyde Park Library District PILOT, the
2029 Roosevelt Fire District PILOT(s), and the

2029 Dutchess County Water and Wastewater Authority District PILOT(s).

"Schedule of Exemptions and Calculation of PILOTs" – Special District PILOTs shall be equal to the full amount of taxes that would have been levied upon the Facility and Additional Facilities if the Facility and Additional Facilities were owned by the Company and the Agency had no ownership interest. For the County PILOT, the Town PILOT and the School District PILOT, the PILOT shall be equal to the full amount of taxes that would have been levied upon the Facility and Additional Facilities, up to an assessed value of $853,624.53 if the Facility and Additional Facilities were owned by the Company and the Agency had no ownership interest. If the assessed value exceeds $853,624.53, the County PILOT, Town PILOT and the School District PILOT shall be increased by an amount equal to the amount of taxes that would have been levied upon the Facility and Additional Facilities on that excess amount but reduced by the following exemption percentage:

PILOT Year	**Exemption Percentage**
1	50%
2	50%
3	50%
4	50%
5	50%
6	40%
7	40%
8	30%
9	30%
10	20%
11	20%
12	10%
13	10%
14	10%
15	5%
thereafter	0%

"Taxable Status Date" shall mean March 1 of each year. For School District PILOTs, Taxable Status Date shall mean March 1 of the year the PILOTs are due. For County, Town and Special District PILOTs, Taxable Status Date shall mean March 1 of the year prior to the PILOTs being due.

Section 2 - Billing, Apportionment and Distribution of PILOTs

After Taxable Status Date each year the Agency shall determine the Annual PILOT, the Apportioned Share of the Annual PILOT and the School District Annual PILOT. The Agency shall send an invoice to the Company for the Annual PILOT. Once received by the Agency, the PILOTs shall be distributed to the appropriate Taxing Jurisdiction timely in accordance with law.

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) If there shall occur a Recapture Event prior to the Completion Date or within the first (1^{st}) or second (2^{nd}) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);

(ii) If there shall occur a Recapture Event during the third (3^{rd}) year after the Completion Date, 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 Recaptured Benefits;

(iii) If there shall occur a Recapture Event during the fourth (4^{th}) year after the Completion Date, 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 Recaptured Benefits;

(iv) If there shall occur a Recapture Event during the fifth (5^{th}) year after the Completion Date, 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 Recaptured Benefits; and

(v) If there shall occur a Recapture Event during the sixth (6^{th}) year after the Completion Date, 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 Recaptured Benefits; and

(vi) If there shall occur a Recapture Event during the seventh (7^{th}) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits;

(viii) If there shall occur a Recapture Event during the eighth (8th) year after the Completion Date, 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 Recaptured Benefits; and

(ix) If there shall occur a Recapture Event during the ninth (9th) year after the Completion Date, 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 Recaptured Benefits; and

(x) If there shall occur a Recapture Event during the tenth (10th) year after the Completion Date, 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 Recaptured Benefits; and

(xi) If there shall occur a Recapture Event during the eleventh (11th) year after the Completion Date, 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 Recaptured Benefits; and

(xii) If there shall occur a Recapture Event during the twelfth (12th) year after the Completion Date or thereafter, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits.

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

(i) the Mortgage Recording Tax Exemption; 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/or cause its 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. In the event of a conflict between the provisions of Section 5.4 and the provisions set forth on Exhibit G, the provisions set forth on Exhibit G shall control.