Dutchess County DCida Industrial Development Agency

*3 Neptune Road, Suite A21, Poughkeepsie, NY 12601*
*Tel. # - (845) 463-5400 / Fax # - (845) 463-0100*

# NOTICE AND CONFIRMATION
# BOARD OF DIRECTORS REGULAR MEETING

**Wednesday, December 9, 2020**
8:00 a.m.

**DATE:** December 4, 2020

**TO:** Mark Doyle, Vice Chair
Kathleen Bauer, Secretary/Treasurer
Amy Bombardieri
Jamie Piccone II
Don Sagliano
Al Torreggiani

**FROM:** Tim Dean, Chairman

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A regular meeting of the Dutchess County Industrial Development Agency [DCIDA] has been scheduled for **Wednesday, December 9, 2020 at 8:00 a.m.**

**In compliance with NYS Senate Bill S88**, signed into law on August 27, 2019 and effective as of January 2020, this meeting will be recorded.

Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1, as extended, suspending the Open Meetings Law, the Dutchess County Industrial Development Agency (the "Agency") Board Meeting scheduled for December 9, 2020 will be held electronically via conference call instead of a public meeting open for the public to attend in person. Members of the public may listen to the Board meeting by logging into the Zoom Platform at https://zoom.us/j/95680402353 or calling 1-929-436-2866 Meeting ID: 956 8040 2353. The meeting will be recorded and later transcribed and the transcription will be posted to the Agency's website.

The purpose of the meeting is to consider the following:

1. Conflict of Interest Disclosures
2. Proof of Meeting Notice
3. Bills and Communications
4. Approval of Minutes
   November 12, 2020
5. Report of the Treasurer
   A. Financial Report
6. Reports of Committees
7. Unfinished Business
8. New Business
   A. For Consideration and Approval of a Final Resolution for USEF Tioranda, LLC and Amazon.com Services LLC (Town of East Fishkill) to induce a Project providing for a Mortgage Tax Exemption, Sales Tax Exemption and a Payment in Lieu of Taxes for an approximately $135,500,000 project for construction and re-development at the former west campus IBM site to construct a new warehouse/distribution center of approximately 629,186,000sq feet.
   B. For Consideration and Approval of a Final Resolution for Violet Estates LLC (Town of Poughkeepsie) to induce a Project providing for a Mortgage Tax Exemption, Sales Tax Exemption and a Payment in Lieu of Taxes for an approximately $18,000,000 project for construction of a multifamily community consisting of 84 residential and 7,100 square feet of commercial units over six buildings. The residential community will be age restricted to those aged 55 and over.
   C. 2021 Meeting Schedule

| **Information Copy** | | |
|---|---|---|
| Marcus J. Molinaro, DC Executive<br>A. Gregg Pulver, Chairman, DC Legislators<br>Ronald Hicks, Dutchess County | Sarah Lee, Executive Director<br>Marilyn Yerks, CFO<br>Donald Cappillino, Counsel<br>Elizabeth Cappillino, Counsel | B. Hunter, WEOK/WPDH<br>H. Gross, MidHudson News |



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*Tel. # - (845) 463-5400 / Fax # - (845) 463-0100*

# BOARD OF DIRECTORS REGULAR MEETING

**Wednesday, December 9, 2020**
8:00 a.m.

## AGENDA

1. Roll Call
2. Conflict of Interest Disclosures
3. Proof of Meeting Notice
4. Bills and Communications
5. Approval of Minutes
   November 12, 2020
6. Report of the Treasurer
   A. Financial Report
7. Reports of Committees
8. Unfinished Business
9. New Business
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   B. For Consideration and Approval of a Final Resolution for Violet Estates LLC (Town of Poughkeepsie) to induce a Project providing for a Mortgage Tax Exemption, Sales Tax Exemption and a Payment in Lieu of Taxes for an approximately $18,000,000 project for construction of a multifamily community consisting of 84 residential and 7,100 square feet of commercial units over six buildings. The residential community will be age restricted to those aged 55 and over.
   C. 2021 Meeting Schedule
10. Adjournment

**In compliance with NYS Senate Bill S88,** signed into law on August 27, 2019 and effective as of January 2020, this meeting will be recorded.

Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1, as extended, suspending the Open Meetings Law, the Dutchess County Industrial Development Agency (the "Agency") Board Meeting scheduled for December 9, 2020 will be held electronically via conference call instead of a public meeting open for the public to attend in person. Members of the public may listen to the Board meeting by logging into the Zoom Platform at https://zoom.us/j/95680402353 or calling 1-929-436-2866 Meeting ID: 956 8040 2353. The meeting will be recorded and later transcribed and the transcription will be posted to the Agency's website.



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DRAFT

**MINUTES**

Dutchess County DCida Industrial Development Agency

*3 Neptune Road, Poughkeepsie, NY 12601*
*Tel. # - (845) 463-5400 / Fax # - (845) 463-0100*

**BOARD OF DIRECTORS REGULAR MEETING**
Thursday, November 12, 2020

**Present:** Tim Dean, Chairman
Mark Doyle, Vice Chairman
Kathleen Bauer, Secretary/Treasurer
Amy Bombardieri
Jamie Piccone II
Don Sagliano
Al Torreggiani

**Also Present:** Sarah Lee, Executive Director
Marilyn Yerks, CFO
Jasmin Haylett, Office Administrator
Donald Cappillino & Elizabeth Cappillino (Counsel)
Joe Kirchhoff, John Hettinger & Catherine Durland (Eastdale Phase II-H)
Henry Hatfield (Hatfield Metal Fab, LLC)
Kate Roberts (Asahishuzo)
Kelly Libolt, Matthew Earl, Patrick Gartland & Louis Reynolds (Violet Estates)
John DiCola, Ryan Kelly, Boy Ryan, Brad Griggs & Nicholas D'Alessandro (USEF Tioranda)

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On Thursday, November 12, 2020, the Dutchess County Industrial Development Agency [DCIDA] Board of Directors Meeting was called to order by Chairman Dean at 8:05 a.m. Present was: Tim Dean, Mark Doyle, Kathleen Bauer, Amy Bombardieri, Jamie Piccone II, Don Sagliano and Al Torreggiani. Quorum was established.

**CONFLICT OF INTEREST DISCLOSURES**
Chairman Dean asked board members if they had any potential conflicts with any items on the agenda. No potential conflicts of interest was noted.

**AMEND THE AGENDA**
Ms. Lee asked for a motion to amend the agenda to remove item A under new business off the agenda because a public hearing was not held.

A motion was made by Mr. Sagliano, duly seconded by Mr. Doyle to remove agenda item A under new business off the agenda. All voted in favor. Motion carried.

**PROOF OF MEETING NOTICE**
Meeting notice was published on November 5, 2020.

**BILLS AND COMMUNICATIONS**
None



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**APPROVAL OF MINUTES**
October 14, 2020

Chairman Dean asked for a motion to approve the October 14, 2020 Minutes of the Dutchess County Industrial Development Agency.

A motion was made by Mr. Sagliano, duly seconded by Mr. Torreggiani to approve the DCIDA Board of Directors Meeting Minutes for October 14, 2020. All voted in favor. Motion carried.

**REPORT OF THE TREASURER**

A. Financial Report

Ms. Yerks reported on the October 31, 2020 Balance Sheet and Profit & Loss Budget

- Current cash balance is $2,404,351.57
- The P&L has a negative net income of $464,064.29
- All PILOT payments came in and were disbursed

A motion was made by Mr. Torreggiani, duly seconded by Mr. Piccone to approve the October 31, 2020 financials as presented. All voted in favor. Motion carried.

**REPORTS OF COMMITTEES**

A. Finance & Audit Committee

- For Consideration and Approval of Agency Auditing Services

  Ms. Yerks noted the following:
  - The IDA By-Laws requires that RFPs be sent out every three years for audit services
  - Seven requests for proposals were sent out and three firms expressed initial interest and two submitted proposals. RBT was one of the firms.
  - For the past three years, RBT has charged $12,000 per year. For 2020 they are proposing $12,500, for 2021 $12,700, and for 2022 $12,900.
  - The other proposal was from Prager Metis. Their proposal for 2020, 2021 and 2022 was $20,000 for each year.
  - The committee would like to recommend RBT CPA as the audit services for the LDC for the next three years

  A motion was made by Mr. Doyle, duly seconded by Ms. Bauer to approve the recommendation to appoint RBT CPA as the auditing firm for the IDA for the next three years. All voted in favor. Motion carried.

- Chairman Dean noted that the Finance and Audit Committee would like to add a new member to the committee and is recommending Jamie Piccone.

  A motion was made by Mr. Sagliano, duly seconded by Mr. Doyle to appoint Jamie Piccone to the IDA Finance & Audit Committee. All voted in favor. Motion carried.

**UNFINISHED BUSINESS**
None

**NEW BUSINESS**

A. For Consideration and Approval of a Final Resolution concerning Phase II-G of the Eastdale Village Project (Town of Poughkeepsie) Authorizing a Lease and Project Agreement providing for the allocation of a portion of the Mortgage Tax Exemption and Sales Tax Exemption previously granted to MHTC Development, LLC to 43 Eastdale Avenue, LLC and providing the PILOT Schedule for Phase II-G of the Project.

This resolution was adjourned for a future meeting.

B. For Consideration and Approval of a Final Resolution concerning Phase II-H of the Eastdale Village Project (Town of Poughkeepsie) Authorizing a Lease and Project Agreement providing for the allocation of a portion of the Mortgage Tax Exemption and Sales Tax Exemption previously granted to MHTC Development, LLC to 39 Eastdale Avenue, LLC and providing the PILOT Schedule for Phase II-H of the Project.

Ms. Lee noted the following about this project:

- Eastdale also known as MHTC is requesting approval to allocate a portion of its previously approved benefits to 39 Eastdale Avenue LLC
- This newly created LLC will own approximately 2,000 or more square feet of mixed-use building that will house first floor commercial and one residential unit above
- A public hearing was held on Tuesday morning and a copy of the transcript and written comments was sent to the board for their review

A motion was made by Mr. Torreggiani, duly seconded by Mr. Piccone to approve the Final Resolution concerning Phase II-H of the Eastdale Village Project (Town of Poughkeepsie) Authorizing a Lease and Project Agreement providing for the allocation of a portion of the Mortgage Tax Exemption and Sales Tax Exemption previously granted to MHTC Development, LLC to 39 Eastdale Avenue, LLC and providing the PILOT Schedule for Phase II-H of the Project. All voted in favor. Motion carried.

C. For Consideration and Approval of a Supplemental Resolution authorizing an amendment to the Sales Tax Exemption for the Hatfield Metal Fab, Inc Project (Town of LaGrange).

Chairman Dean noted that project came before the board for some discussion and there were questions about the significant change in the original amount and those questions were answered.

Ms. Lee noted the following:

- The original application only included the cost of the shell of the building
- They are asking for additional sales tax exemptions as it relates to the project

Questions, responses and comments ensued.

A motion was made by Mr. Doyle, duly seconded by Ms. Bauer to approve the Supplemental Resolution authorizing an amendment to the Sales Tax Exemption for the Hatfield Metal Fab, Inc Project (Town of LaGrange). All voted in favor. Motion carried.

D. For Consideration and Approval of a Supplemental Resolution authorizing an amendment to the Completion Date and an extension of the Sales Tax Exemption for the Asahishuzo Project (Town of Hyde Park) as a result of the project suspension due to the impact of COVID-19.

Ms. Lee noted the following:

- In April, Asahishuzo notified the IDA and the Town of Hyde Park that due to the global impact of COVID-19, Asahishuzo will be to suspending construction on the project
- Asahishuzo's sales tax expired on October 31, 2020 and the project remains suspended.
- They are requesting an extension to the expiration date for December 31, 2021
- This is not an increase in benefit. It is just an extension of the sales tax expiration date.

Question: Do you have any information about when work is anticipated to start again?

Response: The date for resuming construction has not been determined. There is ongoing maintenance on the property and they intend to restart construction when it is economically feasible. When a date is determined to restart, the board will be informed.

Further questions, responses and comments ensued.

Mr. Sagliano noted that there is a typo on page 428 of the packet, at the bottom of page 2, section 1 of the Resolution Authorizing Amendment to Lease Agreement, it states, "*approves the extension of the Completion Date to no later than December 31, 2020.*" It should be 2021 not 2020 and he doesn't think a 12-month extension is enough time.

Chairman Dean noted that since the amendment states that the actual date of construction completion is June 2022, he suggests that the current extension date be the same.

A motion was made by Mr. Sagliano, duly seconded by Mr. Piccone to amend section 1 on page 2 of the Resolution Authorizing Amendment to Lease Agreement to state "*approves the extension of the Completion Date to no later than June 30, 2022."* All voted in favor. Motion carried.

A motion was made by Mr. Sagliano, duly seconded by Mr. Torreggiani to amend the second to the last whereas on page 2 of the Resolution Authorizing Amendment to Lease Agreement to state "*an extension of the Completion Date to June 30, 2022."* All voted in favor. Motion carried.

A motion was made by Mr. Sagliano, duly seconded by Mr. Piccone to approve the amendments as noted above to the Supplemental Resolution authorizing an amendment to the Completion Date and an extension of the Sales Tax Exemption for the Asahishuzo Project (Town of Hyde Park) as a result of the project suspension due to the impact of COVID-19. All voted in favor. Motion carried.

E. For Consideration and Approval of a Preliminary Resolution for USEF Tioranda, LLC and Amazon.com Services LLC (Town of East Fishkill) to induce a Project providing for a Mortgage Tax Exemption, Sales Tax Exemption and a Payment in Lieu of Taxes for an approximately $135,500,000 project for construction and re-development at the former west campus IBM site to construct a new warehouse/distribution center of approximately 629,186,000 sq. feet.

Ms. Lee noted the following about this project and resolution:

- USEF and its development partner, Bluewater Properties Group proposes to invest over $135,000,000 to construct a 629,186 sq. ft. warehouse and distribution center for its proposed tenant Amazon.com Services LLC at the former IBM West Campus site
- They are requesting a mortgage tax abatement, a sales tax exemption and a deviated PILOT
- The project is projected to create 500 direct permanent jobs and 200 direct constructions jobs
- This site has been vacant for over 20 years
- The town rezoned this site to encourage economic development
- It is a 15 year PILOT and has the support of the town and school district

Members of the project from Bluewater and Amazon proceeded to give a brief overview of what the project entails, the site and why it was chosen and how they will be collaborating with each other to make this project possible.

Questions, responses and comments ensued.

A motion was made by Ms. Bauer, duly seconded by Mr. Torreggiani to approve the Preliminary Resolution for USEF Tioranda, LLC and Amazon.com Services LLC (Town of East Fishkill) to induce a Project providing for a Mortgage Tax Exemption, Sales Tax Exemption and a Payment in Lieu of Taxes for an approximately $135,500,000 project for construction and re-development at the former west campus IBM site to

construct a new warehouse/distribution center of approximately 629,186,000 sq. feet. All voted in favor. Motion carried.

F. For Consideration and Approval of a Preliminary Resolution for Violet Estates LLC (Town of Poughkeepsie) to induce a Project providing for a Mortgage Tax Exemption, Sales Tax Exemption and a Payment in Lieu of Taxes for an approximately $18,000,000 project for construction of a multifamily community consisting of 84 residential and 7,100 square feet of commercial units over six buildings. The residential community will be age restricted to those aged 55 and over.

Ms. Lee noted the following about this new project and resolution:

- Reynolds Asset Management proposes to construct a $18 million age restricted mixed use project in the Town of Poughkeepsie, Hyde Park School District
- They are requesting a mortgage abatement, sales tax exemption and deviated PILOT
- This PILOT is unique because it a bifurcated PILOT. The town portion follows the standard UTEP and the school district portion is a 15-year PILOT starting at 50%.
- This project has the support of the town and the school district

Mr. Reynolds proceeded to give a brief overview of the company and the project.

Questions, responses and comments ensued

A motion was made by Mr. Piccone, duly seconded by Ms. Bauer to approve the Preliminary Resolution for Violet Estates LLC (Town of Poughkeepsie) to induce a Project providing for a Mortgage Tax Exemption, Sales Tax Exemption and a Payment in Lieu of Taxes for an approximately $18,000,000 project for construction of a multifamily community consisting of 84 residential and 7,100 square feet of commercial units over six buildings. The residential community will be age restricted to those aged 55 and over. All voted in favor. Motion carried.

**ANNOUNCEMENT**

Ms. Lee announced that the video of the Business Excellence Awards will be released next Thursday and that a link will be sent to the board.

**ADJOURNMENT**

There being no further business to discuss on the agenda, the meeting was adjourned by Chairman Dean at 9:27 a.m.

Respectfully submitted,

_____ _____

Kathleen M. Bauer, Secretary/Treasurer Date

**Meeting** 11-12-2020
**Approved** _____
**Certified** _____

# Dutchess County Industrial Development Agency
## Balance Sheet
### As of November 30, 2020

| | Nov 30, 20 | |
|---|---|---|
| ASSETS | | |
| Current Assets | | |
| Checking/Savings | | |
| 1010 · Cash | | |
| 1152 · Money Market TD Bank | 364,281.08 | |
| 1155 · CD1- Riverside | 254,955.08 | |
| 1156 · CD2 - Riverside | 1,784,752.03 | |
| Total 1010 · Cash | | 2,403,988.19 |
| Total Checking/Savings | | 2,403,988.19 |
| Total Current Assets | | 2,403,988.19 |
| Fixed Assets | | |
| 1390 · Furniture & Equipment | | |
| 1680 · Furniture & Equipment | 3,115.81 | |
| 1710 · Accumulated Depreciation | -3,115.81 | |
| Total 1390 · Furniture & Equipment | | 0.00 |
| Total Fixed Assets | | 0.00 |
| Other Assets | | |
| 1175 · Other Assets | | |
| 1310 · Prepaid Expense | 3,643.92 | |
| Total 1175 · Other Assets | | 3,643.92 |
| 1600 · Escrow Deposits | | |
| 1601 · Cricket Valley Escrow Deposit | 1,719,143.76 | |
| Total 1600 · Escrow Deposits | | 1,719,143.76 |
| Total Other Assets | | 1,722,787.68 |
| TOTAL ASSETS | | **4,126,775.87** |
| LIABILITIES & EQUITY | | |
| Liabilities | | |
| Current Liabilities | | |
| Accounts Payable | | |
| 20000 · *Accounts Payable | | 176,744.70 |
| Total Accounts Payable | | 176,744.70 |
| Total Current Liabilities | | 176,744.70 |
| Long Term Liabilities | | |
| 2300 · Escrow Deposit Liability | | |
| 2301 · Cricket Valley Escrow Deposit | 1,719,143.76 | |
| Total 2300 · Escrow Deposit Liability | | 1,719,143.76 |
| Total Long Term Liabilities | | 1,719,143.76 |
| Total Liabilities | | 1,895,888.46 |
| Equity | | |
| 2490 · Fund Balance | | |
| 3200 · Fund Balance IDA | -25,000.00 | |
| Total 2490 · Fund Balance | | -25,000.00 |
| 30000 · Opening Balance Equity | | 1,447,427.47 |
| 32000 · Unrestricted Net Assets | | 1,273,632.31 |
| Net Income | | -465,172.37 |
| Total Equity | | 2,230,887.41 |
| TOTAL LIABILITIES & EQUITY | | **4,126,775.87** |

# Dutchess County Industrial Development Agency
## Profit & Loss Budget vs. Actual
### January through November 2020

| | Jan - Nov 20 | Budget | $ Over Budget | % of Budget |
|---|---|---|---|---|
| **Ordinary Income/Expense** | | | | |
| **Income** | | | | |
| **4000 · Cash Revenues** | | | | |
| **4020 · Administrative Fees** | 108,259.25 | 218,750.00 | -110,490.75 | 49.5% |
| **4030 · Application Fees** | 1,000.00 | 750.00 | 250.00 | 133.3% |
| **4035 · Compliance Fees** | 4,005.00 | 3,507.00 | 498.00 | 114.2% |
| **4150 · PILOT Payments** | 6,493,978.01 | | | |
| **4910 · Interest** | 33,929.51 | 30,000.00 | 3,929.51 | 113.1% |
| **Total 4000 · Cash Revenues** | 6,641,171.77 | 253,007.00 | 6,388,164.77 | 2,624.9% |
| **Total Income** | 6,641,171.77 | 253,007.00 | 6,388,164.77 | 2,624.9% |
| **Expense** | | | | |
| **6000 · Expenditures** | | | | |
| **6240 · Audit** | 0.00 | 14,500.00 | -14,500.00 | 0.0% |
| **6260 · Dues, Publications, Subs** | 1,274.45 | 3,000.00 | -1,725.55 | 42.5% |
| **6280 · Insurance** | 2,263.00 | 3,750.00 | -1,487.00 | 60.3% |
| **6350 · Misc** | 3,371.91 | 2,000.00 | 1,371.91 | 168.6% |
| **6450 · PILOT Payments** | 6,493,977.99 | | | |
| **6500 · Professional Service Contracts** | 600,000.00 | 600,000.00 | 0.00 | 100.0% |
| **6510 · Professional Services** | 3,074.39 | 20,000.00 | -16,925.61 | 15.4% |
| **6520 · Rent** | 883.41 | 1,000.00 | -116.59 | 88.3% |
| **6530 · Supplies** | 313.59 | 1,000.00 | -686.41 | 31.4% |
| **6550 · Travel & Meetings** | 1,185.40 | 2,500.00 | -1,314.60 | 47.4% |
| **Total 6000 · Expenditures** | 7,106,344.14 | 647,750.00 | 6,458,594.14 | 1,097.1% |
| **Total Expense** | 7,106,344.14 | 647,750.00 | 6,458,594.14 | 1,097.1% |
| **Net Ordinary Income** | -465,172.37 | -394,743.00 | -70,429.37 | 117.8% |
| **Net Income** | **-465,172.37** | **-394,743.00** | **-70,429.37** | **117.8%** |

**FINAL AUTHORIZING RESOLUTION**
(USEF Tioranda, LLC/Amazon.com Services LLC 2021 Project)

A regular meeting of the Dutchess County Industrial Development Agency, having offices at Three Neptune Road, Poughkeepsie, New York, was convened in public session on December 9, 2020 at 8:00 a.m., local time. Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1, as extended, suspending certain requirements of the Open Meetings Law, the meeting was held electronically via webinar with teleconference access made available to the public, instead of a public meeting open for the public to attend in person.

PRESENT: Timothy Dean, Chairman
Mark Doyle, Vice Chairman
Kathleen M. Bauer, Secretary/Treasurer
Alfred D. Torreggiani
Donald R. Sagliano
Ronald J. Piccone, II
Amy L. Bombardieri

ABSENT:

ALSO PRESENT: Sarah Lee, Executive Director
Marilyn Yerks, 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 (USEF Tioranda, LLC/Amazon.com Services LLC 2021 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 USEF TIORANDA, LLC AND AMAZON.COM SERVICES 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

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**WHEREAS**, the Agency has agreed to 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 (collectively, the "**Financial Assistance**") for the following project consisting of: (a) the acquisition of three (3) parcels of land located in the Town of East Fishkill, County of Dutchess, State of New York as follows (i) an approximately 105-acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-854904 (collectively, the "**Land**"), the demolition of existing structures on the Land, and the construction of an approximately 629,186 square foot warehouse facility with ancillary improvements including parking, storm water management facilities, landscaping, site lighting, and other utility infrastructure (the "**Improvements**"), and the acquisition and equipping of certain equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased and subleased by the Agency to USEF Tioranda, LLC, a Delaware limited liability company (the "**Company**"), and further subleased by the Company to Amazon.com Services LLC, a Delaware limited liability company (the "**Sublessee**"); and (b) 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 warehouse and fulfillment center (the "**Project**"); and

**WHEREAS**, the Project includes the following, as they relate to the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing, equipping, and/or 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/or renovation of the Facility and installation of the Equipment; and

**WHEREAS**, the Agency by resolution duly adopted on November 12, 2020 (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 and title to the Facility Equipment and the Equipment, and will sublease and lease the Company Facility to the Company for further sublease to the Sublessee, and will lease the Equipment to the Sublessee; 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 January 1, 2021, 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

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**WHEREAS**, the Agency will acquire title to the Facility 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 Company Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of January 1, 2021 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 will acquire title to the Equipment pursuant to a certain Equipment Bill of Sale, dated the Closing Date (the "**Equipment Bill of Sale**"), from the Sublessee to the Agency; and

**WHEREAS**, the Agency will lease the Equipment to the Sublessee pursuant to a certain Equipment Lease Agreement, dated as of January 1, 2021 or such other date as the Chairman or Executive Director of the Agency and counsel to the Agency shall agree (the "**Equipment Lease Agreement**"), by and between the Agency and the Sublessee; and

**WHEREAS**, the Sublessee and the Agency will enter into a certain Agency Compliance Agreement, dated as of January 1, 2021, or such other date as may be determined by the Chairman or Executive Director of the Agency and counsel to the Agency (the "**Agency Compliance Agreement**"), whereby the Sublessee will provide certain assurances to the Agency with respect to the Facility; and

**WHEREAS**, the Agency contemplates that it will provide financial assistance to the Company and the Sublessee consistent with the policies of the Agency, in the form of (i) exemptions from sales and use taxes in an amount not to exceed $3,575,000 in connection with the purchase or lease of equipment, building materials, services or other personal property with the respect to the Facility; (ii) exemptions from mortgage recording taxes for one or more mortgages securing an amount not to exceed $66,300,000 in connection with the Project Work; and (iii) 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 East Fishkill Town Board (the "**Town Board**"), as Lead Agency under SEQRA and the Agency was named as an involved agency; and

**WHEREAS**, on December 3, 2020, the Town 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

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**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**") but has been consented to by the Town of East Fishkill as evidenced by the letter from the Town of East Fishkill Supervisor dated December 7, 2020 and by the Wappingers Central School District as evidenced by the letter from the Wappingers Central School District Acting Superintendent dated December 8, 2020; and

**WHEREAS**, in compliance with §859-a of the Act, the Agency on December 4, 2020, held a public hearing on the grant of financial assistance as set forth herein following publication in the *Poughkeepsie Journal* on November 20, 2020 of a notice of the public hearing; and

**WHEREAS**, the Company and the Sublessee have 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 for further sublease by the Company to the Sublessee.

**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 Town 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 is bound by the Town 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 December 4, 2020, 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, the leasing of the Company Facility to the Company for further subleasing to the Sublessee, and the leasing of the Equipment to the Sublessee, 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

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(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;

(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.

(g) Based upon representations of the Company and the Sublessee and counsel to the Company and the Sublessee, 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 Company 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; and

(k) The Equipment Lease Agreement will be an effective instrument whereby the Agency leases the Equipment to the Sublessee; and

(l) The Agency Compliance Agreement will be an effective instrument whereby the Sublessee will provide certain assurances to the Agency with respect to the Facility.

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 the personal property described in Exhibit A to the Equipment 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, the Lease Agreement, the Equipment Lease Agreement and the Agency Compliance Agreement (each in substantially



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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. Recapture Provisions. The Agency has retained certain recapture rights under the terms and conditions of the Lease Agreement and the Equipment Lease Agreement, respectively, 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 5.2 of the Equipment Lease Agreement relating to recapture rights by the Agency against the Sublessee is attached hereto and made a part hereof as Exhibit C.

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 and the Sublessee in connection with the Project Work in the form of: (i) exemptions from sales and use taxes in an approximate amount not to exceed $3,575,000 in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, (ii) exemptions from mortgage recording taxes for one or more mortgages securing an amount not to exceed $66,300,000, in connection with the financing of the acquisition, construction, renovation and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing, renovating and equipping of the Facility, and (iii) 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).

Section 8. Subject to (i) execution of the Agency Documents by the Company and Sublessee 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 and the Sublessee as the true and lawful agents 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, the Lease Agreement, the Equipment Lease Agreement, the Agency Compliance Agreement (including any Mortgage and accompanying Assignment of Leases and Rents and Consents to Assignment and any other financing documents reasonably approved as to form and substance by the Executive Director and counsel to the Agency), 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

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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 [ ] seconded by [ ], discussed and adopted with the following members voting:

| | |
|---|---|
| Timothy Dean, Chairman | VOTING |
| Mark Doyle, Vice Chairman | VOTING |
| Kathleen M. Bauer, Secretary/Treasurer | VOTING |
| Alfred D. Torreggiani | VOTING |
| Donald R. Sagliano | VOTING |
| Ronald J. Piccone, II | VOTING |
| Amy L. Bombardieri | VOTING |

Adopted: December 9, 2020

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# EXHIBIT A

PILOT SCHEDULE

Formula for Payments-In-Lieu-of-Taxes ("**PILOTs**"): Town of East Fishkill, (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), Wappingers 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 PILOTs 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 Wappingers Central School District's Apportioned Share of the Annual PILOT due on October 1 of each year.

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

"Special Districts PILOTs" shall mean the PILOTs for the East Fishkill Fire District, and the East Fishkill Public Library District.

"PILOT Year" shall mean the first tax year following the Taxable Status Date after the Completion Date and each year thereafter for a total of fifteen (15) years in accordance with the Schedule of PILOT Payments. For example, if the Completion Date was prior to March 1, 2023, the Initial PILOT Year would include the

2024/2025 School District PILOT, the
2025 County PILOT, the
2025 Town PILOT, the
2025 East Fishkill Fire District PILOT
2025 East Fishkill Public Library District PILOT (collectively the "**Initial PILOT Year**") shall become due, and annually thereafter for a total of fifteen (15) years in accordance with the Schedule of PILOT Payments.

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"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 $5,218,500 if the Facility and Additional Facilities were owned by the Company and the Agency had no ownership interest. If the assessed value exceeds $5,218,500, 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 | 90% |
| 2 | 90% |
| 3 | 85% |
| 4 | 85% |
| 5 | 80% |
| 6 | 80% |
| 7 | 70% |
| 8 | 65% |
| 9 | 60% |
| 10 | 55% |
| 11 | 50% |
| 12 | 45% |
| 13 | 40% |
| 14 | 35% |
| 15 | 30% |
| 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.

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# 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 Company 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 (1st) or second (2nd) 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 (3rd) 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 (4th) 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 (5th) 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 (6th) 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 (7th) 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;

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(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; and

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

(i) the Mortgage Recording Tax Exemption; 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 Company 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.

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(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 (e) 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 and/or the Sublessee; or

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

(4) Failure of the Company to create or cause to be maintained at least ninety percent (90%) of the number of FTE jobs at the Company 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 and/or the Sublessee'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) Reserved.

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event (as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by governmental authority of all or part of the Company Facility, or (iii) the inability or failure of the Company after the Company Facility shall have been destroyed or damaged in whole or in part (such occurrence a "**Loss Event**") to rebuild, repair, restore or replace the Company 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 Company Facility or part thereof.

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(f) The Company 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 Company 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.

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

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred 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.

(i) 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.

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# EXHIBIT C

EXCERPT FROM EQUIPMENT LEASE AGREEMENT

Section 5.2 Recapture of Agency Benefits

Error! Bookmark not defined.

(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, 20__], 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) 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 that the Sublessee receives Sales Tax Savings in connection with the Project Work in violation of any of the provisions of Section 5.1 hereof or Section 875 of the GML; provided, however, that the foregoing shall constitute a Recapture Event with respect to such unauthorized Sales Tax Savings only. It is further provided that failure to repay such authorized Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits.

(d) 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).

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(e) 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.

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USEF TIORANDA, LLC

and

DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

(DUTCHESS COUNTY, NEW YORK)

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# COMPANY LEASE AGREEMENT

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Dated as of [____ 1, 2021]

Dutchess County Industrial Development Agency
(USEF Tioranda, LLC/Amazon.com Services LLC 2021 Facility)

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THIS COMPANY LEASE AGREEMENT, dated as of [____ 1, 2021] (the "**Company Lease**"), is by and between USEF TIORANDA, 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 9830 Colonnade Boulevard, Suite 600, San Antonio, Texas 78230 (the "**Company**"), and the DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 3 Neptune Road, Poughkeepsie, New York 12601 (the "**Agency**").

R E C I T A L S

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; and

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the "**State**"); 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 such term is defined in the hereinafter defined Lease Agreement) and the leasing of the Facility defined below; and

WHEREAS, the Agency has agreed to assist in (a) the acquisition of three (3) parcels of land located in the Town of East Fishkill, County of Dutchess, State of New York as follows (i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No.132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-854904, as more particularly described in Exhibit A attached hereto (collectively, the "**Land**"), the demolition of existing structures on the Land, and the construction of an approximately 629,186 square foot warehouse facility with ancillary improvements including parking, storm water management facilities, landscaping, site lighting, and other utility infrastructure (the "**Improvements**"), and the acquisition and equipping of certain equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased and subleased by the Agency to the Company and further subleased by the Company to Amazon.com Services LLC, 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, having an office at 410 Terry Avenue North, Seattle, Washington 98109 (the "**Sublessee**"); and (b) 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 warehouse and fulfillment center (the "**Project**"); and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and

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as the Agency's agent, to complete the Project Work; and

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to the terms of this Company Lease Agreement; and

WHEREAS, the Agency has agreed to lease and sublease the Company Facility to the Company, pursuant to a certain Lease and Project Agreement, dated as of [_____ 1, 2021] (the "**Lease Agreement**"), by and between the Agency, as sublessor and lessor, and the Company, as sublessee and lessee; and

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

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties mutually agree as follows:

The Company hereby leases the Land (described in Exhibit A attached hereto) and the Improvements to the Agency for the annual rent of $1.00 for a term commencing on the Closing Date and terminating at 11:59 p.m. on [_____ __, 20__] (the "**Lease Term**").

This Company Lease shall terminate on the earliest of (i) the expiration of the Lease Term and (ii) the termination of the Lease Agreement pursuant to Article X or Article XI thereof.

The Company agrees to keep, perform and observe, from and after the date hereof, all of the terms, covenants, conditions, obligations and other provisions contained in the Lease Agreement. The Company agrees further that it shall indemnify, defend and hold harmless the Agency from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings and attorneys' fees arising out of or in connection with the Lease Agreement or this Company Lease and shall defend the Agency in any suit, action or proceeding, including appeals, for personal injury to, or death of, any person or persons, or for any loss of or damage to property of persons, or for other claims arising out of the acts or omissions of the Company or any of its officers, directors, agents or employees. The foregoing indemnitees shall include all expenses incurred by the Agency, including, without limitation, reasonable attorneys' fees to enforce this Company Lease, the Lease Agreement or any other document to which the Company and the Agency are parties, and with respect to third party claims.

The Agency, for itself and its successors and assigns, hereby agrees to lease the Land and the Improvements from the Company on the terms and conditions contained herein.

The Company and the Agency acknowledge that the Agency will lease and sublease the Company Facility to the Company pursuant to the Lease Agreement. The Company and the Agency agree that while this Company Lease and the Lease Agreement remain in full force and effect, (i) there shall be no merger of the Company's fee simple absolute estate in the Land and the Improvements and the Company's subleasehold estate in the Land and Improvements created under the Lease Agreement; and (ii) the Agency shall continue to

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have, use and enjoy the leasehold estate in the Land and the Improvements created under this Company Lease.

The Company and the Agency acknowledge that in order to accomplish certain financing arrangements for the Company Facility, the parties may be required to assign and mortgage, for collateral purposes, each of their respective rights, titles and interests held pursuant to this Company Lease, the Lease Agreement and other interests that either may hold. Each of the Company and the Agency hereby consents to all such assignments, mortgages and other collateral financing requirements that may arise in connection with the financing or refinancing of the Company Facility.

This Company Lease and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage which may be granted by the Agency and the Company on the Company Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

This Company Lease shall not be recorded by either party hereto. The Agency shall cause a memorandum of lease with respect hereto to be recorded in the office of the Dutchess County Clerk.

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
3 Neptune Road
Poughkeepsie, New York 12601
Attention: Executive Director

With a copy to:

Cappillino, Rothschild & Egan LLP
Seven Broad Street
P.O. Box 390
Pawling, New York 12564-0390
Attention: Donald Cappillino, Esq.

To the Company:

USEF Tioranda, LLC
9830 Colonnade Boulevard, Suite 600
San Antonio, Texas 78230
Attention: [_____]

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With a copy to:

Harris Beach PLLC
677 Broadway, Suite1101
Albany, New York 12207
Attention: Robert Ryan, Esq.

Golden Steves & Gordon LLP
200 East Basse Road, Suite 200
San Antonio, Texas 78209
Attention: Stephen L. Golden

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.

Copies of all notices given either to the Agency or to the Company shall also be sent to any Lender, if such Lender shall have delivered written instructions to the Agency and the Company with the address of such Lender.

If a party hereto determines in its reasonable discretion that any further instruments or other actions are necessary or desirable to carry out the terms of this Company Lease, the other party shall, at the Company's sole cost and expense, execute and deliver all such instruments and take all such actions.

Capitalized terms used in this Company Lease and not otherwise defined in this Company Lease shall have the meanings assigned thereto in Schedule A to the Lease Agreement.

This Company Lease 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.

This Company Lease may not be amended, changed, modified or altered except in writing executed by the parties hereto.

This Company Lease shall be governed exclusively by the applicable laws of the State of New York, without regard or reference to its conflict of laws principles.

This Company Lease and the conveyance made hereby shall be subject to the trust fund provisions of Section 13 of the Lien Law of the State.

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

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IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

**USEF TIORANDA, LLC**
a Delaware limited liability company

By: USAA Eagle Real Estate Multi-Sector Operating Partnership, LP, a Delaware limited partnership, its managing member

By: USAA Eagle OP GP, LLC, a Delaware limited liability company, its general partner

By:_____
Name: David J. Buck
Title: Executive Managing Director

STATE OF _____ )
: SS.:
COUNTY OF _____ )

On the ___ day of _____ in the year 2021, before me, the undersigned, personally appeared **David J. Buck** 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

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**DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By: _____
Name: Sarah Lee
Title: Executive Director

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

On the ___ day of _____ in the year 2021, 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

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EXHIBIT A

Legal Description of Real Property

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DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

(DUTCHESS COUNTY, NEW YORK)

and

USEF TIORANDA, LLC

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# LEASE AND PROJECT AGREEMENT

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Dated as of [_____ 1, 2021]

Dutchess County Industrial Development Agency
(USEF Tioranda, LLC/Amazon.com Services LLC 2021 Project)

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THIS LEASE AND PROJECT AGREEMENT, dated as of [_____ 1, 2021] (this "**Lease Agreement**"), is between the DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 3 Neptune Road, Poughkeepsie, New York 12601 (the "**Agency**"), and USEF TIORANDA, 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 9830 Colonnade Boulevard, Suite 600, San Antonio, Texas 78230 (the "**Company**").

R E C I T A L S

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 such term is defined herein) and the leasing of the Facility defined below; and

WHEREAS, the Project shall consist of (a) the acquisition of three (3) parcels of land located in the Town of East Fishkill, County of Dutchess, State of New York as follows (i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-854904, as more particularly described in Exhibit A attached hereto (collectively, the "**Land**"), the demolition of existing structures on the Land, and the construction of an approximately 629,186 square foot warehouse facility with ancillary improvements including parking, storm water management facilities, landscaping, site lighting, and other utility infrastructure (the "**Improvements**"), and the acquisition and equipping of certain equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased and subleased by the Agency to the Company and further subleased by the Company to Amazon.com Services LLC, a limited

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liability company (the "**Sublessee**"); and (b) 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 warehouse and fulfillment center (the "**Project**"); and

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

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to the terms of a certain Company Lease Agreement, dated as of [_____] 1, 2021 (the "**Company Lease**"), by and between the Company and the Agency; and

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

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

WHEREAS, the Company has agreed to sub-sublease the Company Facility to the Sublessee pursuant to the terms of a certain [Sublease], dated as of [___ __, 20__] (the "**Sublease Agreement**"), by and between the Company 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 pursuant to the terms of a certain Equipment Lease Agreement, dated as of [___ 1, 2021] (the "**Equipment Lease Agreement**"), by and between the Agency and the Sublessee.

AGREEMENT

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

ARTICLE I
DEFINITIONS

All capitalized terms used in this Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

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:

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

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

(c) By resolution dated [_____, 2020], the Agency determined that, based upon the review by the Agency of the materials submitted and the representations made by the Company and the Sublessee relating to the Facility, [INSERT SEQR DETERMINATION]. The Agency also acknowledges that the Town of East Fishkill Town Board, serving as Lead Agency, has on [_____ __, 2020] adopted a [_____, determining that the proposed construction of the Project would/would not result in any significant adverse environmental impacts, and in all other respects adopted, as its own SEQR Findings, the Findings Statement as adopted by the Town Board on [____ __, 2020],

(d) Neither the execution and 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, the Agency's Certificate of Establishment or By-Laws, as amended, or any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument, except for Permitted Encumbrances.

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

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

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

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



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(a) The Company 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 Delaware and the State of New York and has full legal right, power and authority to execute, deliver and perform each of the Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

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

(c) The Company Facility, the Project Work and the design, and operation of the Company Facility will conform with all applicable zoning, planning, building and Environmental Laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Company Facility. Under penalty of perjury, the Company certifies that it is in substantial compliance with all local, state, and federal tax, worker protection and environmental laws, rules and regulations as they relate to the Company Facility.

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

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

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

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

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Agency with any and all information and materials describing proposed Facility occupants as necessary.

(h) The Company will cause future tenants of the Company Facility (other than the Sublessee), if any, to execute and deliver to the Agency a Tenant Agency Compliance Agreement, substantially in the form attached hereto as Exhibit I, prior to the occupancy of the Company Facility, or a portion thereof, by such tenant, in accordance with the provisions of Section 9.3 hereof.

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

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

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

(l) 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 FACILITY SITE; PROJECT WORK AND COMPLETION

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

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

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

Section 3.4 Project Work.

(a) The Company agrees that, on behalf of the Agency, it will complete the Project Work in accordance with the Plans and Specifications.

(b) The Company may revise the Plans and Specifications from time to time without the consent or approval of the Agency; provided that the Company Facility shall retain its overall configuration and intended purposes and shall remain a "project" as defined in the Act.

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

(d) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 3.4.

(e) The Company, as agent for the Agency, shall comply in all material respects with all provisions of the Labor Law of the State applicable to the completion of the Project Work and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions. The provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

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

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Section 3.6 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Agency (i) a certificate signed by an Authorized Representative of the Company in the form set forth in Exhibit J attached hereto, together with all attachments required thereunder stating (a) that the Project Work has been completed in accordance with the Plans and Specifications therefor, and (b) that payment for all labor, services, materials and supplies used in such Project Work has been made or provided for; (ii) the Final Project Cost Budget, which budget will include a comparison with the project cost budget information listed in the Project Application Information and shall include all costs paid or incurred by the Company and the Sublessee in connection with the Facility, and (iii) such other certificates and information as may be reasonably satisfactory to the Agency. The Company shall not be entitled to any refund or credit of the Agency's fee if the Final Project Cost Budget is lower than provided in the Project Application Information. The Company agrees that the Completion Date shall be no later than [_____ __, 20__].

Section 3.7 Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Company Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman, surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's sole cost and expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Net Proceeds of any recovery from a contractor or subcontractor or materialman or other person shall be paid to the Company.

## ARTICLE IV
## LEASE OF COMPANY FACILITY RENTAL PROVISIONS

Section 4.1 Lease of Facility. The Agency hereby subleases and leases the Company Facility, consisting of the Land as more particularly described in Exhibit A attached hereto and the Improvements and the Facility Equipment as more particularly described in Exhibit B attached hereto, to the Company and the Company hereby takes the Company Facility from the Agency upon the terms and conditions of this Lease Agreement.

Section 4.2 Duration of Lease Term; Quiet Enjoyment.

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

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(b) Except as provided in Sections 10.2 and 11.1 hereof, the estate created hereby shall terminate at 11:58 p.m. on [December 31, 20__] (the "**Lease Term**").

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

Section 4.3 Rents and Other Amounts Payable.

(a) The Company shall pay basic rent for the Company Facility as follows: One Dollar ($1.00) per year commencing on the Closing Date and on each and every January 1 thereafter during the term of this Lease Agreement. In addition, the Company shall pay to the Agency an annual compliance fee of $500 on or before January 1 of each year commencing January 1, 2022 and continuing through the Lease Term.

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

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

Section 4.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 4.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein, shall be general obligations of the Company, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required hereunder, or (ii) fail to observe any of its other covenants or agreements in this Lease Agreement.

Section 4.5 No Warranty of Condition or Suitability by Agency. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER,



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EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE COMPANY FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE COMPANY FACILITY, OR THE SUITABILITY OF THE COMPANY FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT WORK. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF, IS SATISFIED THAT THE COMPANY FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE COMPANY FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

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

Section 5.1 PILOT Payments.

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

(b) After the effective date of this Lease Agreement and until the provisions of paragraph 5.1(c) become effective, the Company shall pay, as payments in lieu of taxes and assessments, one hundred percent (100%) of the taxes and assessments that would be levied upon the Company Facility by the respective Taxing Authorities if the Company Facility were owned by the Company exclusive of the Agency's leasehold interest.



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(c) In each tax year during the term of this Lease Agreement, commencing with the first tax year following the Completion Date, the Company shall pay, as PILOT Payments, the amounts calculated as set forth on Exhibit C attached hereto and made a part hereof.

(d) The Company shall pay, or cause to be paid, the amounts set forth in subsections (a), (b) and (c) above, as applicable, after receipt of tax bills from the Agency or the Taxing Authorities, as the case may be. Failure to receive a tax bill shall not relieve the Company of its obligation to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate tax bill, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided therein. PILOT Payments shall be made directly to the Agency. PILOT Payments made after the due date(s) as set forth in the applicable tax bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the GML, including Section 874(5) thereof, which currently provides for an initial penalty of five percent (5%) of the amount due and an additional penalty of one percent (1%) per month on payments more than one (1) month delinquent.

(e) During the Lease Term, the Company shall continue to pay all special ad valorem levies, special assessments, and service charges levied against the Company Facility for special improvements or special district improvements.

(f) In the event that any structural addition shall be made to the building or buildings included in the Company Facility subsequent to the Completion Date, or any additional building or improvement shall be constructed on the Land (such structural additions, buildings and improvements being referred to hereinafter as "**Additional Facilities**"), the Company agrees to make additional payments in lieu of taxes to the Agency in amounts as set forth in Exhibit C. All other provisions of this Section 5.1 shall apply to this obligation for additional payments.

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

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

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

(j) As long as this Lease Agreement is in effect, the Agency and the Company agree that (i) the Company shall be deemed to be the owner of the Company Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, administrative or judicial review of an assessment of the real estate with respect to the Company Facility and of the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Agency, at the request of the Company, shall request the Assessor of the Town of East Fishkill, or any other assessor having jurisdiction to assess the Company Facility, to take into consideration the value of surrounding properties of like character when assessing the Company Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Company Facility and the Additional Facilities is reduced as a result of any such administrative or judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Company Facility and the Additional Facilities exclusive of the Agency's leasehold interest therein, such complaining party shall not be entitled to receive a refund or refunds of the PILOT Payments paid pursuant to this Lease Agreement and the PILOT Payments set forth on Exhibit C hereto shall not be reduced. In that event, such complaining party shall be entitled to receive a credit against future PILOT Payments to be paid pursuant to this Lease Agreement, as and when collected by the Agency or the respective Taxing Authorities (as the case may be), in an amount equal to any refund that such complaining party would be entitled to receive if such complaining party were the owner of the Company Facility and the Additional Facilities exclusive of the Agency's leasehold interest therein; provided, however, that the Agency shall have no obligation to provide a credit against PILOT Payments which it has remitted to any of the respective Taxing Authorities before the date the Agency receives written notice from the complaining party that it seeks a credit. In no event shall the Agency be required to remit to the Company or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Company Facility (or any part thereof) due to a certiorari review. If the Company receives a reduction in assessment in the last year of the Lease Agreement after it has made its final payments in lieu of taxes, the Company acknowledges that it shall look solely to the Taxing Authorities for repayment or for a credit against the first payment(s) of Taxes on the Company Facility which will be due after the Company Facility is returned to the tax rolls. The Company hereby agrees that it will notify the Agency if the Company shall have requested a reassessment of the Company Facility or a reduction in the taxes on the Company Facility or shall have instituted any tax certiorari proceedings with respect to the Company Facility. The Company shall deliver to the Agency copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company in

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connection with any reassessment of the Company Facility, reduction of taxes with respect to the Company Facility or tax certiorari proceedings with respect to the Company Facility.

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

Section 5.2 Sales Tax Exemption.

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

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

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

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(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 Lease Agreement, (B) the Completion Date, (C) failure of the Company to file Form ST-340, as described in Section 5.2(g) below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 or (E) the date upon which the Company received the Maximum Company Sales Tax Savings Amount.

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this 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 Lease Agreement.

(iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for use only by the Company or 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 Company or the Sublessee), it being the intention of the Agency and the Company that the Sales Tax Exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Company at the Company Facility.

(v) The Sales Tax Exemption shall not be used for any Ineligible Item.

(vi) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Company and the Sublessee, without the prior written consent of the Agency.

(vii) By execution by the Company of this Lease Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.

(viii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated.

(ix) The Company agrees that the aggregate amount of Company Sales Tax Savings realized by the Company and by all Agents of the Company, if any, in connection with the Company Facility shall not exceed in the aggregate the Maximum Company Sales Tax Savings Amount.

(d) Procedures for Appointing Agents. If the Company desires to seek the appointment of the Sublessee, or 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

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Sales Tax Exemption pursuant to authority of this Lease Agreement, it must complete the following steps:

(i) For each Agent, the Company 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 E. 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 Company. The Company must also provide a copy of an executed Sales Tax Agent Authorization Letter together with a copy of this Lease Agreement to the Agent within five (5) Business Days after receipt thereof by the Company.

(iii) The Company shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Lease Agreement.

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

(f) Form ST-123 Requirement. As an agent of the Agency, the Company agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Agent, as agent for the Agency, for the Project Work. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Company Facility on each bill or



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invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state, "I, [Company/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 USEF Tioranda, LLC/Amazon.com Services LLC 2021 Project [located at Town of East Fishkill, County of Dutchess, State of New York as follows (i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear bearing Tax Map Grid No. 132800-6355-00-854904, Dutchess County, New York, IDA Project Number [____]." The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) 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 Company Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

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

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

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

(i) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of GML Sections 875(1) and (3) (the "**Special Provisions**"), as such provisions may be amended from time to time. In the event of a



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conflict between the other provisions of this Lease Agreement and the Special Provisions, the Special Provisions shall control.

(ii) The Company acknowledges and agrees that pursuant to GML Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company, State Sales Tax Savings taken or purported to be taken by the Company, any Agent or any other person or entity acting on behalf of the Company to which the Company is not entitled or which are in excess of the Maximum Company Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company under Article 28 of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

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

(k) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company under this Section 5.2.

Section 5.3 Mortgage Recording Tax Exemption. Section 874 of the Act exempts the Agency from paying certain mortgage recording taxes except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the Tax Law. The Agency hereby grants to the Company exemption from mortgage recording taxes for one or more Mortgages on the Company Facility securing an aggregate principal amount not to exceed



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$[66,300,000] 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 Company Facility (the "**Mortgage Recording Tax Exemption**"). The Company represents and warrants (1) that the real property secured by the Mortgage is located within a transportation district referenced in Section 253(2)(a) of the Tax Law, and (2) that upon recording the Mortgage, the Company shall pay the mortgage recording tax allocated to transportation districts referenced in Section 253(a)(2) of the Tax Law.

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 Company 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 (1st) or second (2nd) 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 (3rd) 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 (4th) 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 (5th) 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 (6th) 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

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(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 ($8^{th}$) 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, forty percent (40%) of the Recaptured Benefits; and

(ix) If there shall occur a Recapture Event during the ninth ($9^{th}$) 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, thirty percent (30%) of the Recaptured Benefits; and

(x) If there shall occur a Recapture Event during the tenth ($10^{th}$) 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, twenty percent (20%) of the Recaptured Benefits; and

(xi) If there shall occur a Recapture Event during the eleventh ($11^{th}$) 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, ten percent (10%) of the Recaptured Benefits; and

(xii) If there shall occur a Recapture Event during the twelfth ($12^{th}$) 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; and

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

(i) the Mortgage Recording Tax Exemption; 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 Company Facility (the "**Company Sales Tax Savings**"); and

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(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 (e) 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 and/or the Sublessee; or

(3) The closure of the Company Facility and/or departure of the Sublessee from Dutchess County, except as due to casualty, condemnation or force majeure as provided in subsection (e) below or as provided in Section 9.3 hereof; or

(4) Failure of the Company to create or cause to be created and maintained at least ninety percent (90%) of the number of FTE jobs at the Company 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 and/or the Sublessee'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 following receipt of a written request for such payment shall constitute a Recapture Event with respect to all Recapture Benefits.

(d) Reserved.

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force

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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 Company Facility, or (iii) the inability or failure of the Company after the Company Facility shall have been destroyed or damaged in whole or in part (such occurrence a "**Loss Event**") to rebuild, repair, restore or replace the Company 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 Company Facility or part thereof.

(f) The Company covenants and agrees to furnish or cause Sublessee to furnish to the Agency written notification (i) within sixty (60) days of the end of each Tax Year of the number of FTEs located at the Company 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.

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

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred 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.

(i) 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.

## ARTICLE VI
## MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Facility by Company.

(a) The Company shall not abandon the Company Facility or cause or permit any waste to the Improvements. During the Lease Term, the Company shall not remove any material part of the Company Facility outside of the jurisdiction of the Agency and shall (i) keep the Company Facility or cause the Company Facility to be kept in as reasonably safe condition as its

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operations shall permit; (ii) make all necessary repairs and replacements to the Company Facility; and (iii) operate the Company Facility in a sound and economic manner.

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

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 3.5 hereof, the Company or any permitted sublessee of the Company (including Sublessee) from time to time may install additional machinery, equipment or other personal property in the Company Facility (which may be attached or affixed to the Company Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Company Facility. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Company 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 Company Facility or impair the overall operating efficiency of the Company Facility for the purposes for which it is intended, and provided further, that if any damage to the Company Facility is occasioned by such removal, the Company agrees promptly to repair or cause to be repaired such damage at its own expense; provided, however, that notwithstanding the foregoing, any machinery, equipment and other personal property installed by Sublessee may be removed so long as it does not materially and adversely affect the structural integrity of the Company Facility.

Section 6.3 Taxes, Assessments and Utility Charges.

(a) Subject to the Sales Tax Exemption and the Real Property Tax Abatements as provided hereunder, the Company agrees to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost which may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, PILOT Payments and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Company Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Company Facility or any part or component thereof, or the rental or sale of the Company Facility or any part thereof, and any

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taxes levied upon or with respect to the income or revenues of the Agency from the Company Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Company Facility; and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the Company Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings and (ii) the Company shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency.

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

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

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

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the greater of $1,000,000 or the amount as may be required by any Lender. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance which the Company or any permitted sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or

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any permitted sublessee who are located at or assigned to the Company Facility. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Company, any permitted sublessee, any contractor or subcontractor first occupy the Company Facility.

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

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

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

(ii) Comprehensive general liability providing coverage for:

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

Such insurance shall have a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

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

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

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

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

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall 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(a) and (e) 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 of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days' prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Section 6.4(d)(ii), (iii) and (iv) shall name the Agency and the Company as additional insureds. The Agency acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Company to any Lender pursuant to the Mortgage, and the Agency consents thereto. The Agency hereby acknowledges that upon request of any Lender, the Company will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under any Mortgage) to any Lender the policies of insurance required under Section 6.4(a), so and in such manner and form that any Lender shall at all times, upon such request and until the payment in full of any Loan, have and hold said policies and the Net Proceeds thereof as collateral and further security under any Mortgage for the payment of any Loan. The policies required under Section 6.4(a) shall contain appropriate waivers of subrogation.

(b) The certificates of insurance required by Section 6.4(a), (c) and (e) hereof shall be deposited with the Agency on or before the Closing Date. A copy of the certificates of insurance required by Section 6.4(d)(ii), (iii) and (iv) hereof shall be delivered to the Agency on or before



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

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

Section 6.7 Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails, beyond the expiration of any applicable notice and cure periods, (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, PILOT Payment, assessment or other governmental charge required to be paid by Section 6.3 hereof (unless contested in accordance with the provisions of Section 6.3), (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Company Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Company Facility or any part thereof (unless contested in accordance with the provisions of Section 8.8(b) hereof), or (v) to pay any other amount or perform any act required to be paid or performed by the Company hereunder, the Agency may pay or cause to be paid such tax, PILOT Payment, assessment or other governmental charge, premium for such insurance or any such other payment, or may perform any such act. No such payment shall be made or act performed by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency, and in the case of any tax, assessment or governmental charge or the amounts specified in clauses (i) and (iv) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Lease Agreement, unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Agency for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon, from the date of payment of such amount, expense or cost by the Agency at a rate equal to two percent (2%) plus the Prime Rate, but in no event higher than the maximum lawful prevailing rate.

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ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Company Facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7.2 Condemnation.

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

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

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

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

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

(v) if the Company Facility is not repaired, replaced, rebuilt, restored or relocated, as provided herein and in Section 7.2(b) hereof, this Lease Agreement

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shall be terminated at the option of the Agency and the provisions of Section 7.2(e) hereof shall apply.

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

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

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

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

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

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

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

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

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

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

## ARTICLE VIII
## SPECIAL COVENANTS

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

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company), and employees (the "**Indemnified Parties**") shall not be liable for and agrees to protect, defend, indemnify, save, 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 Company Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Company Facility or the Land, (ii) the Project Work and the Agency's acquisition, owning, leasing and subleasing of the Company Facility, including, without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 5.2 of this 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 Company Facility, (iv) the Project Work or the operation or use of the Company Facility in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production or Disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, except in compliance with all applicable Environmental Laws, (v) the presence of any Hazardous

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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 Company 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 Company Facility, required by any Environmental Law, (vii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the Project Work, the condition of the Company Facility or the ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law, (viii) a violation of any applicable Environmental Law, (ix) non-compliance with any Environmental Permit, (x) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company in this Lease Agreement, or (xi) the costs of any required or necessary investigation, assessment, testing, repair, cleanup, or detoxification of the Company Facility and the preparation of any closure or other required plans; provided that any such losses, damages, liabilities or expenses of the Agency are not incurred on account of and do not result from the gross negligence or intentional or willful wrongdoing of the Indemnified Parties. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of any of the Indemnified Parties, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, the payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Indemnified Parties, relating to the enforcement of the provisions herein specified. The liability of the Company to the Agency hereunder shall in no way be limited, abridged, impaired or otherwise affected by (i) any amendment or modification of any of the Transaction Documents by or for the benefit of the Agency, the Company or any subsequent owners or users of the Company Facility, (ii) any extensions of time for payment or performance required by any of the Transaction Documents, (iii) the release of the Company or any other person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Transaction Documents by operation of law, either by the Agency's voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Transaction Documents, (v) any exculpatory provision contained in any of the Transaction Documents limiting the Agency's recourse to any other security or limiting the Agency's rights to a deficiency judgment against the Company, (vi) any investigation or inquiry conducted by or on the behalf of the Agency or any information which the Agency may have or obtain with respect to the condition of the Environment at, or ecological condition of, the Company Facility, (vii) the sale, assignment or foreclosure of any mortgage relating to all or any part of the Company Facility, but only with respect to a Release that has occurred prior to any such event, (viii) the sale, assignment, subleasing, transfer or conveyance of all or part of the

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

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

Section 8.3 Company to Maintain Its Existence. The Company covenants and agrees that at all times during the Lease Term, it will (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Lease Agreement, (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it, and (v) not change more than 49% of the ownership and control of the Company or sell or transfer more than 49% of the equity interests in the Company, 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 Company throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 8.5 Agreement to File Annual Statements and Provide Information. The Company shall file with the NYSDTF an annual statement of the value of all sales and use tax exemptions claimed in connection with the Company Facility in compliance with Sections 874(8) of the GML as provided in Section 5.2(g) hereof. The Company shall submit a copy of such annual statement to the Agency at the time of filing with NYSDTF. The Company shall also provide the Agency with the information necessary for the Agency to comply with Section 874(9) of the GML. Annually, the Company shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Company Facility as a result of the Agency's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained. The Company further agrees to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority



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Budget Office or the Office of the State Comptroller or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency. The Company shall cause any and all sublessees at the Company Facility to comply with the requirements of this Section 8.5 by requiring each such sublessee to enter into a Tenant Agency Compliance Agreement.

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

Section 8.7 Compliance with Orders, Ordinances, Etc.

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

(b) Notwithstanding the provisions of subsection (a) above, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by failure to comply with such requirement or requirements, the Company Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be satisfactory to the Agency. If at any time the then existing use or occupancy of the Company Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Company shall use its best efforts not to cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency.

Section 8.8 Discharge of Liens and Encumbrances.

(a) The Company, throughout the Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Company Facility 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 Company Facility or any part thereof.

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(b) Notwithstanding the provisions of subsection (a) above, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company in writing that by nonpayment of any such item or items, the Company Facility or any part thereof may be subject to loss or forfeiture. In the event of such notice the Company shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Agency, thereby causing such Lien to be removed, or by taking such other actions as may be satisfactory to the Agency to protect its interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the filing or perfection thereof.

Section 8.9 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Company Facility and to any investment credit with respect to any part of the Company Facility.

Section 8.10 Employment Opportunities; Notice of Jobs. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which the Company is a party, cause any new employment opportunities created in connection with the Company 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 Company Facility is located (collectively, the "**Referral Agencies**"). The Company agrees to comply with the Agency's "Local Workforce Utilization Policy" a copy of which is attached hereto as Exhibit L and made a part hereof. The Company 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 8.11 Employment at the Company Facility. The Company hereby agrees to create and maintain at all times or cause the Sublessee to create and maintain at all times at the Company Facility: one-hundred (100) full time equivalent employees as of [December 31, 20__], and five-hundred (500) full time equivalent employees within five (5) years of the Completion Date and thereafter throughout the Lease Term, calculated on the basis of 35 hours per week who are employees of the Company or any subsidiary or affiliates of the Company, or any consultants, contractors or subcontractors of the Company, or any subsidiary or affiliates of the Company, whose place of employment or workplace is located at the Company Facility (including the full time equivalent employees of all tenants at the Company Facility) ("**FTE**"). It is further provided that the Company may not actually provide the FTEs at the Company Facility, but rather shall sublease the Company Facility to the Sublessee, and the FTE jobs created and maintained by the Sublessee at the Company Facility shall satisfy the requirement above. The Company's obligation with regard to creating or causing to be maintained FTEs includes (a) using all reasonable efforts to lease up the Company Facility, and (b) including provisions in all subleases requiring any tenant to comply with the provisions of the Lease Agreement applicable to them.



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Section 8.12 Annual Compliance Certificate. The Company shall deliver to the Agency each year no later than January 15th, a certificate signed by an Authorized Representative of the Company in the form attached hereto as Exhibit K, together with all attachments referenced therein.

## ARTICLE IX
## RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

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

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

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

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

Section 9.2 Removal of Facility 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 Facility Equipment. In any instance where the Company determines that any item of Facility Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such items from the Company 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 Company Facility for the purpose for which it is intended or change the nature of the Company Facility so that it does not constitute a "project" under the Act.

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



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

Section 9.3 Assignment and Subleasing.

(a) Except pursuant to the Sublease Agreement, this Lease Agreement may not be assigned, in whole or in part, and the Company Facility may not be subleased, in whole or in part, without the prior written consent of the Agency, in each instance, which consent shall not be unreasonably withheld or delayed, but shall be subject to the dates of the Agency's board meetings, and which consent may be fully and effectively given by the execution and delivery of a Tenant Agency Compliance Agreement by an Authorized Representative of the Agency in substantially the form attached hereto as Exhibit I; provided, however that following completion of the Company Facility, this Lease Agreement. Any assignment or sublease shall be on the following conditions, as of the time of such assignment or sublease:

(i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder unless the Agency consents thereto, 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 (except in the case of a true sublessee in the ordinary course of business) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

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

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

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

(vi) any sublessee will execute and deliver a Tenant Agency Compliance Agreement, satisfactory to the Agency in substantially the form attached hereto as Exhibit I;

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

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

(c) In accordance with Section 862(1) of the Act, the Company Facility shall not be occupied by a sublessee whose tenancy would result in the removal of a facility or plant of the proposed sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

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

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

Section 9.4 Merger of Agency.

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

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

## ARTICLE X
## EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

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

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

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(ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(e), (f) or (i), 3.6, 5.2, 6.3, 6.4, 6.5, 8.2, 8.4, 8.5, 8.11, 8.12, 9.3, 10.4 and Article XIII hereof;

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

(iv) the occurrence and continuation of a Recapture Event;

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

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

(vii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for forty (40) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;

(viii) an Event of Default under the Mortgage, if any, shall have occurred and be continuing; or

(ix) a default by any tenant under its respective Tenant Agency Compliance Agreement shall have occurred and be continuing.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 3.4, 6.1 and 8.11 of this Lease Agreement, and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the

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

Section 10.2 Remedies on Default.

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

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 4.3(a) and (b) hereof, (B) all unpaid and past due PILOT Payments, (C) all due and owing Recaptured Benefits, and (D) all other payments due under this Lease Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vii) hereof shall have occurred and be continuing, such installments of rent and other payments due under this Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;

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

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

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

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

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

Section 10.5 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 LEASE AGREEMENT
## OPTION IN FAVOR OF COMPANY

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

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



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

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

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

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

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

Section 11.3 Conveyance on Termination. At the closing of any expiration or termination of the Lease Agreement, the Agency shall, upon receipt of the amounts payable pursuant to Section 11.2 hereof, deliver to the Company all necessary documents (i) to terminate this Lease Agreement and the Company Lease and to convey the Facility Equipment to the Company, subject in each case only to the following: (A) any Liens to which leasehold estate or title to such Property was subject when conveyed to the Agency, (B) any Liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances, and (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default hereunder; and (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Company Facility (but not including any Unassigned Rights). At the closing of any expiration or termination of the Lease Agreement, and unless otherwise waived by the Agency, as a condition to such termination or expiration, the Company shall request each Lender to release the Agency from any Mortgage and any other Loan Documents to which it is a party in writing and cause such releases to be recorded as applicable.

## ARTICLE XII
## LENDER PROVISIONS

Section 12.1 Subordination of Lease Agreement. This Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage which may be granted by the Agency and the Company on the Company Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 12.2 Mortgage and Pledge of Agency's Interests to Lender. The Agency shall at the request of, and at the sole cost and expense of, the Company (i) mortgage its interest in the Company Facility, and (ii) pledge and assign its rights to and interest in this Lease Agreement (other than Unassigned Rights) to the Lender as security for the payment of the principal of and interest on the Loan, in each case in accordance with the provisions attached hereto as Exhibit D.



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The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such mortgage, pledge and assignment, continue to run to the Agency for its benefit.

Section 12.3 Pledge of Company's Interest to Lender. The Company shall have the right to pledge and assign its rights to and interest in this Lease Agreement and the Plans and Specifications to any Lender as security for the payment of the principal of and interest on the Loan. The Agency hereby acknowledges and consents to any such pledge and assignment by the Company.

Section 12.4 Making of Loans; Disbursement of Loan Proceeds. The Agency acknowledges that the Company may request one or more Lenders to make one or more loans to finance and refinance the costs of the acquisition of the Company Facility and/or the Project Work or to reimburse the Company for the cost of acquiring the Company Facility and/or the Project Work (the "**Loan**"). Proceeds of such Loan shall be disbursed by such Lender in accordance with the provisions of the Mortgage or other related documentation applicable to such Loan.

Provided that the Agency shall have received the notice of the name and address of a Lender, the Agency agrees that simultaneously with its giving of any notice under this Lease Agreement (each a "**Notice**") it will send a copy of such Notice to each Lender. Each Notice shall be sent to each Lender in the manner provided herein at the address provided to the Agency by each Lender for such purpose. Each such Lender may change such address from time to time by written notice to the Agency in accordance herewith. The Agency shall reasonably cooperate with the Company in connection with the granting or modification by the Company of any Mortgage. Such cooperation shall include, without limitation, the execution and delivery of such documents and instruments in connection with a Mortgage as the Company or the Lender may reasonably request (the "**Loan Documents**"), provided that such documents and instruments shall contain the language set forth in Exhibit D attached hereto and made a part hereof. The Company shall perform or cause to be performed for and on behalf of the Agency, and at the Company's sole cost and expense, each and every obligation of the Agency under and pursuant to such instruments.

Section 12.5 References to Lender, Loan or Mortgage. All references herein to Lender, Loan or Mortgage or other similar words, whether in the singular or the plural, may be in anticipation of future Loans to be made by future Lenders. Such references shall only be effective if such Loans have been made and are still outstanding. If such Loans are never made or have been repaid, such references shall not be of any force or effect.

## ARTICLE XIII
## ENVIRONMENTAL MATTERS

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

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(a) Neither the Company Facility nor, to the best of Company's knowledge, any property adjacent to or within the immediate vicinity of the Company Facility is being or has been used in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste management or disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) Underground storage tanks are not and have not been located on the Company Facility.

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

(d) There has been no Release or threat of a Release of any Hazardous Substance in violation of any applicable law on, at or from the Company Facility or any property adjacent to or within the immediate vicinity of the Company Facility which through soil, subsoil, bedrock, surface water or groundwater migration could come to be located on or at the Company Facility, and the Company has not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Company Facility or any property adjacent to or within the immediate vicinity of the Company Facility or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Company Facility or any property adjacent to or within the immediate vicinity of the Company Facility in violation of any applicable law.

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

(f) No event has occurred with respect to the Company Facility which, with the passage of time or the giving of notice, or both, would constitute a violation of or non-compliance with any applicable Environmental Law or Environmental Permit.

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

(h) There are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or remedy that arise out of, relate to or result from (i) conditions of the Environment at, on or in the vicinity of the Company Facility, (ii) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-

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compliance with any Environmental Permit with respect to the Company Facility, (iii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Company Facility or any property adjacent to or within the immediate vicinity of the Company 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 Company Facility, the Project Work or the ownership, use, operation, sale, transfer or conveyance of the Company Facility.

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

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

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

(c) The Company shall not cause or permit any change to be made in the present or intended Project Work or use or operation of the Company Facility which would (i) involve the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance other than in accordance with any applicable Environmental Law, or the Project Work or use or operation of the Company Facility as a landfill or waste management or disposal site or for manufacturing or industrial purposes or for the storage of petroleum or petroleum based products other than in accordance with any applicable Environmental Law, (ii) violate any applicable Environmental Law, (iii) constitute a violation or non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance; notwithstanding the foregoing, the Company Facility may be used for activities which are part of the ordinary course of Sublessee's business (including, but not limited to Hazardous Substances contained in products used by Sublessee in de minimis quantities for ordinary cleaning, for refrigeration equipment, for printing, for office purposes and warehouse maintenance purposes, any merchandise being handled by Sublessee for sale in the original, individual packaging, materials used on minor maintenance of Sublessee's trucks and machinery, and storage of fuel (including liquefied hydrogen or other alternative fuels) for Sublessee's Generator and other machinery and equipment as well as the Energy and Communications Related Improvements), and are conducted in accordance with all Environmental Laws ("Permitted Activities") and materials used in the Permitted Activities which are properly stored in a manner and location complying with all Environmental Laws, and which, in the case of Hazardous Substances handled by Sublessee for sale to its customers, are individually packaged for resale.

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(d) The Company shall promptly provide the Agency with a copy of all notifications which the Company gives or receives with respect to conditions of the Environment at or in the vicinity of the Company Facility, any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Company Facility or any property adjacent to or within the immediate vicinity of the Company Facility. If the Company receives or becomes aware of any such notification which is not in writing or otherwise capable of being copied, the Company shall promptly advise the Agency of such verbal, telephonic or electronic notification and confirm such notice in writing. Furthermore, upon the Company's discovery thereof, the Company shall promptly advise the Agency in writing of: (i) the presence of any Hazardous Substance on, under or about the Company Facility of which the Agency has not previously been advised in writing; (ii) any remedial action taken by, or on behalf of, the Company in response to any Hazardous Substance on, under or about the Company Facility or to any environmental proceedings of which the Company has not previously been advised in writing; and (iii) the occurrence or condition on any real property adjoining or in the vicinity of the Company Facility that could reasonably be expected to cause the Company Facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Company Facility under any Environmental Law. The Company shall also provide the Agency with copies of all reports, analyses, notices, licenses, approvals, orders, correspondences or other written materials in its possession or control relating to the condition of the Environment at the Company Facility or real property or bodies of water adjoining or in the vicinity of the Company Facility or environmental proceedings promptly upon receipt, completion or delivery of such materials.

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

(f) If at any time the Agency obtains any notice or information that the Company or the Company Facility, or the use or operation thereof or the Project Work may be in violation of an



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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 Company Facility of a scope and level of detail reasonably satisfactory to the Agency be prepared by a professional environmental engineer or other qualified environmental scientist acceptable to the Agency, at the Company's sole cost and expense. Said audit may, but is not required to or limited to, include a physical inspection of the Company Facility, a records search, a visual inspection of any property adjacent to or within the immediate vicinity of the Company Facility, personnel interviews, review of all Environmental Permits and the conducting of scientific testing. If necessary to determine whether a violation of an Environmental Law exists, such inspection shall also include subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance on, at or from the Company Facility in violation of any applicable law, the Company shall promptly undertake and diligently pursue to completion all necessary, appropriate investigative, containment, removal, clean-up and other remedial actions required by any Environmental Law, in accordance with Section 13.2(e) above. The Company hereby consents to the Agency notifying any party under such circumstances of the availability of any or all of the environmental reports and the information contained therein. The Company further agrees that the Agency may disclose such environmental reports to any governmental agency or authority if they reasonably believe that they are required to disclose any matter contained therein to such agency or authority; provided that the Agency shall give the Company at least forty-eight (48) hours prior written notice before so doing. The Company acknowledges that the Agency cannot control or otherwise assure the truthfulness or accuracy of the environmental reports, and that the release of the environmental reports, or any information contained therein, to prospective bidders at any foreclosure sale of the Company Facility may have a material and adverse effect upon the amount which a party may bid at such sale. The Company agrees that the Agency shall not have any liability whatsoever as a result of delivering any or all of the environmental reports or any information contained therein to any third party if done in good faith, and the Company hereby releases and forever discharges the Agency from any and all claims, damages, or causes of action arising out of, connected with or incidental to the delivery of environmental reports.

Section 13.3 Survival Provision. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and indemnifications of the Company contained in this Article XIII shall survive any termination, conveyance, assignment, subleasing or defeasance of any right, title or interest of the Company in and to the Company Facility or in, to or under the Lease Agreement.

## ARTICLE XIV
## MISCELLANEOUS

Section 14.1 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:



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To the Agency:

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

With a copy to:

Cappillino, Rothschild & Egan LLP
Seven Broad Street
P.O. Box 390
Pawling, New York 12564-0390
Attention: Donald Cappillino, Esq.

To the Company:

USEF Tioranda, LLC
9830 Colonnade Boulevard, Suite 600
San Antonio, Texas 78230
Attention: [_____]

With a copy to:

Harris Beach PLLC
677 Broadway, Suite1101
Albany, New York 12207
Attn: Robert Ryan, Esq.

Golden Steves & Gordon LLP
200 East Basse Road, Suite 200
San Antonio, Texas 78209
Attention: Stephen L. Golden

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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.

Copies of all notices given either to the Agency or to the Company shall also be sent to any Lender, if such Lender shall have delivered written instructions to the Agency and the Company with the address of such Lender pursuant to Section 12.4 hereof.

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

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

Section 14.4 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or (except pursuant to Section 10.2 hereof) terminated except in a writing executed by the parties hereto.

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

Section 14.6 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 14.7 List of Additional Equipment; Further Assurances. Upon the Completion Date with respect to the Company Facility and the installation of all of the Facility Equipment therein, the Company shall prepare and deliver to the Agency, a schedule listing all of the Facility Equipment not previously described in this Lease Agreement. If requested by the Agency, the Company shall thereafter furnish to the Agency, within sixty (60) days after the end of each calendar year, a schedule listing all of the Facility Equipment not theretofore previously described herein or in the aforesaid schedule.

Section 14.8 Survival of Obligations. This Lease Agreement shall survive the performance of the obligations of the Company to make the payments required by Section 4.3, and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement.

Section 14.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

Section 14.10 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Lease Agreement or the Company Facility or any matters whatsoever arising out of or in any way connected with this Lease Agreement.

Section 14.11 Estoppel. Upon Company's written request, Agency shall execute, acknowledge, and deliver to Company a written statement certifying to the best of its knowledge: (i) that none of the terms or provisions of this Lease Agreement or the Company Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that neither this Lease Agreement nor the Company Lease has not been cancelled or terminated; (iii) the last date of payment of basic rent and any other charges and the time period covered by such payment; (iv) that Company is not in default under this Lease Agreement or the Company Lease (or, if Company is claimed to be in default, stating why); and (v) such other matters as may be reasonably required by Company, Company's assignee, or Company's lender. Agency shall deliver such statement to Company within 10 business days after Company's request. Any such statement by Agency may be given by Company to any prospective assignee, subtenant, or lender of the Company Facility and such assignee, subtenant, or lender may rely conclusively upon such statement as true and correct. Unless Company has received a written statement to the

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contrary within such 10 business day period, Company, and any prospective assignee, subtenant, or lender, may conclusively presume and rely upon the following facts: (A) that the terms and provisions of this Lease Agreement and the Company Lease have not been changed except as otherwise represented by Company; (B) that neither this Lease Agreement nor the Company Lease have not been cancelled or terminated except as otherwise represented by Company; (C) that Company is not in default under the Lease.

[Remainder of Page Intentionally Left Blank - Signature Pages Follow]

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

**DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By: _____
Name: Sarah Lee
Title: Executive Director

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

On the ___ day of [_____] in the year 2021, 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

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**USEF TIORANDA, LLC**
a Delaware limited liability company

By: USAA Eagle Real Estate Multi-Sector Operating Partnership, LP, a Delaware limited partnership, its managing member

By: USAA Eagle OP GP, LLC, a Delaware limited liability company, its general partner

By:_____
Name: David J. Buck
Title: Executive Managing Director

STATE OF _____ )
: SS.:
COUNTY OF _____ )

On the ___ day of _____ in the year 2021, before me, the undersigned, personally appeared **David J. Buck** 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

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EXHIBIT A

Legal Description of Real Property

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EXHIBIT B

Equipment

All Eligible Items acquired, constructed, renovated or installed and/or to be acquired, constructed, renovated or installed by the Company including, but not limited to:

by or on behalf of the Company, in connection with the completion of the Dutchess County Industrial Development Agency's USEF Tioranda, LLC/Amazon.com Services LLC 2021 Project located in the Town of East Fishkill, Dutchess County, New York at (i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-854904, and leased to the Company pursuant to the Lease Agreement.

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EXHIBIT C

PILOT Schedule

Formula for Payments-In-Lieu-of-Taxes ("**PILOTs**"): Town of East Fishkill, (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), Wappingers 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 PILOTs 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 Wappingers Central School District's Apportioned Share of the Annual PILOT due on October 1 of each year.

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

"Special Districts PILOTs" shall mean the PILOTs for the East Fishkill Fire District, and the East Fishkill Public Library District.

"PILOT Year" shall mean the first tax year following the Taxable Status Date after the Completion Date and each year thereafter for a total of fifteen (15) years in accordance with the Schedule of PILOT Payments. For example, if the Completion Date was prior to March 1, 2023, the Initial PILOT Year would include the

2024/2025 School District PILOT, the
2025 County PILOT, the
2025 Town PILOT, the
2025 East Fishkill Fire District PILOT

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2025 East Fishkill Public Library District PILOT (collectively the "**Initial PILOT Year**") shall become due, and annually thereafter for a total of fifteen (15) years in accordance with the Schedule of PILOT Payments.

"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 $5,218,500 if the Facility and Additional Facilities were owned by the Company and the Agency had no ownership interest. If the assessed value exceeds $5,218,500, 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 | 90% |
| 2 | 90% |
| 3 | 85% |
| 4 | 85% |
| 5 | 80% |
| 6 | 80% |
| 7 | 70% |
| 8 | 65% |
| 9 | 60% |
| 10 | 55% |
| 11 | 50% |
| 12 | 45% |
| 13 | 40% |
| 14 | 35% |
| 15 | 30% |
| 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

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Agency, the PILOTs shall be distributed to the appropriate Taxing Jurisdiction timely in accordance with law.

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EXHIBIT D

Mortgage Requirements

Any Mortgage or related document which shall be entered into by the Agency and the Company shall contain the following required provisions:

Non-Recourse and Hold Harmless Provisions to be included in the Lender's Mortgage

Section ___. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of this Mortgage. The Mortgagee 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 Mortgage or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this Mortgage, the Mortgagee will look solely to the mortgaged premises and/or the Company for the payment of the indebtedness secured by this Mortgage and for the performance of the provisions hereof. The Mortgagee 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 Mortgage or the Loan Documentation. This agreement on the part of the Mortgagee shall not be construed in any way so as to effect or impair the lien of this Mortgage or the Mortgagee's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Mortgagee in any foreclosure proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Company) of the Agency or any natural person executing this Mortgage on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or the County of Dutchess, and neither the State of New York nor the County of Dutchess 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. The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its director, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Company Facility or arising by reason of or in connection with the use thereof or under this Mortgage, or (ii) liability arising from or expense incurred by the Project Work or the Agency's acquiring, owning and leasing of the Company Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein and all causes of action and reasonable attorneys' fees

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(whether by reason of third party claims or by reason of the enforcement of any provision of the Mortgage (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents, or employees 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 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 Mortgage, the obligations of the Company pursuant to this Section ___ shall remain in full force and effect after the termination of this Mortgage until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) and employees, relating to the enforcement of the provisions herein specified.

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

Section ___. Recordation of Mortgage. The Agency covenants that it will record or cause this Mortgage to be duly recorded in all offices where recordation thereof is necessary.

Section ___. Termination of Lease Agreement. Upon the termination of the Lease Agreement for any reason whatsoever, and at the sole cost and expense of the Company, the Mortgagee shall prepare, execute and deliver to the Agency and the Company, and the Agency and the Company shall execute, any documents necessary to amend the Mortgage to remove the Agency as a party thereto.

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EXHIBIT E

FORM OF SALES TAX AGENT AUTHORIZATION LETTER

**SALES TAX AGENT AUTHORIZATION LETTER**

**EXPIRATION DATE: [_____]**

**ELIGIBLE LOCATION:**

The Town of East Fishkill, Dutchess County, New York (i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-854904

_____ __, 20__

TO WHOM IT MAY CONCERN

Re: Dutchess County Industrial Development Agency
(USEF Tioranda, LLC/Amazon.com Services LLC 2021 Project)

Ladies and Gentlemen:

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

1. Pursuant to a certain Lease and Project Agreement, dated as of [_____ 1, 2021] (the "Lease Agreement"), between the Agency and USEF TIORANDA, 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 (the "Company"), the Agency has authorized the Company to act as its agent in connection with the Company 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 Lease Agreement.

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

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project Operator or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which is to be

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completed by Agent and the Company). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the Company 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 COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY-EIGHT AND THIRTY-SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

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 Company Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Company Facility on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state, "I, [Company/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 USEF Tioranda, LLC/Amazon.com Services LLC 2021 Project located in the Town of East Fishkill, Dutchess County, New York at (i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-854904 Dutchess County, New York, IDA Project Number [_____]." 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 Company 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 Lease Agreement. The Agent must retain for at least six (6) years from the date of expiration of its

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contract copies of (a) its contract with the Company to provide services in connection with the Company Facility, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

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

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

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

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

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



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Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner") to assess and determine State Sales and Use Taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

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

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

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

13. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the "Termination Date") that is the earlier of (i) the Expiration Date referred to above, and (ii) the expiration or termination of the 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)

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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:

ACCEPTED AND AGREED TO BY:

**[*AGENT*]**

By: _____
Name:
Title:

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## 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 Company 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 Company 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 of 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 Company 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 Company 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 Company 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.

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**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 (incl. Serial #,if applicable) | Location of Item | Dollar Amount | Vendor Description | Date of Payment | Purchase order or invoice number | Sales Tax Savings |
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| **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 Company 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.

**Name of Agent:** _____

**Signature By:** _____

**Name (print):** _____

**Title:** _____

**Date:** _____



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EXHIBIT F

Sales Tax Registry

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

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

Certification: I, the undersigned, an authorized officer or principal owner of the Company, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Company Sales Tax Savings realized by the Company below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LEASE AND PROJECT AGREEMENT, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Company, 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.

**Company Name:** _____

**Signature By:** _____

**Name (print):** _____

**Title:** _____

**Date:** _____

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EXHIBIT G

# DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

## Policy on Maintaining Performance Based Incentives (MPBI)

The MPBI policy is to be in addition to, and not in lieu of, any recapture requirement pursuant to Article 18A of the New York State General Municipal Law.

### I. Return of 100 per cent of Incentives during construction stage 1 to 2 years or until a Certificate of Occupancy is used:

- Default as defined by legislation and project documents
- Project ceases to be a project during construction and prior to occupancy
- Project ceases to be a project during Year 1, 2 and 3 of operations
- Defaults defined in Legislation and Project Agreement

### II. Establish Performance Based Incentives Review Committee consisting of the entire Board of Directors:

- Committee to review non-compliant projects
- Make recommendations for the return of benefits

### II. Performance Failure

The Agency's goal is to minimize performance failures by providing technical assistance to potential projects prior to the submission of an application for benefits and in helping projects understand the Performance Based Incentive Policy as follows:

- When a project does not achieve expected FTEs at the Project Facility by the dates set in the Project Agreement and falls below a Proportional Amount of 90%.
- The term "Proportional Amount" shall mean the ratio obtained by dividing (x) the number resulting from subtracting the number of FTEs employed at the Project Facility on the relevant date or during the relevant period, from the Base Employment Number (as enumerated in the Project Agreement), by (y) BASE Employment Number.
- Payment in Lieu of Taxes (PILOT) Agreement for each project will establish the terms for increased payments for the year following a performance failure.
- Each year, CEO will meet with projects having a higher Proportional Amount percent of FTEs in a previous year to assess business aspects that may lead to a performance failure in the current or subsequent years. This will mitigate a potential

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future failure by either terminating the project or amending the project agreement and PILOT with cause, and decreasing incentives.

## III. Identifying and Reporting Projects with Performance Based Incentive Deficiencies

- Compliance Officer will prepare and submit a report to the MPBI Review Committee annually, detailing projects that utilized excess sales tax abatements, are not current with PILOT Payments, or have not achieved their expected employment jobs as detailed in the Agency's and Project agreements.
- Agency CEO will meet with each project to review deficiencies in performance based measurements; prepare a report for the MPBI Review Committee
- Committee will assess causes of deficiencies and make recommendations to the Board, at its discretion, for action to: cure deficiencies, declare a project default, terminate the project agreement, reduce the value of incentives, terminate future benefits, and require the return of financial assistance made to date.
- Board will meet with the project to jointly discuss deficiencies and resolution option(s).

The following will be used to determine if an explanation exists for failure to achieve the economic benefits projected by the company:

a. Natural Disaster: if a natural disaster such as a fire, flood, or tornado disrupts the business.

b. Industry Trends: An evaluation of industry trends will be made relevant to the company, and a determination reached as to whether the company is in a market that is declining. International and national data will be used in the evaluation. An industry is considered in decline when, measured by the appropriate SIC code, it experiences employment or revenue declines—beyond its control--of 10% or more over 3 years.

c. Loss of Major Supplier or Customer: if the loss of a customer or supplier represents 15% or more of the sales of the company.

d. Productivity Improvements: if new technology, equipment or general productivity improvements result in the need for less than projected employees or investment

e. Unfair Competition: if an international competitor utilizes an unfair competitive advantage to acquire market share.

f. Other economic reversals.

- Company is officially notified by mail of the Board's decision and has 30 days to comply with the Board conditions.
- The IDA granting the economic incentive retains all rights to impose, delay or waive penalties. Further, the Agency, at its sole discretion, may waive all or any portion of any payment owing by the Company.

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## IV. Recovery of Incentives

The terms of Project Agreement will, depending upon the terms of a project include the following formula:

(A) one hundred per cent (100%) of the Benefits if the Recapture Event occurs prior to the Completion of Project Construction, or within the first (1st) or second (2nd) year after the Completion of Project Construction; or

(B) ninety per cent (90%) of the Benefits if the Recapture Event occurs during the third (3rd) year after the Completion of Project Construction; or;

(C) eighty per cent (80%) of the Benefits if the Recapture Event occurs during the fourth (4th) year after the Completion of Project Construction; or;

(D) seventy per cent (70%) of the Benefits if the Recapture Event occurs during the fifth (5th) year after the Completion of Project Construction; or;

(E) sixty per cent (60%) of the Benefits if the Recapture Event occurs during the sixth (6th) year after the Completion of Project Construction; or;

(F) fifty per cent (50%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the Completion of Project Construction; or;

(G) forty per cent (40%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the Completion of Project Construction; or;

(H) thirty per cent (30%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the Completion of Project Construction; or;

(I) twenty per cent (20%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the Completion of Project Construction; or;

(J) ten per cent (10%) of the Benefits if the Recapture Event occurs during the eleventh (11th) year after the Completion of Project Construction;

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***Adopted 7/21/2015***
***Adopted 1/19/2016***
***Re-adopted 1/19/2017***
***Re-adopted 1/16/2018***
***Amended 12/18/2018***
***Re-adopted 1/9/2019***
***Re-adopted 1/8/2020***

EXHIBIT H

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES OF COMPANY

[NONE.]

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EXHIBIT I

FORM OF TENANT AGENCY COMPLIANCE AGREEMENT

THIS TENANT AGENCY COMPLIANCE AGREEMENT, dated as of _____, 20__, is between the DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 3 Neptune Road, Poughkeepsie, New York 12601 (the "**Agency**"), and _____, a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ having its principal office at _____ (the "**Tenant**").

R E C I T A L S

WHEREAS, the Agency was created by Chapter 335 of the Laws of 1977 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "**Act**"); and

WHEREAS, the Agency has agreed to assist in (a) the acquisition of three (3) parcels of land located in the Town of East Fishkill, County of Dutchess, State of New York as follows (i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-854904 (as more particularly described in Exhibit A attached to the hereinafter defined Lease Agreement, collectively, the "**Land**"), the demolition of existing structures on the Land, and the construction of an approximately 629,186 square foot warehouse facility with ancillary improvements including parking, storm water management facilities, landscaping, site lighting, and other utility infrastructure (the "**Improvements**"), and the acquisition and equipping of certain equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased and subleased by the Agency to USEF Tioranda, LLC, a limited liability company (the "**Company**") and further subleased by the Company to Amazon.com Services LLC, a limited liability company (the "**Sublessee**"); and (b) 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 warehouse and fulfillment center (the "**Project**"); and

WHEREAS, the Agency acquired a leasehold interest in the Land and the Improvements, all pursuant to the Company Lease Agreement, dated as of [_____ 1, 2021] (the "**Company Lease**"), by and between the Agency and the Company; and

WHEREAS, the Agency leased the Company Facility to the Company pursuant to the Lease and Project Agreement, dated as of [_____ 1, 2021] (the "**Lease Agreement**"), by and between the Agency and the Company; and

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WHEREAS, the Company intends to sublease a portion of the Company Facility to be used as _____ (the "**Demised Premises**") to the Tenant pursuant to a [Tenant Lease Agreement], dated as of _____, 20__ (the "**Tenant Lease Agreement**"), by and between the Company and the Tenant, which may be amended from time to time.

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I
REPRESENTATIONS AND COVENANTS OF TENANT

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

(a) The Tenant is a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ [*and authorized to transact business in the State of New York*], and in good standing under the laws of the State of New York, [and the State of [____]] and has full legal right, power and authority to execute, deliver and perform this Tenant Agency Compliance Agreement. This Tenant Agency Compliance Agreement has been duly authorized, executed and delivered by the Tenant.

(b) To the best of the Tenant's knowledge, neither the execution and delivery of this Tenant Agency Compliance Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof 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 Tenant's organizational documents, as amended, or any restriction or any agreement or instrument to which the Tenant is a party or by which it is bound.

(c) Any and all leasehold improvements undertaken by the Tenant with respect to the Demised Premises and the design, acquisition, construction, renovation, equipping and operation thereof by the Tenant will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Company Facility. The Tenant shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorneys' fees, resulting from any failure by the Tenant to comply with the provisions of this subsection.

(d) The Tenant Agency Compliance Agreement constitutes a legal, valid and binding obligation of the Tenant enforceable against the Tenant in accordance with its terms.

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

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ARTICLE II
INSURANCE

Section 2.1 Insurance Required. At all times throughout the Lease Term, the Tenant shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks, and for such amounts, as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto. Such insurance shall include, without limitation, the following (but without duplication of insurance provided by the Company pursuant to the Lease Agreement covering the same risks and insured(s)):

(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 completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Tenant, but in no event less than $1,000,000. During the construction of the Company Facility, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

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

(c) Insurance protecting the Agency and the Tenant against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Tenant under Section 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage), and blanket excess liability coverage, in an amount not less than $5,000,000 combined single limit or equivalent, protecting the Agency and the Tenant against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during any construction or renovation period with respect to the Demised Premises.

(d) During any construction period with respect to the Demised Premises (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Tenant shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

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

(ii) Comprehensive general liability providing coverage for:

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

Such insurance shall have a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

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

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

Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Tenant Agency Compliance Agreement 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 2.1(a) hereof 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 of insurance required by Section 2.1 hereof shall provide for at least thirty (30) days prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 2.1(c) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Section 2.1(d)(ii) and (iv) shall name the Agency and the Tenant as additional insureds.

(b) The certificate of insurance required by Section 2.1(c) hereof shall be delivered to the Agency on or before the date hereof. A copy of the certificates of insurance required by Section 2.1(d)(ii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any construction or renovation of the Demised Premises. The Tenant 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

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force and effect, with a term covering the current year of the Tenant's insurance policy, insurance of the types and in the amounts required by Section 2.1 hereof and complying with the additional requirements of Section 2.2(a) hereof. Prior to the expiration of each such policy or policies, the Tenant shall furnish to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Tenant Agency Compliance Agreement. The Tenant shall provide such further information with respect to the insurance coverage required by this Tenant Agency Compliance Agreement as the Agency may from time to time reasonably require.

Section 2.3 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(a) hereof shall be applied in accordance with the provisions of the Tenant Lease Agreement.

Section 2.4 Right of Agency to Pay Insurance Premiums. If the Tenant fails to maintain or cause to be maintained any insurance required to be maintained by Section 2.1 hereof, the Agency may pay or cause to be paid the premium for such insurance. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency to the Tenant. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Tenant. The Tenant shall, on demand, reimburse the Agency for any amount so paid pursuant to this Section, together with interest thereon from the date of payment of such amount by the Agency.

## ARTICLE III
## SPECIAL COVENANTS

Section 3.1 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 COMPANY FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE COMPANY FACILITY, OR THE SUITABILITY OF THE DEMISED PREMISES FOR THE PURPOSES OR NEEDS OF THE TENANT OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE TENANT WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE DEMISED PREMISES. THE TENANT ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE TENANT, ON BEHALF OF ITSELF IS SATISFIED THAT THE DEMISED PREMISES IS SUITABLE AND FIT FOR PURPOSES OF THE TENANT. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE TENANT 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

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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.

Section 3.2 Hold Harmless Provisions.

(a) The Tenant agrees that the Agency and its directors, members, officers, agents (except the Company) and employees shall not be liable for, and agrees to defend, indemnify, release and hold the Agency and its directors, members, officers, agents 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 Demised Premises or to common areas or other portions of the Company Facility to which the Tenant has regular access (such areas, together with the Demised Premises, are hereinafter referred to as the "**Tenant Premises**"), 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 Tenant Premises, and (ii) liability arising from or expense incurred in connection with the Agency's participation in the subleasing of the Demised Premises to the Tenant, including, without limiting the generality of the foregoing, all claims arising from the breach by the Tenant of any of its covenants contained herein, the exercise by the Tenant of any authority conferred upon it pursuant to this Tenant Agency Compliance 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 Tenant Agency Compliance Agreement (including without limitation this Section) or any other documents delivered by the Agency in connection with this Tenant Agency Compliance Agreement), and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, to the extent that any such losses, damages, liabilities or expenses of the Agency are not incurred and do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, agents or employees. Except as otherwise provided herein, the foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Tenant Agency Compliance Agreement, the obligations of the Tenant pursuant to this Section shall remain in full force and effect after the termination of this Tenant Agency Compliance 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

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or its members, directors, officers, agents 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 or employees by any employee or contractor of the Tenant 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 Tenant 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 3.3 Right to Inspect Demised Premises. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable prior written notice to inspect the Demised Premises.

Section 3.4 Qualification as Project.

(a) The Tenant will not take any action, or fail to take any action, which action or failure to act would cause the Company Facility not to constitute a "project" as such quoted term is defined in the Act. Without limiting the generality of the foregoing, the Tenant will in no event use the Demised Premises in such a way as to cause or permit the Company Facility to be used in violation of Section 862(2)(a) of the Act.

(b) The occupation of the Demised Premises has not and will not result in the removal of a facility or plant of the Tenant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Tenant located within the State.

Section 3.5 Compliance with Orders, Ordinances, Etc.

(a) The Tenant, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee of the Tenant or occupant of the Demised Premises which is occupying the Demised Premises by permission of the Tenant to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Company Facility or the Demised Premises, or to the acquisition, construction and equipping of the Demised Premises, or to any use, manner of use or condition of the Company Facility or any part of the Demised Premises, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Company Facility or any part thereof, and companies or associations insuring the premises.

(b) The Tenant shall keep or cause the Demised Premises to be kept free of Hazardous Substances. Without limiting the foregoing, the Tenant shall not cause or permit the Demised Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Tenant cause or permit, as a result of any intentional or unintentional act or omission on the part of the Tenant

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or any of its contractors, subcontractors or tenants, a release of Hazardous Substances onto the Company Facility or onto any other property. The Tenant shall comply with, and ensure compliance by all of its contractors, subcontractors and subtenants with, all applicable federal, state and local environmental laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all of its contractors, subcontractors and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Tenant shall (i) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances released, stored, generated or used by it on, from or affecting the Demised Premises (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the satisfaction of the Agency, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, its employees, agents, officers, members and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or of any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, and in all cases which result from the intentional or unintentional act or omission of the Tenant or any of its contractors, subcontractors or subtenants, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Tenant may have to the Agency at common law and shall survive the transactions contemplated herein.

(c) Notwithstanding the provisions of subsections (a) and (b) above, the Tenant may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Tenant may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Tenant that, by failure to comply with such requirement or requirements, the Company Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Tenant shall promptly take such action with respect thereto or provide such security as shall be reasonably satisfactory to the Agency. If at any time the then existing use or occupancy of the Demised Premises shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Tenant shall use reasonable efforts not to cause or permit such use or occupancy by the Tenant to be discontinued without the prior written consent of the Agency, which consent shall not be unreasonably withheld.

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(d) Notwithstanding the provisions of this Section, if, because of a breach or violation of the provisions of subsection (a) or (b) above (without giving effect to subsection (c)), the Agency or any of its members, directors, officers, agents or employees shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Tenant shall immediately provide legal protection or pay an amount or post a bond in an amount necessary, in the opinion of the Agency and of its members, directors, officers, agents and employees, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(e) Notwithstanding any provisions of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Tenant.

Section 3.6 Agreement to Provide Information. Annually, the Tenant shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Company 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.[1] The Tenant further agrees to provide and certify or cause to be provided and certified whenever requested by the Agency any other information concerning the Tenant, its respective finances, its respective operations, its respective 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, the Public Authorities Accountability Act of 2005, or 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. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 3.7 Employment Opportunities; Notice of Jobs. The Tenant 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 it is a party, cause any new employment opportunities created in connection with the Demised Premises 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 Company Facility is located (collectively, the "**Referral Agencies**"). The Tenant also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, 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.

[1]Cannot be removed or modified; required by GML Section 859-a(6)(b).



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Section 3.8 Subleasing.

(a) In accordance with Section 862(1) of the Act, the Demised Premises shall not be occupied by a sublessee whose tenancy would result in the removal of a facility or plant of the proposed sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

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

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

(b) The Tenant may not assign the Tenant Lease Agreement or sub-sublease the Demised Premises without the prior written consent of the Agency. Any assignment or sub-sublease shall conform with the restrictions and requirements set forth in Section 9.3 of the Lease Agreement.

Section 3.9 Approval of Tenant Lease Agreement. The Agency hereby approves the subleasing of the Company Facility by the Company to the Tenant pursuant to the terms of the Tenant Lease Agreement.

Section 3.10 Definitions. All capitalized terms used in this Tenant Agency Compliance Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A.

Section 3.11 Execution of Counterparts. This Tenant Agency Compliance 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.

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

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IN WITNESS WHEREOF, the Agency and the Tenant have caused this Tenant Agency Compliance Agreement to be executed in their respective names by their duly authorized representatives, all as of _____, 20__.

**DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By:_____
Name:
Title:

[NAME OF ENTITY]

By:_____
Name:
Title:

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# EXHIBIT J

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

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of USEF TIORANDA, 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 9830 Colonnade Boulevard, Suite 600, San Antonio, Texas 78230 (the "**Company**"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.6 of that certain Lease and Project Agreement, dated as of [_____ 1, 2021] (the "**Lease Agreement**"), between the Dutchess County Industrial Development Agency (the "**Agency**") and the Company. If the Company's Final Project Cost Budget deviates materially (more than ten percent (10%)) from the information provided in the Project Application Information, the Company shall provide a written statement explaining the difference to the Agency.

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

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

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

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

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

(iv) check as applicable:

- ☐ all costs for Project Work have been paid, or
- ☐ all costs for Project Work have been paid except for
  - ☐ amounts not yet due and payable (attach itemized list) and/or

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☐ amounts the payments for which are being contested in good faith (attach itemized list with explanations);

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

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

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

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

**USEF TIORANDA, LLC**

By:_____
Name:
Title:

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Exhibit A

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Exhibit B

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Exhibit C

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EXHIBIT K

**ANNUAL COMPLIANCE CERTIFICATE**

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

1. That s/he is the duly appointed [_____] of USEF TIORANDA, 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 9830 Colonnade Boulevard, Suite 600, San Antonio, Texas 78230 (the "**Company**").

2. That the Company has previously entered into a straight-lease transaction with the Dutchess County Industrial Development Agency (the "**Agency**") pursuant to a certain Company Lease Agreement, dated as of [_____ 1, 2021] (the "**Company Lease**"), whereby the Company leased the Company Facility (as such term is defined in the hereinafter defined Lease Agreement) to the Agency, and a Lease and Project Agreement, dated as of [_____ 1, 2021] (the "**Lease Agreement**"), whereby the Agency subleased and leased the Company Facility to the Company.

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

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

5. That the Company has not received written notice of default in payment of any taxes, PILOT Payments, sewer rents or water charges which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

6. That there are no mechanics liens or other liens by reason of any labor, services or materials on the Company Facility, except in compliance with the provisions in the 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 Lease Agreement.

9. That attached hereto as Exhibit B hereto is a certified statement of the Company and documentation (i) enumerating the FTE (as such term is defined in the Lease Agreement) jobs, by category, retained and/or created at the Company 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.

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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.

**USEF TIORANDA, LLC**

By: _____
Name:
Title:

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

_____
Notary Public

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Exhibit A

Insurance Certificates

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Exhibit B

Form of Certified Statement and Documentation Regarding FTEs

Company Name and Address:

Project Name:

**Job Information**

Number of FTE (as such term is defined in the Lease Agreement) jobs by category and average hourly wage for each **before the Agency's financial assistance provided to the Company:**

| **Category** | **FTE** | **Average Hourly Wage/Salary and/or Fringe Benefits** |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Current number of FTE for 20__ by category and average hourly wage/salary:

| **Category** | **FTE** | **Average Hourly Wage/Salary and/or Fringe Benefits** |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

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Number of FTE jobs **created** during 20__ as a result of the assistance received from the Agency by category and average hourly wage/salary:

| Category | FTE | Average Hourly Wage/ Salary and/or Fringe Benefits |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Number of FTE jobs **retained** during 20__ as a result of the assistance received from the Agency by category and average hourly wage/salary.

| Category | FTE | Average Hourly Wage/Salary and/or Fringe Benefits |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Total annual payroll for 20__ _____

Total of FTE construction jobs created during 20__ _____

Number of FTE construction jobs during 20__ _____

20__ Capital Investment

Real Estate _____

Construction _____

Machinery and Equipment _____

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Other Taxable Expenses _____

Other Non-Taxable Expenses _____

**Total Capital Investment** _____

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.

Signed: _____
(authorized company representative)

Date: _____

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Exhibit C

Form NYS-45

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Exhibit D

Form ST-340

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**EXHIBIT L**

# 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.

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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.

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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*
*Re-adopted 1/9/2019*
*Amended 5/8/2019*
*Adopted 1/8/2020*

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SCHEDULE A

SCHEDULE OF DEFINITIONS

"Act" means, collectively, Title 1 of Article 18-A of the General Municipal Law of the State, enacted into law as Chapter 1030 of the Laws of 1969 of the State, as amended, together with Chapter 335 of the Laws of 1977 of the State, as amended.

"Agency" means (i) the Dutchess County Industrial Development Agency, its successors and assigns, and (ii) any local governmental body resulting from or surviving any consolidation or merger to which the Agency or its successors may be a party.

"Agency Compliance Agreement" means the Agency Compliance Agreement, dated as of [____ 1, 2021], by and between the Agency and the Sublessee, as the same may be amended from time to time.

"Agency Documents" means the Company Lease, the Lease Agreement, the Agency Compliance Agreement and the Equipment Lease Agreement.

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

"Approving Resolution" or "Authorizing Resolution" means the resolution adopted by the Agency on December [__], 2020, authorizing the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

"Authorized Representative" means, in the case of the Agency, the Chairman, the Vice Chairman, the Secretary, the Assistant Secretary, the Executive Director or any member or officer of the Agency and such additional persons as, at the time, are designated to act on behalf of the Agency; in the case of the Company, the members and such additional persons as, at the time, are designated to act on behalf of the Company; and in the case of the Sublessee, the members and such additional persons as, at the time, are designated to act on behalf of the Sublessee.

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

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

"Closing Date" means [____ __, 2021].

"Company" means USEF Tioranda, 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, and its successors and assigns.

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"Company Documents" means the Bill of Sale, the Company Lease, the Lease Agreement and the Sublease Agreement.

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

"Company Lease" means the Company Lease Agreement, dated as of [_____ 1, 2021], by and between the Company and the Agency, as the same may be amended from time to time.

"Company Sales Tax Savings" means all Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent on behalf of the Company, pursuant to this Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Company Facility.

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

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

"Construction Period" means the period beginning on the earlier of (a) Closing Date and (b) the date of commencement of the Project Work of the Facility, and ending on the Completion Date.

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

"Eligible Items" shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Company, the Sublessee and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility: (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Company 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 Company 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 Company Facility.

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

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

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

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

"Equipment Bill of Sale" means the Equipment Bill of Sale, dated the Closing Date, by the Sublessee to the Agency with respect to the Equipment, as the same may be amended from time to time.

"Equipment Completion Date" means the date of completion of the acquisition, leasing and installation of the Equipment in the Facility as certified pursuant to Section 3.4 of the Equipment Lease Agreement.

"Equipment Lease Agreement" means the Equipment Lease Agreement, dated as of [____ 1, 2021], by and between the Agency and the Sublessee, with respect to the Equipment, as the same may be amended from time to time.

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

"Event of Default" means (a) when used with respect to the Lease Agreement, any of the events defined as Events of Default by Section 10.1 of the Lease Agreement, (b) when used with respect to the Equipment Lease Agreement, any of the events defined as Events of Default by Section 10.1 of the Equipment Lease Agreement, and (c) when used with respect to any Mortgage, any of the events defined as Events of Default in such Mortgage.

"Facility" means collectively, the Company Facility leased and subleased to the Company under the Lease Agreement and the Equipment leased to the Sublessee under the Equipment Lease Agreement.

"Facility Equipment" means all machinery, equipment and other personal property used and to be used in connection with Company Facility as described in Exhibit B to the Lease Agreement, but not including the Equipment as described in Exhibit A to the Equipment Lease Agreement.

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

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

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

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

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

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

"Improvements" means all those buildings, improvements, structures and other related facilities (i) affixed or attached to the Land, (ii) not part of the Facility Equipment, and (iii) not part of the Equipment, all as they may exist from time to time.

"Independent Accountant" shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency (such approval not to be unreasonably withheld or delayed).

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



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

(i) vehicles of any sort, including watercraft and rolling stock;

(ii) personalty having a useful life of one year or less;

(iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;

(iv) ordinary office supplies such as pencils, paper clips and paper;

(v) any materials or substances that are consumed in the operation of machinery;

(vi) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and

(vii) maintenance of the type as shall constitute janitorial services.

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

"Lease Agreement" means the Lease and Project Agreement, dated as of [_____ 1, 2021] by and between the Agency, as lessor, and the Company, as lessee, with respect to the Company Facility, as the same may be amended from time to time.

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

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

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

"Loan" has the meaning ascribed to such term in Section 12.4 of the Lease Agreement.

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"Loan Documents" has the meaning ascribed to such term in Section 12.4 of the Lease Agreement.

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

"Maximum Company Sales Tax Savings Amount" shall mean the aggregate maximum dollar amount of Company Sales Tax Savings that the Company and all Agents acting on behalf the Company are permitted to receive under this Lease Agreement, which shall equal $[_____], or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

"Maximum Sublessee Sales Tax Savings Amount" shall mean the aggregate maximum dollar amount of Sublessee Sales Tax Savings that the Sublessee and all Agents acting on behalf the Sublessee are permitted to receive under the Equipment Lease Agreement, which shall equal $[_____], or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

"Mortgage" means any mortgage and security agreement granted by the Agency and the Company to a Lender which grants a mortgage lien on and security interest in the Company Facility in favor of the Lender as security for such Lender's Loan to the Company.

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

"Net Proceeds" means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

"NYSDTF" means the New York State Department of Taxation and Finance.

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

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

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

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

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

"Project" means (a) the acquisition of the Land, the demolition of existing structures on the Land, and the construction of an approximately 629,186 square foot warehouse facility with ancillary improvements including parking, storm water management facilities, landscaping, site lighting, and other utility infrastructure, and the acquisition and equipping of the Facility Equipment, which Company Facility is to be leased and subleased by the Agency to the Company and further subleased by the Company to the Sublessee; and (b) the acquisition and installation of the Equipment, which Equipment is to be leased by the Agency to the Sublessee, and which Facility is to be used by the Sublessee as a warehouse and fulfillment center.

"Project Application Information" means the application and questionnaire submitted to the Agency on October 29, 2020 by or on behalf of the Company and the Sublessee, for approval by the Agency of the Project, together with all other letters, documentation, reports and financial information submitted in connection therewith.

"Project Work" means the work required to complete the Project.

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

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

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

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

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"Recaptured Benefits" has the meaning, as applicable, (a) ascribed to such term in Section 5.4 of the Lease Agreement, or (b) ascribed to such term in Section 5.2 of the Equipment Lease Agreement.

"Recapture Event" has the meaning, as applicable, (a) ascribed to such term in Section 5.4 of the Lease Agreement, or (b) ascribed to such term in Section 5.2 of the Equipment Lease Agreement.

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

"Sales Tax Agent Authorization Letter" shall mean, as applicable, (a) the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit E to the Lease Agreement – "Form of Sales Tax Agent Authorization Letter" and to be delivered in accordance with Section 5.2(d) of the Lease Agreement, and/or (b) the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit B to the Equipment Lease Agreement – "Form of Sales Tax Agent Authorization Letter" and to be delivered in accordance with Section 5.1(c) of the Equipment Lease Agreement.

"Sales Tax Exemption" shall mean an exemption from Sales and Use Taxes resulting from the Agency's participation in the Facility.

"Sales Tax Registry" shall mean, as applicable, (a) the Sales Tax Registry in the form set forth in Exhibit F to the Lease Agreement, and/or (b) the Sales Tax Registry in the form set forth in Exhibit C to the Equipment Lease Agreement.

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

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

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

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

"State" means the State of New York.

"State Sales and Use Taxes" shall mean sales and compensating use taxes and fees imposed by Article 28 of the New York State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

"State Sales Tax Savings" shall mean all Sales Tax Exemption savings relating to State Sales and Use Taxes realized by or for the benefit of the Company and the Sublessee, including



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any savings realized by any Agent, pursuant to this Lease Agreement, the Equipment Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

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

"Sublease Agreement" means a certain Agreement of Lease, dated as of [___ __, 20__], by and between the Company and the Sublessee, as amended from time to time.

"Sublessee" means Amazon.com Services LLC, a limited liability company, organized and existing under the laws of the State of Delaware, as sublessee under the Sublease Agreement, and its successors and assigns.

"Sublessee Documents" means the Agency Compliance Agreement, the Sublease Agreement, the Equipment Lease Agreement and the Equipment Bill of Sale.

"Sublessee Sales Tax Savings" means all Sales Tax Exemption savings realized by or for the benefit of the Sublessee, including any savings realized by any Agent on behalf of the Sublessee, pursuant to the Equipment Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

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

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

"Tenant Agency Compliance Agreement" means an agreement in the form attached to the Lease Agreement as Exhibit I between the Agency and a sublessee of the Company Facility.

"Termination Date" shall mean, as applicable, such date on which the Sales Tax Exemption authorization may terminate pursuant to the terms and conditions of Section 5.2 of the Lease Agreement or Section 5.1 of the Equipment Lease Agreement.

"Title Report" means Certificate of Title No. [_____] issued by [_____], as Agent for [_____ Title Insurance Company] to the Agency on [____ __, 20__] and redated and recertified on the Closing Date.

"Transaction Counsel" means the law firm of Nixon Peabody LLP.

"Transaction Documents" means the Agency Documents, the Company Documents and the Sublessee Documents.

"Unassigned Rights" means the rights of the Agency and moneys payable pursuant to and under (a) Sections 3.6, 4.3, 4.4, 5.1, 5.2, 5.4, 6.4(c) and (d), 6.7, 8.1, 8.2, 8.5, 8.7, 8.8, 8.10, 8.11, 9.3, 10.2(a), 10.4, 11.2, 11.3 and 14.8 and Article XIII of the Lease Agreement, and (b) Sections 4.3, 4.5, 5.1, 5.2, 6.4(b) and (c), 6.5, 8.2, 8.6, 8.7, 8.8, 10.2(a), 10.4, 11.2, 11.3 and 13.9 of the Equipment Lease Agreement.

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DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

(DUTCHESS COUNTY, NEW YORK)

AND

AMAZON.COM SERVICES LLC

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# EQUIPMENT LEASE AGREEMENT

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Dated as of [_____ 1, 2021]

Dutchess County Industrial Development Agency
(USEF Tioranda, LLC/Amazon.com Services LLC 2021 Facility)

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THIS EQUIPMENT LEASE AGREEMENT, dated as of [_____ 1, 2021] (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 AMAZON.COM SERVICES LLC, 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, having an office at 410 Terry Avenue North, Seattle, Washington 98109 (the "**Sublessee**").

R E C I T A L S

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, USEF Tioranda, LLC, a Delaware limited liability company authorized to transact business in New York having offices at 9830 Colonnade Boulevard, Suite 600, San Antonio, Texas 78230 (the "**Company**"), 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**") consisting of (a) the acquisition of three (3) parcels of land located in the Town of East Fishkill, County of Dutchess, State of New York as follows (i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-854904 (as more particularly described in Exhibit A attached to the

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hereinafter defined Lease Agreement, collectively, the "**Land**"), the demolition of existing structures on the Land, and the construction of an approximately 629,186 square foot warehouse facility with ancillary improvements including parking, storm water management facilities, landscaping, site lighting, and other utility infrastructure (the "**Improvements**"), and the acquisition and equipping of certain equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased and subleased by the Agency to the Company and further subleased by the Company to the Sublessee; and (b) 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 warehouse and fulfillment center; and

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to the terms of a certain Company Lease Agreement, dated as of [_____ 1, 2021] (the "**Company Lease**"), by and between the Company and the Agency; and

WHEREAS, the Agency has agreed to lease and sublease the Company Facility to the Company, pursuant to a certain Lease and Project Agreement, dated as of [_____ 1, 2021] (the "**Lease Agreement**"), by and between the Agency and the Company; and

WHEREAS, the Company has agreed to sub-sublease the Company Facility pursuant to the terms of a certain [Sublease Agreement], dated [____ __, 20__] (the "**Sublease Agreement**"), by and between the Company 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 Agreement, which definitions are incorporated herein and made a part hereof by reference.

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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) Under penalty of perjury, 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 is authorized to transact business in the State of New York, is in good standing under the laws of the State of Delaware and the State of New York, and

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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) The Sublessee certifies that it is in substantial compliance with all local, state, and federal tax, worker protection and environmental laws, rules and regulations as they relate to the Company Facility.

(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.

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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.

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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 [_____ __, 20__], 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, 20__] 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

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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 reasonable 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

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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

Section 5.1 Sales 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.

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(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 Company 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 Company 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 Company 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.

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(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 Company.

(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

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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 USEF Tioranda, LLC/Amazon.com Services LLC 2021 Project located at Town of East Fishkill, County of Dutchess, State of New York as follows (i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear bearing Tax Map Grid No. 132800-6355-00-854904, IDA Project Number [_____]. 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.

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(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

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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 Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the 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 Sublesee 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.

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, 20__], 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) 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 that the Sublessee receives Sales Tax Savings in connection with the Project Work in violation of any of the provisions of Section 5.1 hereof or Section 875 of the GML; provided, however, that the foregoing shall

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constitute a Recapture Event with respect to such unauthorized Sales Tax Savings only. It is further provided that failure to repay such authorized Sales Tax Savings within thirty (30) days following receipt of a written request for such payment shall constitute a Recapture Event with respect to all Recaptured Benefits.

(d) 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).

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

## ARTICLE VI
## MAINTENANCE AND INSURANCE

Section 6.1 Maintenance and Modifications of Equipment by 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. 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

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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.

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(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

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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

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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

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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.

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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

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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**"):

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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,

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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.

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(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 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 8.12 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 8.13 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.

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(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

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

Section 9.4 Merger of Agency.

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

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to the 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;

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(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,

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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

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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 COMPANY

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 or expiration 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.

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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

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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; ; notwithstanding the foregoing, the Company Facility may be used for activities which are part of the ordinary course of Sublessee's business (including, but not limited to Hazardous Substances contained in products used by Sublessee in de minimis quantities for ordinary cleaning, for refrigeration equipment, for printing, for office purposes and warehouse maintenance purposes, any merchandise being handled by Sublessee for sale in the original, individual packaging, materials used on minor maintenance of Sublessee's trucks and machinery, and storage of fuel (including liquefied hydrogen or other alternative fuels) for Sublessee's Generator and other machinery and equipment as well as the Energy and Communications Related Improvements), and are conducted in accordance with all Environmental Laws ("Permitted Activities") and materials used in the Permitted Activities which are properly stored in a manner and location complying with all Environmental Laws, and which, in the case of Hazardous Substances handled by Sublessee for sale to its customers, are individually packaged for resale.

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(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

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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:

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To the Agency:

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

With a copy to:

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

To the Sublessee:

Amazon.com Services LLC
410 Terry Avenue North
Seattle Washington 981091
Attention: [_____]

With a copy to:

[Harris Beach PLLC
677 Broadway, Suite1101
Albany, New York 12207
Attn: Robert Ryan, 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.

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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 Page Follows)

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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 officers, all as of [_____ 1, 2021].

**DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By:_____
Name: Sarah Lee
Title: Executive Director

**AMAZON.COM SERVICES LLC,**
a Delaware limited liability company

By: _____
Print Name: Holly Sullivan
Its: Authorized Signatory

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# EXHIBIT A

## Equipment

All Eligible Items acquired and installed and/or to be acquired and installed by or on behalf of Amazon.com Services LLC (the "Sublessee") pursuant to the Sales Tax Exemption in connection with the completion of the Dutchess County Industrial Development Agency's/USEF Tioranda, LLC/Amazon.com Services LLC 2021 Facility located at Town of East Fishkill, County of Dutchess, State of New York as follows, on (i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear bearing Tax Map Grid No. 132800-6355-00-854904, and leased to the Sublessee pursuant to the Equipment Lease Agreement, dated as of [_____ 1, 2021].

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**EXHIBIT B**

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

**SALES TAX AGENT AUTHORIZATION LETTER**

**EXPIRATION DATE: [_____ ___, 20__]**

**ELIGIBLE LOCATION:**

Town of East Fishkill, County of Dutchess, State of New York as follows:

(i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028,

(ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905, and

(iii) (iii) an approximately 3.55-acre parcel located at Route 52 Rear bearing Tax Map Grid No. 132800-6355-00-854904.

_____ __, 20__

TO WHOM IT MAY CONCERN

Re: Dutchess County Industrial Development Agency
(USEF Tioranda, LLC/Amazon.com Services LLC 2021 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 [_____ 1, 2021] (the "Equipment Lease Agreement"), between the Agency and AMAZON.COM SERVICES LLC, 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, having an office at 410 Terry Avenue North, Seattle, Washington 98109 (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**

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**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 USEF Tioranda, LLC/Amazon.com Services LLC 2018 Project located at Town of East Fishkill, County of Dutchess, State of New York as follows, on (i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear bearing Tax Map Grid No. 132800-6355-00-854904, IDA Project Number [_____]. The Agent shall complete Form ST-123 as follows: (i) the "Project information" section of

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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.

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(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)



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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:

ACCEPTED AND AGREED TO BY:

**[*AGENT*]**

By: _____
Name:
Title:

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## 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 of 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.

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**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 (incl. Serial #,if applicable) | Location of Item | Dollar Amount | Vendor Description | Date of Payment | Purchase order or invoice number | Sales Tax Savings |
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| 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.

**Lessee Name:** _____

**Signature By:** _____

**Name (print):** _____

**Title:** _____

**Date:** _____

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# EXHIBIT C

## Sales Tax Registry

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

| Description of Item (incl. Serial #,if applicable) | Location of Item | Dollar Amount | Vendor Description | Date of Payment | Purchase order or invoice number | Sales Tax Savings |
|---|---|---|---|---|---|---|
| SEMI-ANNUAL PERIOD FROM JULY 1, [____] to DECEMBER 31, [____] | | | | | | |
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| **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, [____] | | | | | | |
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| **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 LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Sublessee, 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.

**Lessee Name:** _____

**Signature By:** _____

**Name (print):** _____

**Title:** _____

**Date:** _____

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# EXHIBIT D

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES OF SUBLESSEE

[None.]

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# EXHIBIT E

## ANNUAL COMPLIANCE CERTIFICATE

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

1. That s/he is the duly appointed [_____] of AMAZON.COM SERVICES LLC, 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, having an office at 410 Terry Avenue North, Seattle, Washington 98109 (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 [_____ 1, 2021] (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.

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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.

**AMAZON.COM SERVICES LLC**

By: _____
Name:
Title:

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

_____
Notary Public

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Exhibit A

Insurance Certificates

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Exhibit B

Form of Certified Statement and Documentation Regarding FTEs

Sublessee Name and Address:

Project Name:

**Job Information**

Number of FTE (as such term is defined in the Equipment Lease Agreement) jobs by category and average hourly wage for each **before the Agency's financial assistance provided to the Sublessee:**

| Category | FTE | Average Hourly Wage/Salary and/or Fringe Benefits |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Current number of FTE for 20__ by category and average hourly wage/salary:

| Category | FTE | Average Hourly Wage/Salary and/or Fringe Benefits |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

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Number of FTE jobs **created** during 20__ as a result of the assistance received from the Agency by category and average hourly wage/salary:

| **Category** | **FTE** | **Average Hourly Wage/ Salary and/or Fringe Benefits** |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Number of FTE jobs **retained** during 20__ as a result of the assistance received from the Agency by category and average hourly wage/salary.

| **Category** | **FTE** | **Average Hourly Wage/Salary and/or Fringe Benefits** |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Total annual payroll for 20__ _____

Total of FTE construction jobs created during 20__ _____

Number of FTE construction jobs during 20__ _____

20__ Capital Investment

Real Estate _____

Construction _____

Machinery and Equipment _____

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Other Taxable Expenses _____

Other Non-Taxable Expenses _____

**Total Capital Investment** _____

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.

Signed: _____
(authorized company representative)

Date: _____

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Exhibit C

Form NYS-45

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Exhibit D

Form ST-340

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**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.

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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.

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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*
*Re-adopted 1/9/2019*
*Amended 5/8/2019*
*Adopted 1/8/2020*

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AGENCY COMPLIANCE AGREEMENT

THIS AGENCY COMPLIANCE AGREEMENT, dated as of [_____ __, 2021], is between the DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 3 Neptune Road, Poughkeepsie, New York 12601 (the "**Agency**"), and AMAZON.COM SERVICES LLC, 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, having an office at 410 Terry Avenue North, Seattle, Washington 98109 (the "**Sublessee**").

R E C I T A L S

WHEREAS, the Agency was created by Chapter 335 of the Laws of 1977 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "**Act**"); and

WHEREAS, the Agency has agreed to assist in (a) the acquisition of three (3) parcels of land located in the Town of East Fishkill, County of Dutchess, State of New York as follows (i) an approximately 105 acre parcel located at 1940 Route 52, bearing Tax Map Grid No. 132800-6356-04-606028, (ii) an approximately 15.3-acre parcel located at Route 52 Rear, bearing Tax Map Grid No.132800-6355-00-501905, and (iii) an approximately 3.55-acre parcel located at Route 52 Rear, bearing Tax Map Grid No. 132800-6355-00-854904 (as more particularly described in Exhibit A attached to the hereinafter defined Lease Agreement, collectively, the "**Land**"), the demolition of existing structures on the Land, and the construction of an approximately 629,186 square foot warehouse facility with ancillary improvements including parking, storm water management facilities, landscaping, site lighting, and other utility infrastructure (the "**Improvements**"), and the acquisition and equipping of certain equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased and subleased by the Agency to USEF Tioranda, LLC, a limited liability company (the "**Company**") and further subleased by the Company to the Sublessee; and (b) 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 warehouse and fulfillment center (the "**Project**"); and

WHEREAS, the Agency acquired a leasehold interest in the Land and the Improvements, all pursuant to the Company Lease Agreement, dated as of [_____ 1, 2021] (the "**Company Lease**"), by and between the Agency and the Company; and

WHEREAS, the Agency leased and subleased the Company Facility to the Company pursuant to the Lease and Project Agreement, dated as of [_____ 1, 2021] (the "**Lease Agreement**"), by and between the Agency and the Company; and

WHEREAS, the Company intends to sublease the Company Facility (the "**Demised Premises**") to the Sublessee to be used as a warehouse and fulfillment center pursuant to a

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[Sublease Agreement], dated as of [_____ ___, 20__] (the "**Sublease Agreement**"), by and between the Company and the Sublessee, which may be amended from time to time.

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I
REPRESENTATIONS AND COVENANTS OF SUBLESSEE

Section 2.1 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 duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, and 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 this Agency Compliance Agreement. This Agency Compliance Agreement has been duly authorized, executed and delivered by the Sublessee.

(b) To the best of the Sublessee's knowledge, neither the execution and delivery of this Agency Compliance Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof 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.

(c) Any and all leasehold improvements undertaken by the Sublessee with respect to the Demised Premises and the design, acquisition, construction, renovation, equipping and operation thereof by the Sublessee will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Company Facility. The Sublessee shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorneys' fees, resulting from any failure by the Sublessee to comply with the provisions of this subsection.

(d) The Agency Compliance Agreement 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.

ARTICLE II
INSURANCE

Section 2.1 Insurance Required. At all times throughout the Lease Term, the Sublessee shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks, and for such amounts, as are customarily insured against by businesses of like size and type and

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shall pay, as the same become due and payable, all premiums with respect thereto. Such insurance shall include, without limitation, the following (but without duplication of insurance provided by the Company pursuant to the Lease Agreement covering the same risks and insured(s)):

(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 completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Sublessee, but in no event less than $1,000,000. During the construction of the Company Facility, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance that the Sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Sublessee or any permitted sublessee who are located at or assigned to the Company Facility. This coverage shall be in effect from and after the date any such employees first occupy the Company 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 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage), and blanket excess liability coverage, in an amount not less than $5,000,000 combined single limit or equivalent, protecting the Agency and the Sublessee against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during any construction or renovation period with respect to the Demised Premises.

(d) During any construction period with respect to the Demised Premises (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Sublessee shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

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

(ii) Comprehensive general liability providing coverage for:

Premises and Operations
Products and Completed Operations
Owners Protective
Contractors Protective
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)

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Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

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

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

Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Agency Compliance Agreement 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 2.1(a) hereof 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 of insurance required by Section 2.1 hereof shall provide for at least thirty (30) days prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 2.1(c) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Section 2.1 (d)(ii) and (iv) shall name the Agency and the Sublessee as additional insureds.

(b) The certificate of insurance required by Section 2.1(c) hereof shall be delivered to the Agency on or before the date hereof. A copy of the certificates of insurance required by Section 2.1(d)(ii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any construction or renovation of the Demised Premises. 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 the current year of the Sublessee's insurance policy, insurance of the types and in the amounts required by Section 2.1 hereof and complying with the additional requirements of Section 2.2(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 policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Agency Compliance Agreement. The Sublessee shall provide such further information with respect to the insurance coverage required by this Agency Compliance Agreement as the Agency may from time to time reasonably require.

Section 2.3 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds

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may be paid. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(a) hereof shall be applied in accordance with the provisions of the Sublease Agreement.

Section 2.4 Right of Agency to Pay Insurance Premiums. If the Sublessee fails to maintain or cause to be maintained any insurance required to be maintained by Section 2.1 hereof, the Agency may pay or cause to be paid the premium for such insurance. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency to the Sublessee. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Sublessee. The Sublessee shall, on demand, reimburse the Agency for any amount so paid pursuant to this Section, together with interest thereon from the date of payment of such amount by the Agency.

## ARTICLE III
## SPECIAL COVENANTS

Section 3.1 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 DEMISED PREMISES 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 DEMISED PREMISES. THE SUBLESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE SUBLESSEE, ON BEHALF OF ITSELF IS SATISFIED THAT THE DEMISED PREMISES 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.

Section 3.2 Hold Harmless Provisions.

(a) The Sublessee agrees that the Agency and its directors, members, officers, agents (except the Company) and employees shall not be liable for, and agrees to defend, indemnify, release and hold the Agency and its directors, members, officers, agents 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 Demised Premises or to common areas or other portions of the Company Facility to which the Sublessee has regular access (such areas, together with the Demised Premises, are hereinafter referred to as the "**Sublessee Premises**"), or arising by reason of or in connection with the

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occupation or the use thereof or the presence of any Person or Property on, in or about the Sublessee Premises, and (ii) liability arising from or expense incurred in connection with the Agency's participation in the subleasing of the Demised Premises to the Sublessee, 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 any authority conferred upon it pursuant to this Agency Compliance 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 Agency Compliance Agreement (including without limitation this Section) or any other documents delivered by the Agency in connection with this Agency Compliance Agreement), and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, to the extent that any such losses, damages, liabilities or expenses of the Agency are not incurred and do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, agents or employees. Except as otherwise provided herein, the foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Agency Compliance Agreement, the obligations of the Sublessee pursuant to this Section shall remain in full force and effect after the termination of this Agency Compliance 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 members, directors, officers, agents 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 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 3.3 Right to Inspect Demised Premises. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable prior written notice to inspect the Demised Premises.

Section 3.4 Qualification as Project.

(a) The Sublessee will not take any action, or fail to take any action, which action or failure to act would cause the Company Facility not to constitute a "project" as such quoted term is defined in the Act. Without limiting the generality of the foregoing, the Sublessee will in no event use the Demised Premises in such a way as to cause or permit the Company Facility to be used in violation of Section 862(2)(a) of the Act.

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(b) The occupation of the Demised Premises has not and will not result in the removal of a facility or plant of the Sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Sublessee located within the State.

Section 3.5 Compliance with Orders, Ordinances, Etc.

(a) The Sublessee, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee of the Sublessee or occupant of the Demised Premises which is occupying the Demised Premises by permission of the Sublessee to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Company Facility or the Demised Premises, or to the acquisition, construction and equipping of the Demised Premises, or to any use, manner of use or condition of the Company Facility or any part of the Demised Premises, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Company Facility or any part thereof, and companies or associations insuring the premises.

(b) The Sublessee shall keep or cause the Demised Premises to be kept free of Hazardous Substances. Without limiting the foregoing, the Sublessee shall not cause or permit the Demised Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Sublessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Sublessee or any of its contractors, or subcontractors, a release of Hazardous Substances onto the Company Facility or onto any other property. The Sublessee shall comply with, and ensure compliance by all of its contractors, and subcontractors with, all applicable federal, state and local environmental laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all of its contractors, and subcontractors obtain and comply with, any and all approvals, registrations or permits required thereunder. The Sublessee shall (i) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances released, stored, generated or used by it on, from or affecting the Demised Premises (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the satisfaction of the Agency, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, its employees, agents, officers, members and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or of any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, and in all cases which result from the intentional or unintentional act or omission of the Sublessee or any

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of its contractors or subcontractors, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Sublessee may have to the Agency at common law and shall survive the transactions contemplated herein.

(c) Notwithstanding the provisions of subsections (a) and (b) above, the Sublessee may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) 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, unless the Agency shall notify the Sublessee that, by failure to comply with such requirement or requirements, the Company Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Sublessee shall promptly take such action with respect thereto or provide such security as shall be reasonably satisfactory to the Agency. If at any time the then existing use or occupancy of the Demised Premises shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Sublessee shall use reasonable efforts not to cause or permit such use or occupancy by the Sublessee to be discontinued without the prior written consent of the Agency, which consent shall not be unreasonably withheld.

(d) Notwithstanding the provisions of this Section, if, because of a breach or violation of the provisions of subsection (a) or (b) above (without giving effect to subsection (c)), the Agency or any of its members, directors, officers, agents or employees shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Sublessee shall immediately provide legal protection or pay an amount or post a bond in an amount necessary, in the opinion of the Agency and of its members, directors, officers, agents and employees, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(e) Notwithstanding any provisions of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Sublessee.

Section 3.6 Agreement to Provide Information. Annually, the Sublessee shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Company 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 whenever requested by the Agency any other information concerning the Sublessee, its respective finances, its respective operations, its respective 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, the Public Authorities Accountability Act of 2005, or the Public Authorities Reform Act of 2009, each as amended from

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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 3.7 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 it is a party, cause any new employment opportunities created in connection with the Demised Premises 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 Company Facility is located (collectively, the "**Referral Agencies**"). The Sublessee also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, 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 3.8 Subleasing.

(a) In accordance with Section 862(1) of the Act, the Demised Premises shall not be occupied by a sublessee whose tenancy would result in the removal of a facility or plant of the proposed sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

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

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

(b) The Sublessee may not assign the Sublease Agreement or sub-sublease the Demised Premises without the prior written consent of the Agency. Any assignment or sub-sublease shall conform with the restrictions and requirements set forth in Section 9.3 of the Lease Agreement.

Section 3.9 Approval of Sublease Agreement. The Agency hereby approves the subleasing of the Company Facility by the Company to the Sublessee pursuant to the terms of the Sublease Agreement.

Section 3.10 Definitions. All capitalized terms used in this Agency Compliance Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A.

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Section 3.11 Execution of Counterparts. This Agency Compliance 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.

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

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IN WITNESS WHEREOF, the Agency and the Sublessee have caused this Agency Compliance Agreement to be executed in their respective names by their duly authorized representatives, all as of [_____ __, 2021]

**DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By:_____
Name: Sarah Lee
Title: Executive Director

**AMAZON.COM SERVICES LLC,**
a Delaware limited liability company

By: _____
Name: Holly Sullivan
Its: Authorized Signatory

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NEGATIVE DECLARATION
Notice of Determination of Non-Significance

Date: December 3, 2020

This notice is issued pursuant to Part 617 of the implementing regulation pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Town of East Fishkill Town Board has determined that the proposed action described below will not have a significant adverse effect on the environment and a Draft Environmental Impact Statement will not be prepared.

**Name of Action:** **Project Redtail**

**Description of Action:** Bluewater Property Group proposes to develop a new warehouse distribution facility on approximately 123.86 acres of land known as the former IBM West Campus (the "Proposed Project" or "Project"). The Project is comprised of three contiguous parcels. The primary site is designated as parcel 6356-04-606028, with two smaller lots to the southwest and southeast designated as parcel 6355-00-501905 and 6355-00-854904, respectively. The site was formerly the IBM West Campus and formerly consisted of five buildings totaling approximately 1 million square feet, as well as roadways, parking areas, and significant utility infrastructure. The site has been vacant since 2005. The proposed distribution facility will replace the existing buildings and will consist of a one-story building containing 629,186 square feet. The facility will also have approximately 132 loading docks, 1,000 employee parking spaces, and 702 trailer parking spaces. Other improvements include stormwater management facilities, landscaping, site lighting, security shacks, and other utility infrastructure. A retaining wall is proposed along the southern and western property boundaries. The proposed development would reuse existing infrastructure to the greatest extent practical, and minimizes or avoids impacts in sensitive areas such as wetlands, flood hazard areas, and other undisturbed areas. The site is currently zoned I-1 Light Industrial. The applicant will pursue an Economic Redevelopment Special Permit with the Town of East Fishkill for the proposed facility.

This is a Type I Action under the State Environmental Quality Review Act (SEQRA), and a Coordinated review was completed as required by 6 NYCRR 617.6(b)(2). The Town of East Fishkill Town Board properly noticed its intent to serve as Lead Agency and no involved agency challenged the Town Board being Lead Agency within thirty (30) days after the Environmental Assessment Form was transmitted to it.

SEQR Status: Type I __X__ Conditioned Negative Declaration? ___ Yes

Unlisted _____ __X__ No

Location of Action: **Town of East Fishkill, County of Dutchess**

Street Address: **1940 Route 52**

Tax Map Parcel(s) No.: **6356-04-606028, 6355-00-501905, 6355-00-854904**
Attach location map.

The following documentation was analyzed in making this negative declaration:

X Full EAF

X Supplemental Part III Information

X Storm Water Pollution Prevention Plan (SWPPP)

_ Other (Describe)

Name of Action: **Project Redtail**

For Further Information:

Contact Person: **Gina Grippo, Town Board Clerk**
**Town Hall, 330 Route 376**
**Hopewell Junction, New York 12533**
**(845) 221-9191**

REASONS SUPPORTING THIS DETERMINATION:

(See 617.7(c) for requirements of this determination; see 617.7(d) for conditioned Negative Declaration)

(a) Environmental issues identified as relevant:

1. **Land Use, Zoning, and Public Policy**
2. **Public Services**
3. **Stormwater**
4. **Traffic and Transportation**
5. **Noise**
6. **Air Quality**
7. **Fiscal**
8. **Surface Waters and Wetlands**
9. **Threatened and Endangered Species**
10. **Historic and Archeological Resources**
11. **Scenic Resources**
12. **Water & Wastewater**

(b) Analysis of the issues identified and elaboration of the basis and reason for this determination that there will not be a significant impact on the areas of the environment identified in Section (a).

## 1. Land Use, Zoning, and Public Policy

The Proposed Project would result in the redevelopment, reuse, and revitalization of vacant and underutilized industrial site previously used for manufacturing with a distribution/warehouse facility. The site was formerly the IBM West Campus and consisted of five buildings totaling approximately one (1) million square feet as well as roadways, parking areas and significant utility infrastructure. The Proposed Project would result in the demolition of the existing buildings and the construction of a distribution/warehouse facility consisting of a single one-story building fifty (50) feet in height containing 629,186 square feet, 132 loading docks, 1,000 employee parking spaces, and 702 trailer parking spaces. The Proposed Project would be located almost entirely within the development footprint of the former IBM West Campus. Approximately 0.4 acres of forested land would be disturbed by the proposed distribution/warehouse facility. The redevelopment of a vacant, underutilized industrial site formerly used for manufacturing with a distribution/warehouse facility would be consistent with the surrounding industrial land uses and the existing industrial zoning but would require an Economic Redevelopment Special Permit to allow for greater flexibility in the site layout and design.

The Town Board has evaluated all potential impacts related to the Project and finds that the Project is not anticipated to result in any significant adverse environmental impacts on land use because:

Land Use

1. As a distribution center, the Project is appropriately located near major thoroughfares and transportation hubs including Interstate Route 84, Route 9, NYS Routes 17K, I-87, and Stewart International Airport.

2. Compared with other commercial, residential or institutional uses, distribution/warehouse facilities have limited impacts on municipal services including the police and fire departments and school districts.

3. The Project Site is largely isolated from other uses by setbacks, roadways, existing and proposed vegetation, topography and large wetland complexes.

4. The existing land uses within one-half mile of the Project Site indicates the Proposed Action is generally consistent with nearby industrial and commercial development patterns. The Project is compatible with those commercial and industrial land uses in the immediate vicinity of the Project Site including iPark, and the proposed Sports Dome. The Project is currently located in an I-1 industrial zoning districts.

5. The large acreage of the Project Site, its location to the rear of the former IBM West Campus, and the I-84 corridor provides a buffer between the warehouse building and surrounding land uses including residential uses.

6. To minimize impacts on the surrounding land uses, existing natural vegetation along the boundaries of the Project Site (including wetlands) would be left intact to serve as a buffer. The placement of the warehouse building in the center of the Project Site, significantly set back from other land uses, would be designed to minimize potential

adverse visual and noise impacts from surrounding land uses and views from surrounding roadways, in addition to the screening and landscape vegetation that has been added to screen the facility along Auditorium Drive.

7. The Project will use iPark Blvd /Lime Kiln Road and South Drive as the primary access to the site. All truck traffic will be routed to use iPark Blvd /Lime Kiln Road and South Drive access to minimize truck traffic utilizing the local access on Route 52.

Zoning

1. The Proposed use is consistent with the I-1 zoning district which permits "warehouses."

2. The Proposed Project would require an Economic Redevelopment Special Permit which provides for a greater flexibility of site design to allow for the redevelopment and revitalization of former industrial campuses in the I-1 zone. The Proposed Project would be in conformance with the intent of the Economic Redevelopment Special Permit and meet all the special permit criteria of the Economic Redevelopment Special Permit.

3. The Proposed Project meets all site plan review standards set forth in the Town's Zoning Law.

Public Policy

1. The Project is in accordance with all stated public policy goals enumerated in the Town of East Fishkill's Comprehensive Plan (2002). The Plan called for the entire Project Site to be used for general industrial uses. As originally stated in the Town's 1982 Comprehensive Plan and reiterated in the 2002 Plan, the I-84 corridor is an appropriate location for industrial development. In addition, the Proposed Project is consistent with the Plan's following stated goal: "*Identify land with marketable sites and good interstate highway access in order to attract high-value industry. Industrial zoning shall continue to be maintained near the interstate and reduced near the railroads*."

**Accordingly, the Town Board further finds that no significant adverse environmental impacts related to Land Use, Zoning and Public Policy are anticipated from the Project.**

## 2. Public Services

Police Department

Information regarding the Town of East Fishkill Police Department was received from Chief Christopher A. Bellino and was provided to the Town Board in the expanded EAF.

1. The Town of East Fishkill Police Department provides law enforcement services 24 hours a day, 7 days a week throughout the entire year. The staff consists of 25 full-time officers and 10 civilian employees. Travel time to the Project Site from the police

station is approximately 2 minutes 30 seconds with emergency response time of approximately one minute.

2. The East Fishkill Police Department letter states that based on the warehouse size, commercial traffic, and workforce flow, potential service calls may increase by 160 calls yearly. The department also states that consideration should be given to additional off-site traffic issues that require police assistance, resulting in excess wear and tear and mileage on the patrol fleet.

3. To reduce the potential for impacts on the East Fishkill Police Department, security measures will be implemented at the project site on a 24/7/365 basis, including but not limited to perimeter fencing, gates and guardhouses, video surveillance, alarms, loss prevention program to minimize theft, and internal staff training. It is anticipated that the proposed security measures would minimize the potential for service calls to the site and the need for additional police manpower.

   **Accordingly, based on the proposed use and security measures there would not be any significant adverse impacts on police department services.**

Fire Department

Information regarding the Town of East Fishkill Fire District (EFFD) was received from the EFFD website and Kevin McNamara, Chief of the Board of Fire Commissioners.

1. The East Fishkill Fire District (EFFD) provides fire protection and rescue squad services to the site. The EFFD is a volunteer fire department with no paid firefighters. Staff is limited to two administrative personnel and two maintenance personnel.

2. The site plan for the Proposed Project includes a sprinkler system and standpipe connections on the outside of the building. On-site fire hydrants will be located to avoid unnecessary hose lays that may block other apparatus from setting up at the scene in the event of a fire.

3. The site design allows for 360 degree access around the warehouse building. The building will be designed in accordance with applicable standards of the New York State (NYS) Uniform Fire Prevention and Building Code and multiple points of access to the building will be provided for alternate routes of entry and exit in the event of an emergency.

4. All sprinkler systems and fire alarm components such as smoke detectors and pull stations will be properly labeled. This will allow the fire department to quickly locate activated alarms and minimize the facility's evacuation time. All standpipes in the building need to be labeled and kept free from obstructions.

5. The proposed access driveways will be designed to accommodate fire engines. Emergency vehicle access will be provided around the building and fire lanes will be provided at appropriate locations around the building in accordance with the Town of East Fishkill zoning code.

**Accordingly, due to the fire protection measures proposed at the project site, any potential impacts will not be significant and are able to be addressed with the existing resources of the fire department. The project will not pose a significant adverse impact to the fire department.**

Emergency Medical Services

The rescue squad is a division of the EFFD and is an entirely volunteer Basic Life Support (BLS) ambulance service that provides emergency medical services to the residents of East Fishkill and surrounding communities under pre-planned mutual aid agreements 24 hours a day, 7 days a week, all year long, and are rotated each week to one of the four fire stations in the EFFD.

1. The site plan for the Proposed Project provides for emergency access, both outside and inside of the proposed warehouse building. Hallways and access points will be constructed in accordance with New York State building codes and access points will be clearly marked. Time is essential in communicating where an injured person is, especially given the size of the proposed warehouse facility.

2. As required by the NYS Fire Code, there are proposed two ingress/egress driveways that are designed to safely and effectively allow all emergency vehicles, including ambulances, to access the site.

3. The project will be designed to accommodate all emergency service needs, including EMS equipment.

**Accordingly, due to the design of the Proposed Project, the project site will not pose a potential significant adverse impact to emergency medical services.**

## 3. Stormwater

The Proposed Project consists of a warehouse with associated car and trailer parking, trailer loading docks, stormwater basins, site utilities, signage and landscaping. The following potential impacts related to stormwater were identified:

1. Stormwater runoff from developed land is recognized as a possible contributor of pollution that can adversely affect the quality of downstream receiving waters if not properly controlled.

2. As a “Fleet Storage Area” the proposed project is classified as a “Stormwater Hotspot” in accordance with the requirements of the New York State Stormwater Management Design Manual. A stormwater hotspot is defined as a land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff.

3. Development of the Project Site will create impervious areas, which can alter the

hydrologic characteristics of a watershed and could have impacts on water resources, because pollutants and sediment carried by stormwater runoff could degrade the water quality of receiving waters downstream.

4. The potential pollution sources during construction include large areas (greater than 15 acres) of exposed and unstable soils, and after construction include sediment, debris, litter, and potential contaminants on driveways and parking lots.

The Applicant prepared a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirements of the Town of East Fishkill and the New York State Department of Environmental Conservation (NYSDEC) State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001) technical standards. This SWPPP identifies the erosion control, sediment control, pollution-prevention, and stormwater management measures to be implemented during construction to minimize soil erosion and control sediment transport off site, and after construction to control and treat stormwater runoff from the developed site. The pre- and post-development conditions were analyzed using the USDA Soil Conservation Service Publication Technical Release (TR-55) "Urban Hydrology for Small Watersheds." TR-55 provides procedures for estimating runoff and peak discharges in small watersheds based upon the watershed areas, land coverage, soil group types, curve numbers (CN), times of concentration (Tc), rainfall distribution type, and rainfall amount for the design storm events. The pre- and post-development peak discharge rates of runoff have been evaluated utilizing HydroCAD stormwater modeling software.

The Town Consulting Engineer (CPL) prepared a Watershed Analysis to evaluate the impact this project will have on the Wiccopee Creek, Guildersleeve Brook and Fishkill Creek. The analysis was originally prepared in 2014 for the Hopewell Sports Dome project. The analysis has been updated to incorporate the post-development conditions analysis prepared for this project utilizing HydroCAD stormwater modeling software to estimate impacts to flow rate, water surface elevation and velocity during the 100-Year, 24 hour storm event for each of the streams noted. The SWPPP and Watershed Analysis showed the following:

1. The Proposed Project will maintain existing drainage patterns as much as practical, control the rate of stormwater runoff resulting from the development, and mitigate potential impacts on water quality and erosion generated during and after construction.

2. The peak rate of runoff from the Project Site will not be increased as a result of the proposed development. In addition, the erosion control, sediment control, pollution-prevention, and stormwater management measures to be implemented during construction as outlined in this SWPPP and project drawings will minimize soil erosion and control sediment transport off site, and after construction will control the water quality and quantity of stormwater runoff.

3. The peak rate of runoff from the Project Site will be managed to minimize impacts to downstream areas. Increases to downstream peak rate of runoff, water surface elevation and stream velocity will not be permitted to exceed 2014 levels for the

streams analyzed, except as a result of natural increases in rainfall depths as reported by the Northeast Regional Climate Center.

4. The volume of runoff from the Project Site will increase as a result of the proposed development. Stormwater Management Practices and Planning Measures have been incorporated to reduce runoff volume (Runoff Reduction Volume – RRv) as required by the NYS SPDES technical standards to the maximum extent practical but in no case will the RRv be less than the minimum RRv required.

5. The Town will engage an environmental monitor funded by the applicant to monitor the site construction at least once a week to ensure compliance with the approved SWPPP for disturbances up to 5 acres.

6. The Applicant will be required to post a performance bond as a condition of the Project's site plan approval to ensure the proper construction of the stormwater control practices in accordance with the SWPPP until a certificate of occupancy (CO) is issued for the warehouse.

7. The Applicant will be required to post a maintenance bond as a condition of the Project's site plan approval to ensure the continued proper performance, maintenance and repair (if any) of the stormwater control measures for two years after a CO is issued for the warehouse.

   **Accordingly, the proposed project will not have adverse impacts if the measures for erosion control, sediment control, pollution prevention, and stormwater management measures are properly constructed and maintained in accordance with the requirements outlined in the SWPPP and on the accompanying approved project site plans.**

## 4. Traffic and Transportation

The Proposed Project is located on the Route 52 corridor a major regional thoroughfare that runs through the Town of East Fishkill. According to the Traffic Impact Study (TIS) prepared by Langan Engineering, Environmental, Surveying, Landscape Architecture and Geology, D.P.C. dated October 2, 2020 and submitted as part of the EAF, regional access to the site will primarily be provided via the South Drive/iPark Blvd and Lime Kiln Road signalized intersection. Alternative access, for local employees, will be provided via the Auditorium Drive and NYS Route 52 intersection. The future connector road constructed as part of the Project will connect NYS Route 52 and Lime Kiln Road using Auditorium Drive and the east-west oriented South Drive/iPark Blvd. The proposed truck traffic related to project operation will access the site from the regional Interstate 84 roadway network and will use the South Drive/iPark Blvd and Lime Kiln Road access. It is not anticipated that truck traffic will use the local access on NYS Route 52.

The Town Board reviewed the following information within the EAF related to traffic and transportation and makes the findings below:

1. According to the TIS, the Proposed Project would generate approximately 662 new trips (520 enter, 142 exit) during the weekday morning peak hour and 597 new trips (203 enter, 394 exit) during the weekday evening peak hour. As part of the TIS, a capacity analysis was performed at the following intersections:
   a. Lime Kiln Road (County Road 27) and I-84 Westbound Ramps
   b. Lime Kiln Road (CR 27) and South Drive/iPark Drive / Old Lime Kiln Road
   c. Lime Kiln Rd (CR 27) / Binnewater Road and New York State Route 52
   d. Palen Road (CR 31) / West Drive and NYS Route 52
   e. John Jay High School Driveway and NYS Route 52
   f. Lime Kiln Road (CR 27) and I-84 Eastbound Ramps
   g. South Drive / Roethal Drive and NYS Route 52
   h. Auditorium Drive and NYS Route 52
   i. Lake Drive and NYS Route 52

2. The TIS projected traffic volumes to include existing traffic and new traffic created by background growth to derive the 2022 No-Build traffic volumes. The site-generated trips were added to the 2022 No-Build traffic volumes to derive the 2022 Build traffic volumes. Based on the analysis, the NYSDOT identified impacts and concerns within the Route 52/Lime Kiln corridor. These concerns included the degradation of throughput traffic at the signalized intersections of Route 52, appropriate traffic control at the Route 52/Auditorium Drive intersection and impacts at the John Jay High School intersection.

3. The future connector road constructed as part of the Project will connect NYS Route 52 and Lime Kiln Road using Auditorium Drive and the east-west oriented South Drive/iPark Blvd.

4. Regional access to the site will primarily be provided via the east-west oriented South Drive/iPark Blvd I-84. Truck traffic will be directed to use South Drive/iPark Blvd.

5. A significant mitigation measure has been made a part of the proposed action by the applicant. The applicant has committed to the town the recording of an irrevocable offer of cession and dedication (upon taking title to the property) of Auditorium Drive from NYS Route 52 to South Drive (to the East Campus property line), in combination with the two prior recorded rights of way of public utilities. This offer of Cession will be acceptable to the town once the upgrades of the aforementioned road to the town's standards are complete (the "Auditorium Drive Portion"). This offer of Cession will be combined with the acceptance by the town of “South Drive“ as a public right of way per the irrevocable offer of cession and dedication granted by Global Foundries US LLC to the Town dated July 21, 2017, including but not limited to the upgrade of the road to the town standards as a precondition of acceptance by the town (the “South Drive Portion”). These offers of cession and dedication, for both the Auditorium Drive Portion and the South Drive Portion will result in a new town road extending from NYS Route 52 in the north to iPark Blvd/Lime Kiln Road in the south, and such Acceptance shall occur and be formally accepted no later than the issuance of a temporary certificate of occupancy for the subject property. This new Town Road shall provide mitigation to traffic conditions.

6. As part of the Proposed Project, the applicant will make improvements to Auditorium

Drive which will allow it to be used as a bypass road between I-84 and the Route 52 corridor. Ownership of Auditorium Drive will be transferred to the Town of East Fishkill. The improvements to Auditorium Drive will support and facilitate the implementation of the Town sponsored Route 52 traffic improvements which will include the construction of a modern roundabout at the intersection of Route 52 and Auditorium Drive to facilitate the connection of Route 52 and the new Auditorium Drive bypass.

7. The modern roundabout will allow traffic heading to and from I-84 to bypass Route 52 and reduce traffic volumes at the heavily congested intersections on at Route 52, including John Jay High School, Palen Road and Lime Kiln Road. The roundabout will also create a fully functional intersection at Route 52/Auditorium Drive accommodating all vehicle movements. The applicant has agreed to make a one-time fair share contribution to facilitate the implementation of these town sponsored Route 52 improvements, in addition to its upgrade and dedication of Auditorium Drive

8. The proposed project will construct two bus transit stops along Auditorium Drive to facilitate transit use to and from the facility.

**Accordingly, with the proposed improvements described in place, the Proposed Project will not result in any significant adverse traffic or transportation impacts.**

## 5. Noise

The Town Board reviewed the information within the EAF related to noise and sound emission and makes the findings below:

1. A sound study of the Project Site was conducted to analyze background and future site sound emissions and consider improvements to the Proposed Project needed to comply with applicable code limits and/or to minimize the acoustical impact and potential for noise complaints. It is anticipated that the site will generate additional sounds to the surrounding area from rooftop HVAC equipment and truck and car activity. The sound study measured existing sound at the following four locations:
   - Location 1: On Auditorium Drive, in line with the southern edge of the high school gym.
   - Location 2: On the street in front of 5 Roethal Drive.
   - Location 3: At the eastern side of the Saxon Woods Court cul-de-sac
   - Location 4: At the northeastern side of the Wiccopee Run cul-de-sac

2. The Town Consulting Engineer, CPL reviewed the noise analysis and requested noise monitoring at several additional locations to augment the analysis. Further review of the revised noise analysis will be conducted during the site plan approval process, but it has been determined that the site will comply with the Town Noise Ordinance as well as the NYSDEC manual for Assessing and Mitigating Noise Impacts. The current noise analysis is technically acceptable and no significant adverse impacts are expected from the project. Although no significant adverse noise impacts are expected, the following recommendations will be considered

during the site plan approval process:

i. To minimize noise from truck back-up alarms, consideration will be given to equipping the switcher engines for all tenant trucks with smart, ambient sensing, multi-frequency back-up alarms. This type of alarm is commonly called a “shusher” alarm due to the type of noise it produces. These devices reduce annoyance generated from constant level, pure tones from “beeping” back up alarms.

ii. Additional measures such as landscape berms, tree plantings, fencing or other acceptable noise reduction devices may be required, particularly along the boundary with John Jay High School. These measures will also provide visual screening if necessary, as the project plans are further developed.

3. To minimize receptor exposure to temporary construction noise during this phase, the following construction mitigation measures shall be implemented:

i. As feasible, limit all heavy equipment operation to non-noise sensitive daytime hours. On occasion, construction may extend past these hours for critical path construction activities, such as concrete pours.
ii. As feasible, limit the number of equipment operating near any one of the critical receptors at a given time. Avoid exposing any one critical receptor to high sound levels for an extended period of time.
iii. Place stationary equipment, such as generators, compressors, and office trailers, away from any critical receptors.
iv. Avoid having construction parking or laydown areas near any critical receptors.
v. Specific noise issues will be individually evaluated for tailored noise mitigation recommendations should traditional methods above not be sufficient.
vi. Limit materials deliveries to the greatest extent possible to the Route 84 and Lime Kiln Road access to the project to avoid the use of Route 52 and Auditorium Drive
vii. During the site plan approval process, a Site Construction and Phasing Plan will be developed that identifies storage areas, truck access routes, contractor parking etc., that will take into consideration limiting noise impact on the critical receptors.

**Accordingly, the Proposed Project will not create any significant adverse noise impacts and will avoid or minimize sound emission from the site to the maximum extent practicable.**

## 6. Air Quality

The Town Board has reviewed the relevant facts related to air quality and makes the findings below.

1. Pursuant to 6 NYCRR 217-3.2, idling for heavy duty vehicles is limited to no more than five (5) consecutive minutes when the vehicles are not in motion. This will

significantly limit any noxious fumes emitted by tractor-trailers.

2. The building will be heated primarily by natural gas;

3. The building will not require any air permits from New York State or Federal Agencies in order to operate.

4. Any emissions during construction will be temporary in nature, and the Applicant will fund an escrow for construction monitoring services with the Town, which will enable the Town to hire an environmental construction monitor to confirm compliance with all safety and emissions regulations.

**Accordingly, the Project will not create any significant adverse environmental impacts with respect to air quality.**

## 7. Fiscal

The Town Board reviewed the information within the EAF related to the fiscal conditions and makes the findings below.

1. The Project Site consists of three parcels with a lot area of approximately 123.86 acres. The Project Site is currently vacant.

2. The current taxable assessed value of the Project Site is $5,218,500. No tax exemptions are recorded for any of the Project Site parcels. Most of the assessed value is attributed to the land at the Project Site.

3. Property Taxes - The Project is projected to generate significantly higher property tax revenue than the current taxes of approximately $155,000.

4. The Proposed Project would develop the property into a warehouse/distribution facility containing approximately 629,186 square feet including parking for passenger vehicles and trucks, stormwater management facilities, landscaping, site lighting and other utility infrastructure.

5. It is anticipated that the Proposed Project will result in an investment of $135.5 million at the Project Site over 15 years.

6. The Project site will be subject to a payment in lieu of taxes (PILOT) agreement. The PILOT is designed to gradually implement taxes over 15 years. Property taxes for Town/County/School over the first 15 years will be over $18,000,000 more than if there were no project at all. The Project represents a positive fiscal impact for all taxing districts.

7. Wappingers Central School District (WCSD)— Without residential construction and no school- aged children generated as a result of the Proposed Project, the Project would not result in any direct costs to the WCSD. Instead, the Proposed Project would provide significant tax revenues to the school district.

8. Overall Projected Net Benefits – Over a 15 year timeline, the Project is projected to have total net benefits of $496,701,000.

9. Construction Jobs – Approximately 200 construction jobs will be created during the estimated 12 to 15-month construction period.

10. Long Term Employment – It is projected that up to 500 full-time equivalent employees will be employed by the Project. Salaries are expected to range from $31,000 to $60,000 with robust benefit packages offered. The projected employees would have roles in managerial, supervisory, safety, security, information technology, and human resource capacities in addition to roles in receiving, handling, packing, and transportation. Seasonal increase in employment is expected annually in the fourth quarter. Employees would typically reside within 30 minutes of the Project Site. The Project will utilize local labor force in the region to address work and there is adequate labor force in the region to address workforce concerns. The Project is expected to increase jobs in the County.

    **Accordingly, the Project will create substantial fiscal benefits for local and regional jurisdictions through tax revenues, payroll, sales taxes, and a significant number of construction and permanent jobs for the area. Due to these positive fiscal benefits, no mitigation measures are required.**

## 8. Surface Waters and Wetlands

The Town Board reviewed the information within the EAF related to the existing conditions of the Project Site in relation to surface waters and wetlands and makes the findings below.

1. An evaluation and delineation of wetlands/waters was completed onsite in August 2020. Five wetlands were identified and delineated as listed below.
    - Wetland A – 5.07 acres
    - Wetland M – 0.10 acres
    - Wetland Q – 0.11 acres
    - Wetland Y – 0.35 acres
    - Wetland Z – 0.09 acres

    Wetlands A, M and Q
    Wetlands A, M and Q are located in the southwestern corner of the site and situated adjacent to Wiccopee Creek and a tributary to Wiccopee Creek. Each of these wetlands is wooded and hydrologically driven by seasonal high water, surface runoff from surrounding uplands and fluctuations in water levels associated with the adjacent streams. As shown on the NYSDEC Freshwater Wetlands Map, Wetlands A, M and Q are consistent with NYSDEC mapped wetlands and thus are subject to NYSDEC jurisdiction under Article 24 (Figure E-2). In addition, Wiccopee Creek is a Class C(t) stream and therefore is an NYSDEC-protected water under Article 15. Wetlands A, M and Q are also subject to U.S. Army Corps of Engineers (USACE) jurisdiction pursuant to Section 404 of the Clean Water Act.

Wetland Y
Wetland Y consists of an emergent wetland swale located along the eastern property line. The wetland is hydrologically driven by surface water runoff from surrounding uplands and does not contain an outlet or connection to other wetlands/waters. Wetland Y is not mapped by NYSDEC and therefore is subject to USACE jurisdiction only.

Wetland Z
Wetland Z consists of a wooded wetland situated in the southeastern corner of the site. Wetland hydrology is primarily driven by surface runoff and seasonal high groundwater. Wetland Z is not mapped by NYSDEC and therefore is subject to USACE jurisdiction only.

2. The Project does not include any activities within the limits of onsite wetlands or within the 100-foot NYSDEC Adjacent Area associated with those mapped and regulated by NYSDEC (Wetlands A, M and Q). Confirmation that the project does not require a permit from the USACE pursuant to Section 404 of the Clean Water Act/Section 10 of the Rivers and Harbors Act or NYSDEC pursuant to the Freshwater Wetlands Permit Program (Article 24) or Protection of Waters Program (Article 15), will be obtained.

**Accordingly, no significant adverse impacts to surface waters or wetlands will result from the Proposed Project.**

## 9. Threatened and Endangered Species

The Town Board reviewed the information within the EAF related to the existing conditions of the Project Site in relation to threatened and endangered species and makes the findings below.

1. Based on a response from the New York State Department of Environmental Conservation (NYSDEC) Natural Heritage Program (NHP) dated September 3, 2020, there are no documented occurrences of threatened or endangered species onsite. However, the NHP indicates a documented Indiana bat maternity colony within 0.5 miles of the site and bald eagle and bog turtle within 1 mile of the site.

2. Based on a review of the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) tool, there are two threatened or endangered species that should be considered in an effects analysis for the project: Indiana bat (Myotis sodalis) and bog turtle (Clemmys muhlenbergii). However, subsequent communication with USFWS in a letter dated 11/16/20 determined that no further coordination or consultation with the USFWS is required at this time.

3. Indiana bat (*Myotis sodalis*)
For purposes of compliance with the Endangered Species Act, both the NYSDEC and USFWS will consider suitable Indiana bat habitat in wooded or treed areas within 2.5 miles of a known Indiana bat summer colony. Trees providing suitable habitat are

characterized by USFWS as those with a diameter at breast height (DBH) > 5 inches that have exfoliating bark, cracks, crevices or hollows. The majority of the project area is non-forested and consists of vacant and demolished buildings and associated infrastructure from the previous development; these areas do not provide suitable habitat for Indiana bat. Forested uplands and wetlands in the southwestern corner of the site are generally dominated by deciduous trees including red maple (Acer rubrum), sycamore (Platanus occidentalis) and green ash (Fraxinus pennsylvanica). Forested uplands in the southeastern corner of the site are mainly dominated by black locust (Robinia pseudoacacia). These forested areas may be considered suitable habitat for Indiana bat.

The majority of the proposed redevelopment project avoids disturbance and removal of trees and wooded areas; however, approximately 0.4 acres of forested/wooded area along the southwestern perimeter of the prior development and various individual trees located adjacent to existing buildings will be cleared during construction. In order to avoid potential impact to Indiana bat, trees will be cleared during inactive months (November 1 thru March 31).

4. Bog turtle (*Clemmys muhlenbergii*)
   The bog turtle is federally listed as threatened and state-listed as endangered. According to the New York Natural Heritage Program, bog turtles occur in open-canopy wet meadows, sedge meadows, and calcareous fens. In the Hudson River Valley, known bog turtle habitat may be isolated from other wetlands or may exist as part of larger wetland complexes. These wetlands are often fed by groundwater and the vegetation commonly includes various species of sedges.

   Other vegetation that is frequently found in southern New York bog turtle sites includes shrubby cinquefoil (Potentilla fruticosa), grass-of-parnassus (Parnassia glauca), mosses (Sphagnum spp.), horsetail (Equisetum sp.), scattered trees such as red maple (Acer rubrum), red cedar (Juniperus virginianus), and tamarack (Larix laricina), and scattered shrubs such as willows (Salix spp.), dogwood (Cornus spp.), and alder (Alnus spp.) (NYSDEC NHP 2020). Bog turtles are also found within unpolluted emergent and scrub/shrub wetlands that consist of micro-habitats, including dry pockets, saturated areas, and areas that are periodically flooded. These habitats are characterized by soft muddy bottoms, interspersed wet and dry pockets, vegetation dominated by low grasses and sedges, and a low volume of standing or slow-moving water which often forms a network of shallow pools and rivulets (USFWS NY 2020).

   Based on a recent evaluation and delineation of wetlands/waters in August 2020, there are five wetlands present onsite (Wetlands A, M, Q, Y and Z). Wetlands A, M and Q are located in the southwestern corner of the site and situated adjacent to Wiccopee Creek and a tributary to Wiccopee Creek. Each of these wetlands is wooded and hydrologically driven by seasonal high water, surface runoff and fluctuations in water levels associated with the adjacent streams. At the time of our evaluation, the substrate within the wetlands was mostly firm with softer soils present closer to the streams within. Based on the observed characteristics of these wetlands, bog turtle habitat was determined absent.

Wetland Y consists of an emergent wetland swale located along the eastern property line. The wetland is hydrologically driven by surface water runoff from surrounding uplands and does not contain an outlet or connection to other wetlands/waters. At the time of our evaluation, soils within this wetland were firm with saturation absent at the surface. Based on the observed characteristics of these wetlands, bog turtle habitat was determined absent.

Wetland Z consists of a wooded wetland situated in the southeastern corner of the site. Wetland hydrology is primarily driven by surface runoff and seasonal high groundwater. At the time of our evaluation, soils within this wetland were firm with saturation absent at the surface. Based on the observed characteristics of these wetlands, bog turtle habitat was determined absent.

**Accordingly, since only a small area of forested land (0.4 acres) will be cleared during the inactive months of the Indiana bat (November 1 thru March 31) and the Proposed Project does not include any work or other disturbance within or adjacent to the onsite wetlands, the Proposed Project is not expected to result in any significant adverse impact to threatened and endangered species.**

## 10. Historic and Archeological Resources

The Town Board reviewed the information within the EAF related to the existing conditions of the Project Site in relation to historic and archeological resources and makes the findings below.

1. The Project Site was previously disturbed and developed with the IBM West Campus. Extensive historical and archeological surveys were completed during the SEQR review for the IBM West Campus. Historic and Archeological artifacts collected during the development of the IBM West Campus were provided to the East Fishkill Historical Society.

2. A Phase IA Archaeological Survey was completed for the Project Redtail Warehouse Development by Michael Audin, RPA & Maria Audin M.A. Archaeology & Historic Resource Services, LLC in November 2020. During AHRS's examination of the CRIS field and the non-digitized archaeological surveys for the limit area of disturbance a Stage IA survey was identified for the construction of the IBM West Facility that included the current archaeological-Area of Potential Effect (APE). Based on the fact that the property was previously surveyed at least once in the past AHRS limited its research to known archaeological sites and surveys that were conducted on the archaeological-APE. AHRS identified a total of three known archaeological sites and six previous archaeological surveys on the OPRHP CRIS website, the scanned Archaeological Survey Coverage Maps and Bibliographic information and at the East Fishkill Historical Society that were on or adjacent to the archaeological-APE. A total of three known archaeological sites are either in or adjacent to the archaeological-APE; one precontact (The Van Wyck Prehistoric Site) and two historic (The Theodorus Van Wyck House Site and The Abraham Van Wyck House Site). A data recovery effort was conducted for these three sites. The four surveys that included an archaeological sensitivity assessment all concluded that there is a moderate to

high sensitivity for precontact archaeological sites near Wiccopee Creek to the west of the archaeological-APE. The aerial photograph and topographic map review revealed that the archaeological-APE has experienced a high degree of ground disturbance from the former construction and expansion of the IBM West Facility. The site visit verified the high level of ground disturbance in the archaeological-APE for the construction of the facility. The archaeological survey testing results and ground disturbing activities in the archaeological-APE were mapped in GIS. The mapping revealed that all of the known archaeological sites are just outside of the current archaeological-APE and that the vast majority of the archaeological-APE has experienced some form of ground disturbance since the mid-1980s. Only a small portion of the northwest corner of the archaeological-APE could not be definitively mapped as disturbed. This small area is approximately 500 feet from Wiccopee Creek. The area is within an area of well drained soils so it could possess some level of precontact sensitivity. However, the property adjacent to the west (closer to Wiccopee Creek) was archaeologically tested for the Hudson adjacent to the west (closer to Wiccopee Creek) was archaeologically tested for the Hudson Valley Technology Camps Waste Water Treatment Plant (City/Scape, 2008) and no archaeological sites were identified. In addition, the area is just to the north of the area identified as stripped in the 1983 Stage IA (Dumont and Dumont) and no precontact artifacts were recovered leading in this direction from the Cow Barn location where the Van Wyck Prehistoric Site was identified. Although not completely obvious in the site visit the area has most likely experienced some level of soil disturbance from grading for the facility. Based on the above information and analysis AHRS concluded that the precontact and historic sensitivity for the archaeological-APE is low. Therefore, AHRS does not recommend any additional archaeological work for the project.

3. On November 10, 2020, The New York State Office of Parks Recreation and Historic Preservation (OPRHP) provided a letter of no impact. The letter stated the following: "OPRHP has reviewed Phase IA Archaeological Survey, Project Redtail Warehouse Development, Section 6356, Block 04 Lot 606028 and Section 6355, Block 0, Lots 501905 And 854904, Route 52 & Auditorium Dr., Town of East Fishkill, Dutchess County, NY (AHRS, November 2020) [20SR00574]. Based on the information provided, OPHRP has no concerns regarding the proposed project under SEQRA. Should the project design be changed, we recommend further consultation with this office."

**Accordingly, the Proposed Project will not create any significant adverse historic or archeological impacts.**

## 11. Water and Wastewater

Water

The Town Board has evaluated all potential impacts related to the Project and finds that the Project will not result in any significant adverse environmental impacts related to water or water service because:

1. The Proposed Project will receive water service from Duchess County Water and Wastewater Authority (DCWWA) which has sufficient capacity to supply the project.

2. The projected water demand has been calculated in accordance with the New York State Department of Environmental Conservation's (NYSDEC) New York State Design Standards for Intermediate Sized Wastewater Treatments Systems, 2014 per-unit hydraulic loading rates in Table B-3. The per-unit hydraulic loading rate for a distribution warehouse is 15 gpd/employee/shift. To be conservative, it has been assumed that this rate is for an 8-hour shift, so the rate has been adjusted for a 10-hour shift. Please see calculation below:

   [(15 gpd/employee/shift) × 10 hours) ÷ 8 hours] = 18.75 gpd/employee/shift

   The projected average daily flow is as follows: 27,450 gpd

   (732 employees/shift × 2 shifts × 18.75 gpd/employee/shift = 27,450 gpd)

   The projected peak flow is as follows:

   (27,450 gpd ÷ 24 hours ÷ 60 minutes) × 4 peak flow factor = 76.25 gpm

3. The fire flow demand is 2,000 gallons per minute over 120 minutes, which will be provided by the 240,000 gallon fire suppression storage tank.

4. The proposed 10-inch water service will provide water supply to the 240,000-gallon water tank located in the north truck court. From there, the tank will then supply the fire suppression loop, which consists of 10-inch diameter C900 DR-18 PVC. The fire riser laterals that lead into the building will then provide water service to the internal fire sprinkler system of the proposed warehouse. Nine fire hydrants have been provided around the warehouse. Post indicator valves will be provided as required by the Town.

5. Where the proposed fire water service will be parallel to the sanitary sewer, a minimum horizontal separation distance of 10 feet (outer-wall to outer-wall) was maintained. Where proposed water line crosses sanitary sewer, a minimum vertical separation distance of 18 inches (outer-wall to outer-wall) was maintained

6. The domestic water service has been designed in accordance with the requirements of the Ten States Recommended Standards for Water Works, latest edition and pipe and appurtenances will conform to AWWA Standard C900, latest revision.

7. Where the proposed domestic water service will be parallel to the sanitary sewer or, a minimum horizontal separation distance of 10 feet (outer-wall to outer-wall) was maintained. Where proposed water line crosses sanitary sewer, a minimum vertical separation distance of 18 inches (outer-wall to outer-wall) was maintained.

**Accordingly, the Proposed Project will not create any significant adverse water or water service impacts.**

Wastewater

The Town Board has evaluated all potential impacts related to the Project and finds that the Project will not result in any significant adverse environmental impacts related to sanitary sewer because:

1. The projected average wastewater generation for the Project is a maximum of 27,450 gallons per day (gpd). The projected peak flow is as follows: (27,450 gpd ÷ 24 hours ÷ 60 minutes) × 4 peak flow factor = 76.25 gpm. No vehicle washing will occur on the Site as part of warehouse operations.

2. All of the existing sanitary sewer infrastructure associated with the old IBM West Campus wastewater treatment plant is proposed to be removed and replaced with a proposed collection system designed to convey wastewater from the proposed warehouse and guardhouses to the Global Foundries Sewer Treatment Plant (STP) via the John Jay Pump Station (located along Route 52). Final connections will be approved by the Dutchess County Department of Health (DCDOH). All sanitary flows will be domestic in nature and void of any industrial solid, hazardous or toxic waste contamination.

3. The proposed collection system has been designed in accordance with the requirements of the New York State Department of Environmental Conservation's (NYSDEC) New York State Design Standards for Intermediate Sized Wastewater Treatment Systems, 2014, and the Ten States Recommended Standards for Wastewater Facilities, latest edition.

4. Where the proposed sanitary sewer gravity main will be parallel to the water main, a minimum horizontal separation of 10 feet (wall-to wall) is maintained. Where the proposed sanitary sewer gravity main will cross the water main or the storm sewer main, a minimum vertical separation of 18 inches (wall-to-wall) is maintained. Where this minimum vertical separation is unattainable, a minimum vertical separation of 6 inches (wall-to-wall) is maintained, and the pipes are to be concrete encased.

5. The peak design flow is approximately 22% of the capacity of the proposed pipe. Given that this is the flattest sloping pipe with the highest design flow, it can be assumed that all other pipes within the project will be capable of conveying the anticipated peak flow rate as well.

6. The project wastewater will flow to the GlobalFoundries Wastewater Treatment Plant (WWTP). The WWTP is located at 2070 State Route 52, Building 325, and discharges into Gildersleeve Brook, a NYSDEC Class C stream (SPDES Permit #NY0005096). According to the Engineer's Report, prepared by Morris Associates Engineering and Surveying Consultants, PLLC, dated June 2016 and revised December 2016, the WWTP has a permitted design flow of 6 million gallons per day (MGD), with an average daily flow rate of approximately 2.62 MGD, and a peak flow rate of approximately 2.89 MGD. The proposed 27,450 gpd will not have an adverse impact on the capacity of Global Foundries WWTP.

7. Prior to being placed into service, the sanitary sewer system shall be tested in accordance with the testing procedures outlined on the project plans. A certification letter shall be provided to the Town of East Fishkill and NYSDEC once testing has been completed.

**Accordingly, the Proposed Project will not create any significant adverse wastewater impacts.**

## 12. Other

No other significant potential impacts were identified as a result of the Proposed Action.

Based on a review of 6NYCRR 617.7, there appear to be no significant adverse environmental impacts.

THIS NEGATIVE DECLARATION WAS AUTHORIZED AT A MEETING OF THE TOWN BOARD OF THE TOWN OF EAST FISHKILL HELD ON DECEMBER 3, 2020.

_____ _____

Chairperson/Designee Date

For Type I Actions and Conditioned Negative Declarations, a Copy of this Notice Sent to:

- Commissioner, Department of Environmental Conservation, 50 Wolf Road, Albany, New York12233-0001
- Appropriate Regional Office of the Department of Environmental Conservation.
- Office of the Chief Executive Officer of the political subdivision in which the action will be principally located.
- Applicant (if any)
- Other involved agencies (if any)

**FINAL AUTHORIZING RESOLUTION**
(Violet Estates Owner LLC/Violet Estates LLC 2020 Project)

A regular meeting of the Dutchess County Industrial Development Agency, having offices at Three Neptune Road, Poughkeepsie, New York, was convened in public session on December 9, 2020 at 8:00 a.m., local time. Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1, as extended, suspending certain requirements of the Open Meetings Law, the meeting was held electronically via webinar with teleconference access made available to the public, instead of a public meeting open for the public to attend in person.

PRESENT: Timothy Dean, Chairman
Mark Doyle, Vice Chairman
Kathleen M. Bauer, Secretary/Treasurer
Alfred D. Torreggiani
Donald R. Sagliano
Ronald J. Piccone, II
Amy L. Bombardieri

ABSENT:

ALSO PRESENT: Sarah Lee, Executive Director
Marilyn Yerks, 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 (Violet Estates Owner LLC/Violet Estates LLC 2020 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 VIOLET ESTATES OWNER LLC AND VIOLET ESTATES 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

DRAFT

**WHEREAS**, the Agency has agreed to 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 (collectively, the "**Financial Assistance**") for the following project consisting of:

(a) the acquisition of an approximately 7.194-acre parcel of land located at 35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6162-10-427650 (the "**Land**"), the demolition of existing structures on the Land, and the construction of (i) two (2) three-story, 14,400 square-foot mixed-use buildings each with seven (7) residential units and approximately 4,000 square feet of commercial space; (ii) one (1) three-story, 12,960 square-foot building with nine (9) residential units; (iii) one (1) three-story, 19,365 square-foot building with eleven (11) residential units and an approximately 1,443 square foot senior center; (iv) one (1) three-story, 25,380 square-foot building with twenty-three (23) residential units; and (v) one (1) three-story, 28,890 square-foot building with twenty-seven (27) residential units (the "**Improvements**"), and the acquisition and equipping of certain equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased and subleased by the Agency to Violet Estates Owner LLC, a Delaware limited liability company (the "**Company**"), and further subleased by the Company to Violet Estates LLC, a Delaware limited liability company (the "**Sublessee**"); and

(b) 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 senior housing community and mixed-use commercial facility (the "**Project**"); and

**WHEREAS**, the Project includes the following, as they relate to the acquisition, construction, improvement, reconstruction, repair, renovation, installation, furnishing, equipping, and/or 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/or renovation of the Facility and installation of the Equipment; and

**WHEREAS**, the Agency by resolution duly adopted on November 12, 2020 (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 and title to the Facility Equipment and the Equipment, and will sublease and lease the Company Facility to the Company for further sublease to the Sublessee, and will lease the Equipment to the Sublessee; and

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**WHEREAS**, the Agency will acquire a leasehold interest in the Land and the Improvements pursuant to a certain Company Lease Agreement, dated as of December 1, 2020, 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 Facility 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 Company Facility to the Company pursuant to a certain Lease and Project Agreement, dated as of December 1, 2020 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 will acquire title to the Equipment pursuant to a certain Equipment Bill of Sale, dated the Closing Date (the "**Equipment Bill of Sale**"), from the Sublessee to the Agency; and

**WHEREAS**, the Agency will lease the Equipment to the Sublessee pursuant to a certain Equipment Lease Agreement, dated as of December 1, 2020 or such other date as the Chairman or Executive Director of the Agency and counsel to the Agency shall agree (the "**Equipment Lease Agreement**"), by and between the Agency and the Sublessee; and

**WHEREAS**, the Sublessee and the Agency will enter into a certain Agency Compliance Agreement, dated as of December 1, 2020, or such other date as may be determined by the Chairman or Executive Director of the Agency and counsel to the Agency (the "**Agency Compliance Agreement**"), whereby the Sublessee will provide certain assurances to the Agency with respect to the Facility; and

**WHEREAS**, the Agency contemplates that it will provide financial assistance to the Company and the Sublessee consistent with the policies of the Agency, in the form of (i) exemptions from sales and use taxes in an amount not to exceed $243,750 in connection with the purchase or lease of equipment, building materials, services or other personal property with the respect to the Facility; (ii) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be $13,500,000 and in any event not to exceed $14,000,000 in connection with the Project Work; and (iii) abatement of real property taxes on the Facility as set forth in the PILOT Schedule attached as Exhibit A hereof; 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**") but has been consented to by the Town of Poughkeepsie Town Board pursuant to its Resolution 7:8 - #7 of 2020 dated July 8, 2020 and by the Hyde Park Central School District pursuant to a Resolution of the Board of Education dated November 12, 2020; and

**WHEREAS**, in compliance with §859-a of the Act, the Agency on December 8, 2020, held a public hearing on the grant of financial assistance as set forth herein following

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publication in the *Poughkeepsie Journal* on November 24, 2020 of a notice of the public hearing; and

**WHEREAS**, the Company and the Sublessee have 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 for further sublease by the Company to the Sublessee.

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

Section 1. [Reserved].

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 December 8, 2020, 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, the leasing of the Company Facility to the Company for further subleasing to the Sublessee, and the leasing of the Equipment to the Sublessee, 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;

(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.

(g) Based upon representations of the Company and the Sublessee and counsel to the Company and the Sublessee, 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

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(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 Company 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; and

(k) The Equipment Lease Agreement will be an effective instrument whereby the Agency leases the Equipment to the Sublessee; and

(l) The Agency Compliance Agreement will be an effective instrument whereby the Sublessee will provide certain assurances to the Agency with respect to the Facility.

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 the personal property described in Exhibit A to the Equipment 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, the Lease Agreement, the Equipment Lease Agreement and the Agency Compliance 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. Recapture Provisions. The Agency has retained certain recapture rights under the terms and conditions of the Lease Agreement and the Equipment Lease Agreement, respectively, 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 5.2 of the Equipment Lease Agreement relating to recapture rights by the Agency against the Sublessee is attached hereto and made a part hereof as Exhibit C.

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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 and the Sublessee in connection with the Project Work in the form of: (i) exemptions from sales and use taxes in an approximate amount not to exceed $243,750 in connection with the purchase or lease of equipment, building materials, services or other personal property with respect to the Facility, (ii) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be $13,500,000 and in any event not to exceed $14,000,000, in connection with the financing of the acquisition, construction, renovation and equipping of the Facility and any future financing, refinancing or permanent financing of the costs of acquiring, constructing, renovating and equipping of the Facility, and (iii) 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).

Section 8. Subject to (i) execution of the Agency Documents by the Company and Sublessee 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 and the Sublessee as the true and lawful agents 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, the Lease Agreement, the Equipment Lease Agreement, the Agency Compliance Agreement (including any Mortgage and accompanying Assignment of Leases and Rents and Consents to Assignment and any other financing documents reasonably approved as to form and substance by the Executive Director and counsel to the Agency), 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 and Agency 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



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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 [ ] seconded by [ ], discussed and adopted with the following members voting:

| | |
|---|---|
| Timothy Dean, Chairman | VOTING |
| Mark Doyle, Vice Chairman | VOTING |
| Kathleen M. Bauer, Secretary/Treasurer | VOTING |
| Alfred D. Torreggiani | VOTING |
| Donald R. Sagliano | VOTING |
| Ronald J. Piccone, II | VOTING |
| Amy L. Bombardieri | VOTING |

Adopted: December 9, 2020

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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), 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 PILOTs 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 Hyde Park Central School District's Apportioned Share of the Annual PILOT due on October 1 of each year.

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

"Special Districts PILOTs" shall mean the PILOTs for the Fairview Fire District, the Townwide Drain Improvement District, the Consolidated Light District, the Poughkeepsie Library District, the Town-Wide Water Improvement District, and the 4th Ward Sewer Improvement District.

"PILOT Year" shall mean the first tax year following the Taxable Status Date after the Completion Date and each year thereafter for a total of fifteen (15) years in accordance with the Schedule of PILOT Payments. For example, if the Completion Date was prior to March 1, 2023, the Initial PILOT Year would include the

2024/2025 School District PILOT, the
2025 County PILOT, the
2025 Town PILOT, the
2025 Fairview Fire District PILOT
2025 Townwide Drain Improvement District PILOT, the

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2025 Consolidated Light District PILOT, the
2025 Poughkeepsie Library District PILOT, the
2025 Town-Wide Water Improvement District PILOT, and the
2025 4th Ward Sewer Improvement District PILOT (collectively the "**Initial PILOT Year**") shall become due, and annually thereafter for a total of fifteen (15) years in accordance with the Schedule of PILOT Payments.

"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 $202,500 if the Facility and Additional Facilities were owned by the Company and the Agency had no ownership interest. If the assessed value exceeds $202,500, 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** | **County PILOT and Town PILOT Exemption Percentage** | **School District PILOT Exemption Percentage** |
|---|---|---|
| 1 | 50% | 90% |
| 2 | 50% | 90% |
| 3 | 50% | 85% |
| 4 | 40% | 85% |
| 5 | 30% | 80% |
| 6 | 20% | 80% |
| 7 | 10% | 70% |
| 8 | 10% | 65% |
| 9 | 10% | 60% |
| 10 | 5% | 55% |
| 11 | 0% | 50% |
| 12 | 0% | 45% |
| 13 | 0% | 40% |
| 14 | 0% | 35% |
| 15 | 0% | 30% |
| thereafter | 0% | 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.

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**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.

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# 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 Company 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 (1st) or second (2nd) 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 (3rd) 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 (4th) 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 (5th) 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 (6th) 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 (7th) 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;

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(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; and

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

(i) the Mortgage Recording Tax Exemption; 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 Company 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.

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(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 (e) 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 and/or the Sublessee; or

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

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

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event

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(as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by governmental authority of all or part of the Company Facility, or (iii) the inability or failure of the Company after the Company Facility shall have been destroyed or damaged in whole or in part (such occurrence a "**Loss Event**") to rebuild, repair, restore or replace the Company 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 Company Facility or part thereof.

(f) The Company 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 Company 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.

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

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred 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.

(i) 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.

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# EXHIBIT C

EXCERPT FROM EQUIPMENT LEASE AGREEMENT

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, 2022], 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) 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 that the Sublessee receives Sales Tax Savings in connection with the Project Work in violation of any of the provisions of Section 5.1 hereof or Section 875 of the GML; provided, however, that the foregoing shall constitute a Recapture Event with respect to such unauthorized Sales Tax Savings only. It is further provided that failure to repay such authorized Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits.

(d) 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).

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(e) 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.

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Draft Dated 12/03/2020

Transcript Document No. 1

VIOLET ESTATES OWNER LLC

and

DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

(DUTCHESS COUNTY, NEW YORK)

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# COMPANY LEASE AGREEMENT

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Dated as of [December 1, 2020]

Dutchess County Industrial Development Agency
(Violet Estates Owner LLC/Violet Estates LLC 2020 Facility)

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THIS COMPANY LEASE AGREEMENT, dated as of [December 1, 2020] (the "**Company Lease**"), is by and between VIOLET ESTATES OWNER 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 c/o Reynolds Asset Management at 188 E. Franklin Turnpike, Ho Ho Kus, New Jersey 07423 (the "**Company**"), and the DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 3 Neptune Road, Poughkeepsie, New York 12601 (the "**Agency**").

R E C I T A L S

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; and

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the "**State**"); 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 such term is defined in the hereinafter defined Lease Agreement) and the leasing of the Facility defined below; and

WHEREAS, the Agency has agreed to assist in (a) the acquisition of an approximately 7.194-acre parcel of land located at 35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6162-10-427650 (the "**Land**"), the demolition of existing structures on the Land, and the construction of (i) two (2) three-story, 14,400 square-foot mixed-use buildings each with seven (7) residential units and approximately 4,000 square feet of commercial space; (ii) one (1) three-story, 12,960 square-foot building with nine (9) residential units; (iii) one (1) three-story, 19,365 square-foot building with eleven (11) residential units and an approximately 1,443 square foot senior center; (iv) one (1) three-story, 25,380 square-foot building with twenty-three (23) residential units; and (v) one (1) three-story, 28,890 square-foot building with twenty-seven (27) residential units (the "**Improvements**"), and the acquisition and equipping of certain equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased and subleased by the Agency to the Company and further subleased by the Company to Violet Estates LLC, a Delaware limited liability company (the "**Sublessee**"); and (b) 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 senior housing community and mixed-use commercial facility (the "**Project**"); and

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

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WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to the terms of this Company Lease Agreement; and

WHEREAS, the Agency has agreed to lease and sublease the Company Facility to the Company, pursuant to a certain Lease and Project Agreement, dated as of [December 1, 2020] (the "**Lease Agreement**"), by and between the Agency, as sublessor and lessor, and the Company, as sublessee and lessee; and

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

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties mutually agree as follows:

The Company hereby leases the Land (described in Exhibit A attached hereto) and the Improvements to the Agency for the annual rent of $1.00 for a term commencing on the Closing Date and terminating at 11:59 p.m. on December 31, [2039] (the "**Lease Term**").

This Company Lease shall terminate on the earliest of (i) the expiration of the Lease Term and (ii) the termination of the Lease Agreement pursuant to Article X or Article XI thereof.

The Company agrees to keep, perform and observe, from and after the date hereof, all of the terms, covenants, conditions, obligations and other provisions contained in the Lease Agreement. The Company agrees further that it shall indemnify, defend and hold harmless the Agency from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings and attorneys' fees arising out of or in connection with the Lease Agreement or this Company Lease and shall defend the Agency in any suit, action or proceeding, including appeals, for personal injury to, or death of, any person or persons, or for any loss of or damage to property of persons, or for other claims arising out of the acts or omissions of the Company or any of its officers, directors, agents or employees. The foregoing indemnitees shall include all expenses incurred by the Agency, including, without limitation, reasonable attorneys' fees to enforce this Company Lease, the Lease Agreement or any other document to which the Company and the Agency are parties, and with respect to third party claims.

The Agency, for itself and its successors and assigns, hereby agrees to lease the Land and the Improvements from the Company on the terms and conditions contained herein.

The Company and the Agency acknowledge that the Agency will lease and sublease the Company Facility to the Company pursuant to the Lease Agreement. The Company and the Agency agree that while this Company Lease and the Lease Agreement remain in full force and effect, (i) there shall be no merger of the Company's fee simple absolute estate in the Land and the Improvements and the Company's subleasehold estate in the Land and Improvements created under the Lease Agreement; and (ii) the Agency shall continue to have, use and enjoy the leasehold estate in the Land and the Improvements created under this Company Lease.

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The Company and the Agency acknowledge that in order to accomplish certain financing arrangements for the Company Facility, the parties may be required to assign and mortgage, for collateral purposes, each of their respective rights, titles and interests held pursuant to this Company Lease, the Lease Agreement and other interests that either may hold. Each of the Company and the Agency hereby consents to all such assignments, mortgages and other collateral financing requirements that may arise in connection with the financing or refinancing of the Company Facility.

This Company Lease and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage which may be granted by the Agency and the Company on the Company Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

This Company Lease shall not be recorded by either party hereto. The Agency shall cause a memorandum of lease with respect hereto to be recorded in the office of the Dutchess County Clerk.

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
3 Neptune Road
Poughkeepsie, New York 12601
Attention: Executive Director

With a copy to:

Cappillino, Rothschild & Egan LLP
Seven Broad Street
P.O. Box 390
Pawling, New York 12564-0390
Attention: Donald Cappillino, Esq.

To the Company:

Violet Estates Owner LLC
c/o Reynolds Asset Management
188 E. Franklin Turnpike
Ho Ho Kus, New Jersey 07423
Attention: [ ]

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With a copy to:

Corbally, Gartland & Rappleyea LLP
35 Market Street
Poughkeepsie, New York 12601
Attention: Patrick Gartland, 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.

Copies of all notices given either to the Agency or to the Company shall also be sent to any Lender, if such Lender shall have delivered written instructions to the Agency and the Company with the address of such Lender.

If a party hereto determines in its reasonable discretion that any further instruments or other actions are necessary or desirable to carry out the terms of this Company Lease, the other party shall, at the Company's sole cost and expense, execute and deliver all such instruments and take all such actions.

Capitalized terms used in this Company Lease and not otherwise defined in this Company Lease shall have the meanings assigned thereto in Schedule A to the Lease Agreement.

This Company Lease 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.

This Company Lease may not be amended, changed, modified or altered except in writing executed by the parties hereto.

This Company Lease shall be governed exclusively by the applicable laws of the State of New York, without regard or reference to its conflict of laws principles.

This Company Lease and the conveyance made hereby shall be subject to the trust fund provisions of Section 13 of the Lien Law of the State.

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

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IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

**VIOLET ESTATES OWNER LLC**
a Delaware limited liability company

By:_____
Name:
Title:

STATE OF _____ )
: SS.:
COUNTY OF _____ )

On the ___ day of [December] in the year [2020], before me, the undersigned, personally appeared **[ ]** 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

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**DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By: _____
Name: Sarah Lee
Title: Executive Director

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

On the ___ day of [December] in the year [2020], 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

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EXHIBIT A

Legal Description of Real Property

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Draft Dated 12/03/2020

Transcript Document No. 2

DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

(DUTCHESS COUNTY, NEW YORK)

and

VIOLET ESTATES OWNER LLC

---

# LEASE AND PROJECT AGREEMENT

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Dated as of [December 1, 2020]

Dutchess County Industrial Development Agency
(Violet Estates Owner LLC/Violet Estates LLC 2020 Facility)

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THIS LEASE AND PROJECT AGREEMENT, dated as of [December 1, 2020] (this "**Lease Agreement**"), is between the DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 3 Neptune Road, Poughkeepsie, New York 12601 (the "**Agency**"), and VIOLET ESTATES OWNER 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 c/o Reynolds Asset Management at 188 E. Franklin Turnpike, Ho Ho Kus, New Jersey 07423 (the "**Company**").

R E C I T A L S

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 such term is defined herein) and the leasing of the Facility defined below; and

WHEREAS, the Project shall consist of (a) the acquisition of an approximately 7.194-acre parcel of land located at 35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6162-10-427650 (the "**Land**"), the demolition of existing structures on the Land, and the construction of (i) two (2) three-story, 14,400 square-foot mixed-use buildings each with seven (7) residential units and approximately 4,000 square feet of commercial space; (ii) one (1) three-story, 12,960 square-foot building with nine (9) residential units; (iii) one (1) three-story, 19,365 square-foot building with eleven (11) residential units and an approximately 1,443 square foot senior center; (iv) one (1) three-story, 25,380 square-foot building with twenty-three (23) residential units; and (v) one (1) three-story, 28,890 square-foot building with twenty-seven (27) residential units (the "**Improvements**"), and the acquisition and equipping of certain equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased and subleased by the Agency to the Company

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and further subleased by the Company to Violet Estates LLC, a Delaware limited liability company (the "**Sublessee**"); and (b) 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 senior housing community and mixed-use commercial facility (the "**Project**"); and

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

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to the terms of a certain Company Lease Agreement, dated as of [December 1, 2020] (the "**Company Lease**"), by and between the Company and the Agency; and

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

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

WHEREAS, the Company has agreed to sub-sublease the Company Facility pursuant to the terms of a certain [Sublease Agreement], dated as of [____ __], 202[_] (the "**Sublease Agreement**"), by and between the Company, as sublessor, and the Sublessee, as 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 pursuant to the terms of a certain Equipment Lease Agreement, dated as of [December 1, 2020] (the "**Equipment Lease Agreement**"), by and between the Agency and the Sublessee.

AGREEMENT

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

ARTICLE I
DEFINITIONS

All capitalized terms used in this Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

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ARTICLE II
REPRESENTATIONS AND COVENANTS

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

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

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

(c) By resolution dated November 12, 2020, based upon the review by the Agency of the materials submitted and the representations made by the Company and the Sublessee relating to the Facility, the Agency acknowledged that the Town of Poughkeepsie Planning Board (the "**Planning Board**"), serving as Lead Agency, had on March 19, 2015, as reaffirmed on December 13, 2017, adopted a Negative Declaration and Determination of Non-Significance (the "**Negative Declaration**"), determining that the proposed construction of the Project would not result in any significant adverse environmental impacts, and the Agency adopted the reasoning set forth in the Negative Declaration and determined that the Project would not have a "significant impact" or "significant effect" on the environment as defined under the SEQR Act.

(d) Neither the execution and 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, the Agency's Certificate of Establishment or By-Laws, as amended, or any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument, except for Permitted Encumbrances.

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

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

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

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

(a) The Company is a 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 Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

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

(c) The Company Facility, the Project Work and the design, and operation of the Company Facility will conform with all applicable zoning, planning, building and Environmental Laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Company Facility. Under penalty of perjury, the Company certifies that it is in substantial compliance with all local, state, and federal tax, worker protection and environmental laws, rules and regulations.

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

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

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

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(g) The Company agrees to take any actions reasonably deemed necessary by the Agency, or its Chairman, Vice Chairman, Executive Director, or any member or officer of the Agency or counsel to the Agency, in order to ensure compliance with Sections 2.2(e) and (f) and 9.3 of this Lease Agreement provided that the Company receives duly acknowledged written confirmation from the Agency setting forth the reason(s) for said action(s). Without limiting the generality of the foregoing, the Company will provide the Agency with any and all information and materials describing proposed Facility occupants as necessary.

(h) The Company will cause future tenants of the Company Facility (other than the Sublessee), if any, to execute and deliver to the Agency a Tenant Agency Compliance Agreement, substantially in the form attached hereto as Exhibit I, prior to the occupancy of the Company Facility, or a portion thereof, by such tenant, in accordance with the provisions of Section 9.3 hereof.

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

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

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

(l) 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 FACILITY SITE; PROJECT WORK AND COMPLETION

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

Section 3.2 Title Report and Survey. The Company has obtained and delivered to the Agency (i) a title report (in form and substance acceptable to the Agency) reflecting all matters of

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record with respect to the Land and existing Improvements, including municipal searches and (ii) a current or updated survey of each of the Land and the existing Improvements certified to the Agency.

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

Section 3.4 Project Work.

(a) The Company agrees that, on behalf of the Agency, it will complete the Project Work in accordance with the Plans and Specifications.

(b) The Company may revise the Plans and Specifications from time to time without the consent or approval of the Agency; provided that the Company Facility shall retain its overall configuration and intended purposes and shall remain a "project" as defined in the Act.

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

(d) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 3.4.

(e) The Company, as agent for the Agency, shall comply in all material respects with all provisions of the Labor Law of the State applicable to the completion of the Project Work and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions. The provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 3.5 Identification of Facility Equipment. All Facility Equipment which is or may become the Property of the Agency pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency. All Property of whatever nature affixed or attached to the Land or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were installed by the Company and title thereto was retained by the Company as provided in

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Section 6.2 of this Lease Agreement and such Property was properly identified by such appropriate records as were approved by the Agency.

Section 3.6 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Agency (i) a certificate signed by an Authorized Representative of the Company in the form set forth in Exhibit J attached hereto, together with all attachments required thereunder stating (a) that the Project Work has been completed in accordance with the Plans and Specifications therefor, and (b) that payment for all labor, services, materials and supplies used in such Project Work has been made or provided for; (ii) the Final Project Cost Budget, which budget will include a comparison with the project cost budget information listed in the Project Application Information and shall include all costs paid or incurred by the Company and the Sublessee in connection with the Facility, and (iii) such other certificates and information as may be reasonably satisfactory to the Agency. The Company shall not be entitled to any refund or credit of the Agency's fee if the Final Project Cost Budget is lower than provided in the Project Application Information. The Company agrees that the Completion Date shall be no later than [July 31, 2022].

Section 3.7 Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Company Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman, surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's sole cost and expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Net Proceeds of any recovery from a contractor or subcontractor or materialman or other person shall be paid to the Company.

## ARTICLE IV
## LEASE OF COMPANY FACILITY RENTAL PROVISIONS

Section 4.1 Lease of Company Facility. The Agency hereby subleases and leases the Company Facility, consisting of the Land as more particularly described in Exhibit A attached hereto and the Improvements and the Facility Equipment as more particularly described in Exhibit B attached hereto, to the Company and the Company hereby takes the Company Facility from the Agency upon the terms and conditions of this Lease Agreement.

Section 4.2 Duration of Lease Term; Quiet Enjoyment.

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

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(b) Except as provided in Sections 10.2 and 11.1 hereof, the estate created hereby shall terminate at 11:58 p.m. on [December 31, 2039] (the "**Lease Term**").

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

Section 4.3 Rents and Other Amounts Payable.

(a) The Company shall pay basic rent for the Company Facility as follows: One Dollar ($1.00) per year commencing on the Closing Date and on each and every January 1 thereafter during the term of this Lease Agreement. In addition, the Company shall pay to the Agency an annual compliance fee of $500.00 on or before January 1 of each year commencing January 1, [2021] and continuing through the Lease Term.

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

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

Section 4.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 4.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein, shall be general obligations of the Company, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required hereunder, or (ii) fail to observe any of its other covenants or agreements in this Lease Agreement.

Section 4.5 No Warranty of Condition or Suitability by Agency. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE COMPANY

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FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE COMPANY FACILITY, OR THE SUITABILITY OF THE COMPANY FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT WORK. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF, IS SATISFIED THAT THE COMPANY FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE COMPANY FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

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

Section 5.1 PILOT Payments.

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

(b) After the effective date of this Lease Agreement and until the provisions of paragraph 5.1(c) become effective, the Company shall pay, as payments in lieu of taxes and assessments, one hundred percent (100%) of the taxes and assessments that would be levied upon the Company Facility by the respective Taxing Authorities if the Company Facility were owned by the Company exclusive of the Agency's leasehold interest.

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(c) In each tax year during the term of this Lease Agreement, commencing with the first tax year following the Completion Date, the Company shall pay, as PILOT Payments, the amounts calculated as set forth on Exhibit C attached hereto and made a part hereof.

(d) The Company shall pay, or cause to be paid, the amounts set forth in subsections (a), (b) and (c) above, as applicable, after receipt of tax bills from the Agency or the Taxing Authorities, as the case may be. Failure to receive a tax bill shall not relieve the Company of its obligation to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate tax bill, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided therein. PILOT Payments shall be made directly to the Agency. PILOT Payments made after the due date(s) as set forth in the applicable tax bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the GML, including Section 874(5) thereof, which currently provides for an initial penalty of five percent (5%) of the amount due and an additional penalty of one percent (1%) per month on payments more than one (1) month delinquent.

(e) During the Lease Term, the Company shall continue to pay all special ad valorem levies, special assessments, and service charges levied against the Company Facility for special improvements or special district improvements.

(f) In the event that any structural addition shall be made to the building or buildings included in the Company Facility subsequent to the Completion Date, or any additional building or improvement shall be constructed on the Land (such structural additions, buildings and improvements being referred to hereinafter as "**Additional Facilities**"), the Company agrees to make additional payments in lieu of taxes to the Agency in amounts as set forth in Exhibit C. All other provisions of this Section 5.1 shall apply to this obligation for additional payments.

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

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

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

(j) As long as this Lease Agreement is in effect, the Agency and the Company agree that (i) the Company shall be deemed to be the owner of the Company Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, administrative or judicial review of an assessment of the real estate with respect to the Company Facility and of the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Agency, at the request of the Company, shall request the Assessor of the Town of Poughkeepsie, or any other assessor having jurisdiction to assess the Company Facility, to take into consideration the value of surrounding properties of like character when assessing the Company Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Company Facility and the Additional Facilities is reduced as a result of any such administrative or judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Company Facility and the Additional Facilities exclusive of the Agency's leasehold interest therein, such complaining party shall not be entitled to receive a refund or refunds of the PILOT Payments paid pursuant to this Lease Agreement and the PILOT Payments set forth on Exhibit C hereto shall not be reduced. In that event, such complaining party shall be entitled to receive a credit against future PILOT Payments to be paid pursuant to this Lease Agreement, as and when collected by the Agency or the respective Taxing Authorities (as the case may be), in an amount equal to any refund that such complaining party would be entitled to receive if such complaining party were the owner of the Company Facility and the Additional Facilities exclusive of the Agency's leasehold interest therein; provided, however, that the Agency shall have no obligation to provide a credit against PILOT Payments which it has remitted to any of the respective Taxing Authorities before the date the Agency receives written notice from the complaining party that it seeks a credit. In no event shall the Agency be required to remit to the Company or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Company Facility (or any part thereof) due to a certiorari review. If the Company receives a reduction in assessment in the last year of the Lease Agreement after it has made its final payments in lieu of taxes, the Company acknowledges that it shall look solely to the Taxing Authorities for repayment or for a credit against the first payment(s) of Taxes on the Company Facility which will be due after the Company Facility is returned to the tax rolls. The Company hereby agrees that it will notify the Agency if the Company shall have requested a reassessment of the Company Facility or a reduction in the taxes on the Company Facility or shall have instituted any tax certiorari proceedings with respect to the Company Facility. The Company shall deliver to the Agency copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company in

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connection with any reassessment of the Company Facility, reduction of taxes with respect to the Company Facility or tax certiorari proceedings with respect to the Company Facility.

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

Section 5.2 Sales Tax Exemption.

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

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

(c) Scope of Authorization of Sales Tax Exemption. The Agency hereby authorizes the Company, subject to the terms and conditions of this Lease Agreement, to act as its agent in connection with the Company Facility for the purpose of effecting purchases and leases of Eligible Items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency's authorization with respect to such Sales Tax Exemption provided to the Company and its Agents pursuant to this 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

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the Closing Date and expiring upon the earliest of (A) the termination of this Lease Agreement, (B) the Completion Date, (C) failure of the Company to file Form ST-340, as described in Section 5.2(g) below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 or (E) the date upon which the Company received the Maximum Company Sales Tax Savings Amount.

(ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this 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 Lease Agreement.

(iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for use only by the Company or 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 Company or the Sublessee), it being the intention of the Agency and the Company that the Sales Tax Exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Company at the Company Facility.

(v) The Sales Tax Exemption shall not be used for any Ineligible Item.

(vi) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Company and the Sublessee, without the prior written consent of the Agency.

(vii) By execution by the Company of this Lease Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.

(viii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated.

(ix) The Company agrees that the aggregate amount of Company Sales Tax Savings realized by the Company and by all Agents of the Company, if any, in connection with the Company Facility shall not exceed in the aggregate the Maximum Company Sales Tax Savings Amount.

(d) Procedures for Appointing Agents. If the Company desires to seek the appointment of the Sublessee, or 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 Lease Agreement, it must complete the following steps:

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(i) For each Agent, the Company 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 E. 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 Company. The Company must also provide a copy of an executed Sales Tax Agent Authorization Letter together with a copy of this Lease Agreement to the Agent within five (5) Business Days after receipt thereof by the Company.

(iii) The Company shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Lease Agreement.

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

(f) Form ST-123 Requirement. As an agent of the Agency, the Company agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Agent, as agent for the Agency, for the Project Work. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Company Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state, "I, [Company/Agent], certify that I am duly appointed agent of the Dutchess County Industrial Development Agency and that I am purchasing the tangible

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personal property or services for use in the Violet Estates Owner LLC/Violet Estates LLC 2020 Project located at 35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6162-10-427650, IDA Project Number [1302____]." The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) 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 Company Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

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

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

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

(i) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of GML Sections 875(1) and (3) (the "**Special Provisions**"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Lease Agreement and the Special Provisions, the Special Provisions shall control.

(ii) The Company acknowledges and agrees that pursuant to GML Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company, State Sales Tax Savings taken or purported to be taken by the Company, any Agent or any other person or entity acting on behalf of the Company to which the Company is not entitled

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or which are in excess of the Maximum Company Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company under Article 28 of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

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

(k) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company under this Section 5.2.

Section 5.3 Mortgage Recording Tax Exemption. Section 874 of the Act exempts the Agency from paying certain mortgage recording taxes except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the Tax Law. The Agency hereby grants to the Company exemption from mortgage recording taxes for one or more Mortgages on the Company Facility securing an aggregate principal amount not to exceed $14,000,000, 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 Company Facility (the "**Mortgage Recording Tax Exemption**"). The Company represents and warrants (1) that the real property secured by the Mortgage is located within a transportation district referenced in Section 253(2)(a) of the Tax Law, and (2) that upon recording the Mortgage, the Company shall pay the mortgage recording tax allocated to transportation districts referenced in Section 253(a)(2) of the Tax Law.

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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 Company 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 (1st) or second (2nd) 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 (3rd) 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 (4th) 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 (5th) 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 (6th) 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 (7th) 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

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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 ($9^{th}$) 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, thirty percent (30%) of the Recaptured Benefits; and

(x) If there shall occur a Recapture Event during the tenth ($10^{th}$) 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, twenty percent (20%) of the Recaptured Benefits; and

(xi) If there shall occur a Recapture Event during the eleventh ($11^{th}$) 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, ten percent (10%) of the Recaptured Benefits; and

(xii) If there shall occur a Recapture Event during the twelfth ($12^{th}$) 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; and

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

(i) the Mortgage Recording Tax Exemption; 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 Company 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:

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(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 (e) 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 and/or the Sublessee; or

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

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

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event (as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by

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governmental authority of all or part of the Company Facility, or (iii) the inability or failure of the Company after the Company Facility shall have been destroyed or damaged in whole or in part (such occurrence a "**Loss Event**") to rebuild, repair, restore or replace the Company 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 Company Facility or part thereof.

(f) The Company 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 Company 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.

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

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred 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.

(i) 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.

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## ARTICLE VI
## MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Company Facility by Company.

(a) The Company shall not abandon the Company Facility or cause or permit any waste to the Improvements. During the Lease Term, the Company shall not remove any material part of the Company Facility outside of the jurisdiction of the Agency and shall (i) keep the Company Facility or cause the Company Facility to be kept in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Company Facility; and (iii) operate the Company Facility in a sound and economic manner.

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

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 3.5 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Company Facility (which may be attached or affixed to the Company Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Company Facility, so long as such additional property is properly identified by such appropriate records, including computerized records, as approved by the Agency. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Company 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 Company Facility or impair the overall operating efficiency of the Company Facility for the purposes for which it is intended, and provided further, that if any damage to the Company Facility is occasioned by such removal, the Company agrees promptly to repair or cause to be repaired such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges.

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

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governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the Company Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings and (ii) the Company shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency.

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

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

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

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the greater of $1,000,000 or the amount as may be required by any Lender. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

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

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

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

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

(ii) Comprehensive general liability providing coverage for:

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

Such insurance shall have a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

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

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

(e) A policy or policies of flood insurance in an amount not less than the greater of $1,000,000 or the amount that may be required by any Lender or the maximum amount of flood

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insurance available with respect to the Company Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Agency that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

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

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall 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(a) and (e) 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 of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days' prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Section 6.4(d)(ii), (iii) and (iv) shall name the Agency and the Company as additional insureds. The Agency acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Company to any Lender pursuant to the Mortgage, and the Agency consents thereto. The Agency hereby acknowledges that upon request of any Lender, the Company will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under any Mortgage) to any Lender the policies of insurance required under Section 6.4(a), so and in such manner and form that any Lender shall at all times, upon such request and until the payment in full of any Loan, have and hold said policies and the Net Proceeds thereof as collateral and further security under any Mortgage for the payment of any Loan. The policies required under Section 6.4(a) shall contain appropriate waivers of subrogation.

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

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

Section 6.7 Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails, beyond the expiration of any applicable notice and cure periods, (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, PILOT Payment, assessment or other governmental charge required to be paid by Section 6.3 hereof (unless contested in accordance with the provisions of Section 6.3), (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Company Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Company Facility or any part thereof (unless contested in accordance with the provisions of Section 8.8(b) hereof), or (v) to pay any other amount or perform any act required to be paid or performed by the Company hereunder, the Agency may pay or cause to be paid such tax, PILOT Payment, assessment or other governmental charge, premium for such insurance or any such other payment, or may perform any such act. No such payment shall be made or act performed by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency, and in the case of any tax, assessment or governmental charge or the amounts specified in clauses (i) and (iv) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Lease Agreement, unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Agency for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon, from the date of payment of such amount, expense or cost by the Agency at a rate equal to two percent (2%) plus the Prime Rate, but in no event higher than the maximum lawful prevailing rate.

## ARTICLE VII
## DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Company Facility.

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

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement, including, without limitation, the PILOT

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Payments (whether or not the Company Facility is replaced, repaired, rebuilt, restored or relocated);

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

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

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

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

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

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

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

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

(c) All such repair, replacement, rebuilding, restoration or relocation of the Company Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts and shall automatically become a part of the Company Facility as if the same were specifically provided herein.

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

(e) If the Company shall not repair, replace, rebuild, restore or relocate the Company Facility, it shall be deemed to have exercised its option to terminate this Lease Agreement pursuant

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to Section 11.1 hereof. Any Net Proceeds derived from insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof and the balance shall be delivered to the Company. If an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

Section 7.2 Condemnation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE VIII
## SPECIAL COVENANTS

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

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company), and employees (the "**Indemnified Parties**") shall not be liable for and

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agrees to protect, defend, indemnify, save, 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 Company Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Company Facility or the Land, (ii) the Project Work and the Agency's acquisition, owning, leasing and subleasing of the Company Facility, including, without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 5.2 of this 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 Company Facility, (iv) the Project Work or the operation or use of the Company Facility in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production or Disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, except in compliance with all applicable Environmental Laws, (v) the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance or waste on, at or from the Company 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 Company Facility, required by any Environmental Law, (vii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the Project Work, the condition of the Company Facility or the ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law, (viii) a violation of any applicable Environmental Law, (ix) non-compliance with any Environmental Permit, (x) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company in this Lease Agreement, or (xi) the costs of any required or necessary investigation, assessment, testing, repair, cleanup, or detoxification of the Company Facility and the preparation of any closure or other required plans; provided that any such losses, damages, liabilities or expenses of the Agency are not incurred on account of and do not result from the gross negligence or intentional or willful wrongdoing of the Indemnified Parties. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of any of the Indemnified Parties, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon

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the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, the payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Indemnified Parties, relating to the enforcement of the provisions herein specified. The liability of the Company to the Agency hereunder shall in no way be limited, abridged, impaired or otherwise affected by (i) any amendment or modification of any of the Transaction Documents by or for the benefit of the Agency, the Company or any subsequent owners or users of the Company Facility, (ii) any extensions of time for payment or performance required by any of the Transaction Documents, (iii) the release of the Company or any other person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Transaction Documents by operation of law, either by the Agency's voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Transaction Documents, (v) any exculpatory provision contained in any of the Transaction Documents limiting the Agency's recourse to any other security or limiting the Agency's rights to a deficiency judgment against the Company, (vi) any investigation or inquiry conducted by or on the behalf of the Agency or any information which the Agency may have or obtain with respect to the condition of the Environment at, or ecological condition of, the Company Facility, (vii) the sale, assignment or foreclosure of any mortgage relating to all or any part of the Company Facility, but only with respect to a Release that has occurred prior to any such event, (viii) the sale, assignment, subleasing, transfer or conveyance of all or part of the Land or the Company Facility or the Company's interests and rights in, to, and under the Lease Agreement or the termination of the Lease Agreement, but only with respect to a Release that has occurred prior to any such event, (ix) the death or legal incapacity of the Company, (x) the release or discharge, in whole or in part, of the Company in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, or (xi) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Company under the Lease Agreement, or any other Transaction Document.

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

Section 8.3 Company to Maintain Its Existence. The Company covenants and agrees that at all times during the Lease Term, it will (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Lease Agreement, (iv) not consolidate with or merge into another corporation or permit one

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or more corporations to consolidate with or merge into it, and (v) not change more than 49% of the ownership and control of the Company or sell or transfer more than 49% of the equity interests in the Company, 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 Company throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 8.5 Agreement to File Annual Statements and Provide Information. The Company shall file with the NYSDTF an annual statement of the value of all sales and use tax exemptions claimed in connection with the Company Facility in compliance with Sections 874(8) of the GML as provided in Section 5.2(g) hereof. The Company shall submit a copy of such annual statement to the Agency at the time of filing with NYSDTF. The Company shall also provide the Agency with the information necessary for the Agency to comply with Section 874(9) of the GML. Annually, the Company shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Company Facility as a result of the Agency's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained. The Company further agrees to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency. The Company shall cause any and all sublessees at the Company Facility to comply with the requirements of this Section 8.5 by requiring each such sublessee to enter into a Tenant Agency Compliance Agreement.

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

Section 8.7 Compliance with Orders, Ordinances, Etc.

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

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(b) Notwithstanding the provisions of subsection (a) above, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by failure to comply with such requirement or requirements, the Company Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be satisfactory to the Agency. If at any time the then existing use or occupancy of the Company Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Company shall use its best efforts not to cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency.

Section 8.8 Discharge of Liens and Encumbrances.

(a) The Company, throughout the Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Company Facility 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 Company Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) above, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company in writing that by nonpayment of any such item or items, the Company Facility or any part thereof may be subject to loss or forfeiture. In the event of such notice the Company shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Agency, thereby causing such Lien to be removed, or by taking such other actions as may be satisfactory to the Agency to protect its interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the filing or perfection thereof.

Section 8.9 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Company Facility and to any investment credit with respect to any part of the Company Facility.

Section 8.10 Employment Opportunities; Notice of Jobs. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which the Company is a party, cause any new employment opportunities created in connection with the Company 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 Company Facility is located (collectively, the "**Referral Agencies**"). The Company agrees to comply with the Agency's "Local Workforce Utilization Policy" a copy of which is attached hereto as Exhibit L and made a part hereof. The Company also agrees, and shall cause any and all sublessees to agree, that they will, where

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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 8.11 Employment at the Company Facility. The Company hereby agrees to create and maintain at all times or cause the Sublessee to create and maintain at all times at the Company Facility: [three (3)] full time equivalent employees as of [December 31, 2024] and thereafter throughout the Lease Term, calculated on the basis of 35 hours per week who are employees of the Company or any subsidiary or affiliates of the Company, or any consultants, contractors or subcontractors of the Company, or any subsidiary or affiliates of the Company, whose place of employment or workplace is located at the Company Facility (including the full time equivalent employees of all tenants at the Company Facility) ("**FTE**"). It is further provided that the Company may not actually provide the FTEs at the Company Facility, but rather shall sublease the Company Facility to the Sublessee, and the FTE jobs created and maintained by the Sublessee at the Company Facility shall satisfy the requirement above. The Company's obligation with regard to creating or causing to be maintained FTEs includes (a) using all reasonable efforts to lease up the Company Facility, and (b) including provisions in all subleases requiring any tenant to comply with the provisions of the Lease Agreement applicable to them.

Section 8.12 Annual Compliance Certificate. The Company shall deliver to the Agency each year no later than January 15th, a certificate signed by an Authorized Representative of the Company in the form attached hereto as Exhibit K, together with all attachments referenced therein.

## ARTICLE IX
## RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

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

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

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

(c) No conveyance of any part of, or interest in, the Land effected under the provisions of this Section 9.l shall entitle the Company to any abatement or diminution of the rents payable by it under this Lease Agreement or any abatement or diminution of the PILOT Payments.

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Section 9.2 Removal of Facility 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 Facility Equipment. In any instance where the Company determines that any item of Facility Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such items from the Company 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 Company Facility for the purpose for which it is intended or change the nature of the Company Facility so that it does not constitute a "project" under the Act.

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

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

Section 9.3 Assignment and Subleasing.

(a) Except pursuant to the Sublease Agreement, this Lease Agreement may not be assigned, in whole or in part, and the Company Facility may not be subleased, in whole or in part, without the prior written consent of the Agency, in each instance, which consent shall not be unreasonably withheld or delayed, but shall be subject to the dates of the Agency's board meetings, and which consent may be fully and effectively given by the execution and delivery of a Tenant Agency Compliance Agreement by an Authorized Representative of the Agency in substantially the form attached hereto as Exhibit I. Any assignment or sublease shall be on the following conditions, as of the time of such assignment or sublease:

(i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder unless the Agency consents thereto, 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 (except in the case of a true sublessee in the ordinary course of business) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

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

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

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

(vi) any sublessee will execute and deliver a Tenant Agency Compliance Agreement, satisfactory to the Agency in substantially the form attached hereto as Exhibit I;

(b) If the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 9.3, the Company at its sole cost and expense shall furnish the Agency with opinions, 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) In accordance with Section 862(1) of the Act, the Company Facility shall not be occupied by a sublessee whose tenancy would result in the removal of a facility or plant of the proposed sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

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

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

Section 9.4 Merger of Agency.

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

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

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hereof. The Agency promptly shall furnish such additional information with respect to any such transaction as the Company may reasonably request.

## ARTICLE X
## EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

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

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

(ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(e), (f) or (i), 3.6, 5.2, 6.3, 6.4, 6.5, 8.2, 8.4, 8.5, 8.11, 8.12, 9.3, 10.4 and Article XIII hereof;

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

(iv) the occurrence and continuation of a Recapture Event;

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

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

(vii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for forty (40) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such

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Property or for the purpose of general administration of such Property for the benefit of creditors;

(viii) an Event of Default under the Mortgage, if any, shall have occurred and be continuing; or

(ix) a default by any tenant under its respective Tenant Agency Compliance Agreement shall have occurred and be continuing.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 3.4, 6.1 and 8.11 of this Lease Agreement, and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuation of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2 Remedies on Default.

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

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 4.3(a) and (b) hereof, (B) all unpaid and past due PILOT Payments, (C) all due and owing Recaptured Benefits, and (D) all other payments due under this Lease Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vii) hereof shall have occurred and be continuing, such installments of rent and other payments due under this Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;

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

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

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

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

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

Section 10.5 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.

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

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

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

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

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

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

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

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

Section 11.3 Conveyance on Termination. At the closing of any expiration or termination of the Lease Agreement, the Agency shall, upon receipt of the amounts payable pursuant to Section 11.2 hereof, deliver to the Company all necessary documents (i) to terminate this Lease Agreement and the Company Lease and to convey the Facility Equipment to the Company, subject in each case only to the following: (A) any Liens to which leasehold estate or title to such Property was subject when conveyed to the Agency, (B) any Liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances, and (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default hereunder; and (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Company Facility (but not including any Unassigned Rights). At the closing of any expiration or termination of the Lease Agreement, and unless otherwise waived by the Agency, as a condition to such termination or expiration, the Company shall request each Lender to release the Agency from any Mortgage and any other Loan Documents to which it is a party in writing and cause such releases to be recorded as applicable.

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ARTICLE XII
LENDER PROVISIONS

Section 12.1 Subordination of Lease Agreement. This Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage which may be granted by the Agency and the Company on the Company Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 12.2 Mortgage and Pledge of Agency's Interests to Lender. The Agency shall at the request of, and at the sole cost and expense of, the Company (i) mortgage its interest in the Company Facility, and (ii) pledge and assign its rights to and interest in this Lease Agreement (other than Unassigned Rights) to the Lender as security for the payment of the principal of and interest on the Loan, in each case in accordance with the provisions attached hereto as Exhibit D. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such mortgage, pledge and assignment, continue to run to the Agency for its benefit.

Section 12.3 Pledge of Company's Interest to Lender. The Company shall have the right to pledge and assign its rights to and interest in this Lease Agreement and the Plans and Specifications to any Lender as security for the payment of the principal of and interest on the Loan. The Agency hereby acknowledges and consents to any such pledge and assignment by the Company.

Section 12.4 Making of Loans; Disbursement of Loan Proceeds. The Agency acknowledges that the Company may request one or more Lenders to make one or more loans to finance and refinance the costs of the acquisition of the Company Facility and/or the Project Work or to reimburse the Company for the cost of acquiring the Company Facility and/or the Project Work (the "**Loan**"). Proceeds of such Loan shall be disbursed by such Lender in accordance with the provisions of the Mortgage or other related documentation applicable to such Loan.

Provided that the Agency shall have received the notice of the name and address of a Lender, the Agency agrees that simultaneously with its giving of any notice under this Lease Agreement (each a "**Notice**") it will send a copy of such Notice to each Lender. Each Notice shall be sent to each Lender in the manner provided herein at the address provided to the Agency by each Lender for such purpose. Each such Lender may change such address from time to time by written notice to the Agency in accordance herewith. The Agency shall reasonably cooperate with the Company in connection with the granting or modification by the Company of any Mortgage. Such cooperation shall include, without limitation, the execution and delivery of such documents and instruments in connection with a Mortgage as the Company or the Lender may reasonably request (the "**Loan Documents**"), provided that such documents and instruments shall contain the language set forth in Exhibit D attached hereto and made a part hereof. The Company shall perform or cause to be performed for and on behalf of the Agency, and at the Company's sole cost and expense, each and every obligation of the Agency under and pursuant to such instruments.

Section 12.5 References to Lender, Loan or Mortgage. All references herein to Lender, Loan or Mortgage or other similar words, whether in the singular or the plural, may be in

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anticipation of future Loans to be made by future Lenders. Such references shall only be effective if such Loans have been made and are still outstanding. If such Loans are never made or have been repaid, such references shall not be of any force or effect.

## ARTICLE XIII
## ENVIRONMENTAL MATTERS

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

(a) Neither the Company Facility nor, to the best of Company's knowledge, any property adjacent to or within the immediate vicinity of the Company Facility is being or has been used in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste management or disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) Underground storage tanks are not and have not been located on the Company Facility.

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

(d) There has been no Release or threat of a Release of any Hazardous Substance in violation of any applicable law on, at or from the Company Facility or any property adjacent to or within the immediate vicinity of the Company Facility which through soil, subsoil, bedrock, surface water or groundwater migration could come to be located on or at the Company Facility, and the Company has not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Company Facility or any property adjacent to or within the immediate vicinity of the Company Facility or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Company Facility or any property adjacent to or within the immediate vicinity of the Company Facility in violation of any applicable law.

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

(f) No event has occurred with respect to the Company Facility which, with the passage of time or the giving of notice, or both, would constitute a violation of or non-compliance with any applicable Environmental Law or Environmental Permit.

(g) There are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future construction, renovation, equipping, ownership, use, operation, sale, transfer or conveyance of the Company Facility which require any change in the present condition of the Company Facility or any work, repairs, construction, containment,

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clean up, investigations, studies, removal or remedial action or capital expenditures in order for the Company Facility to be in compliance with any applicable Environmental Law or Environmental Permit.

(h) There are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or remedy that arise out of, relate to or result from (i) conditions of the Environment at, on or in the vicinity of the Company Facility, (ii) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit with respect to the Company Facility, (iii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Company Facility or any property adjacent to or within the immediate vicinity of the Company 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 Company Facility, the Project Work or the ownership, use, operation, sale, transfer or conveyance of the Company Facility.

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

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

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

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

(d) The Company shall promptly provide the Agency with a copy of all notifications which the Company gives or receives with respect to conditions of the Environment at or in the

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vicinity of the Company Facility, any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Company Facility or any property adjacent to or within the immediate vicinity of the Company Facility. If the Company receives or becomes aware of any such notification which is not in writing or otherwise capable of being copied, the Company shall promptly advise the Agency of such verbal, telephonic or electronic notification and confirm such notice in writing. Furthermore, upon the Company's discovery thereof, the Company shall promptly advise the Agency in writing of: (i) the presence of any Hazardous Substance on, under or about the Company Facility of which the Agency has not previously been advised in writing; (ii) any remedial action taken by, or on behalf of, the Company in response to any Hazardous Substance on, under or about the Company Facility or to any environmental proceedings of which the Company has not previously been advised in writing; and (iii) the occurrence or condition on any real property adjoining or in the vicinity of the Company Facility that could reasonably be expected to cause the Company Facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Company Facility under any Environmental Law. The Company shall also provide the Agency with copies of all reports, analyses, notices, licenses, approvals, orders, correspondences or other written materials in its possession or control relating to the condition of the Environment at the Company Facility or real property or bodies of water adjoining or in the vicinity of the Company Facility or environmental proceedings promptly upon receipt, completion or delivery of such materials.

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

(f) If at any time the Agency obtains any notice or information that the Company or the Company Facility, or the use or operation thereof or the Project Work may be in violation of an Environmental Law or in non-compliance with any Environmental Permit or standard, the Agency may require that a full or supplemental environmental inspection and audit report with respect to

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the Company Facility of a scope and level of detail reasonably satisfactory to the Agency be prepared by a professional environmental engineer or other qualified environmental scientist acceptable to the Agency, at the Company's sole cost and expense. Said audit may, but is not required to or limited to, include a physical inspection of the Company Facility, a records search, a visual inspection of any property adjacent to or within the immediate vicinity of the Company Facility, personnel interviews, review of all Environmental Permits and the conducting of scientific testing. If necessary to determine whether a violation of an Environmental Law exists, such inspection shall also include subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance on, at or from the Company Facility in violation of any applicable law, the Company shall promptly undertake and diligently pursue to completion all necessary, appropriate investigative, containment, removal, clean-up and other remedial actions required by any Environmental Law, in accordance with Section 13.2(e) above. The Company hereby consents to the Agency notifying any party under such circumstances of the availability of any or all of the environmental reports and the information contained therein. The Company further agrees that the Agency may disclose such environmental reports to any governmental agency or authority if they reasonably believe that they are required to disclose any matter contained therein to such agency or authority; provided that the Agency shall give the Company at least forty-eight (48) hours prior written notice before so doing. The Company acknowledges that the Agency cannot control or otherwise assure the truthfulness or accuracy of the environmental reports, and that the release of the environmental reports, or any information contained therein, to prospective bidders at any foreclosure sale of the Company Facility may have a material and adverse effect upon the amount which a party may bid at such sale. The Company agrees that the Agency shall not have any liability whatsoever as a result of delivering any or all of the environmental reports or any information contained therein to any third party if done in good faith, and the Company hereby releases and forever discharges the Agency from any and all claims, damages, or causes of action arising out of, connected with or incidental to the delivery of environmental reports.

Section 13.2 Survival Provision. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and indemnifications of the Company contained in this Article XIII shall survive any termination, conveyance, assignment, subleasing or defeasance of any right, title or interest of the Company in and to the Company Facility or in, to or under the Lease Agreement.

## ARTICLE XIV
## MISCELLANEOUS

Section 14.1 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:

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

With a copy to:

Cappillino, Rothschild & Egan LLP
Seven Broad Street
P.O. Box 390
Pawling, New York 12564-0390
Attention: Donald Cappillino, Esq.

To the Company:

Violet Estates Owner LLC
c/o Reynolds Asset Management
188 E. Franklin Turnpike
Ho Ho Kus, New Jersey 07423
Attention: [ ]

With a copy to:

Corbally, Gartland & Rappleyea LLP
35 Market Street
Poughkeepsie, New York 12601
Attention: Patrick Gartland, 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.

Copies of all notices given either to the Agency or to the Company shall also be sent to any Lender, if such Lender shall have delivered written instructions to the Agency and the Company with the address of such Lender pursuant to Section 12.4 hereof.

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

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

Section 14.4 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or (except pursuant to Section 10.2 hereof) terminated except in a writing executed by the parties hereto.

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

Section 14.6 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 14.7 List of Additional Equipment; Further Assurances. Upon the Completion Date with respect to the Company Facility and the installation of all of the Facility Equipment therein, the Company shall prepare and deliver to the Agency, a schedule listing all of the Facility Equipment not previously described in this Lease Agreement. If requested by the Agency, the Company shall thereafter furnish to the Agency, within sixty (60) days after the end of each calendar year, a schedule listing all of the Facility Equipment not theretofore previously described herein or in the aforesaid schedule.

Section 14.8 Survival of Obligations. This Lease Agreement shall survive the performance of the obligations of the Company to make the payments required by Section 4.3, and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement.

Section 14.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

Section 14.10 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Lease Agreement or the Company Facility or any matters whatsoever arising out of or in any way connected with this Lease Agreement.

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

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

**DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By: _____
Name: Sarah Lee
Title: Executive Director

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

On the ___ day of [December] in the year [2020], 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

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**VIOLET ESTATES OWNER LLC**
a Delaware limited liability company

By:_____
Name:
Title:

STATE OF _____ )
: SS.:
COUNTY OF _____ )

On the ___ day of [December] in the year [2020], before me, the undersigned, personally appeared **[ ]** 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

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EXHIBIT A

Legal Description of Real Property

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EXHIBIT B

Facility Equipment

All Eligible Items acquired, constructed, renovated or installed and/or to be acquired, constructed, renovated or installed by or on behalf of the Company, in connection with the completion of the Dutchess County Industrial Development Agency's Violet Estates Owner LLC/Violet Estates LLC 2020 Facility located at 35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6162-10-427650, and leased to the Company pursuant to the Lease Agreement.

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EXHIBIT C
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), 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 PILOTs 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 Hyde Park Central School District's Apportioned Share of the Annual PILOT due on October 1 of each year.

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

"Special Districts PILOTs" shall mean the PILOTs for the Fairview Fire District, the Townwide Drain Improvement District, the Consolidated Light District, the Poughkeepsie Library District, the Town-Wide Water Improvement District, and the 4th Ward Sewer Improvement District.

"PILOT Year" shall mean the first tax year following the Taxable Status Date after the Completion Date and each year thereafter for a total of fifteen (15) years in accordance with the Schedule of PILOT Payments. For example, if the Completion Date was prior to March 1, 2023, the Initial PILOT Year would include the

2024/2025 School District PILOT, the
2025 County PILOT, the
2025 Town PILOT, the
2025 Fairview Fire District PILOT
2025 Townwide Drain Improvement District PILOT, the
2025 Consolidated Light District PILOT, the

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2025 Poughkeepsie Library District PILOT, the
2025 Town-Wide Water Improvement District PILOT, and the
2025 4th Ward Sewer Improvement District PILOT (collectively the "**Initial PILOT Year**") shall become due, and annually thereafter for a total of fifteen (15) years in accordance with the Schedule of PILOT Payments.

"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 $202,500 if the Facility and Additional Facilities were owned by the Company and the Agency had no ownership interest. If the assessed value exceeds $202,500, 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** | **County PILOT and Town PILOT Exemption Percentage** | **School District PILOT Exemption Percentage** |
|---|---|---|
| 1 | 50% | 90% |
| 2 | 50% | 90% |
| 3 | 50% | 85% |
| 4 | 40% | 85% |
| 5 | 30% | 80% |
| 6 | 20% | 80% |
| 7 | 10% | 70% |
| 8 | 10% | 65% |
| 9 | 10% | 60% |
| 10 | 5% | 55% |
| 11 | 0% | 50% |
| 12 | 0% | 45% |
| 13 | 0% | 40% |
| 14 | 0% | 35% |
| 15 | 0% | 30% |
| thereafter | 0% | 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.

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**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.

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EXHIBIT D

Mortgage Requirements

Any Mortgage or related document which shall be entered into by the Agency and the Company shall contain the following required provisions:

Non-Recourse and Hold Harmless Provisions to be included in the Lender's Mortgage

Section ___. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of this Mortgage. The Mortgagee 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 Mortgage or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this Mortgage, the Mortgagee will look solely to the mortgaged premises and/or the Company for the payment of the indebtedness secured by this Mortgage and for the performance of the provisions hereof. The Mortgagee 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 Mortgage or the Loan Documentation. This agreement on the part of the Mortgagee shall not be construed in any way so as to effect or impair the lien of this Mortgage or the Mortgagee's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Mortgagee in any foreclosure proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Company) of the Agency or any natural person executing this Mortgage on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or the County of Dutchess, and neither the State of New York nor the County of Dutchess 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. The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its director, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Company Facility or arising by reason of or in connection with the use thereof or under this Mortgage, or (ii) liability arising from or expense incurred by the Project Work or the Agency's acquiring, owning and leasing of the Company Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the Mortgage (including, without

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limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents, or employees 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 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 Mortgage, the obligations of the Company pursuant to this Section ___ shall remain in full force and effect after the termination of this Mortgage until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) and employees, relating to the enforcement of the provisions herein specified.

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

Section ___. Recordation of Mortgage. The Agency covenants that it will record or cause this Mortgage to be duly recorded in all offices where recordation thereof is necessary.

Section___. Termination of Lease Agreement. Upon the termination of the Lease Agreement for any reason whatsoever, and at the sole cost and expense of the Company, the Mortgagee shall prepare, execute and deliver to the Agency and the Company, and the Agency and the Company shall execute, any documents necessary to amend the Mortgage to remove the Agency as a party thereto.

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EXHIBIT E

FORM OF SALES TAX AGENT AUTHORIZATION LETTER

**SALES TAX AGENT AUTHORIZATION LETTER**

**EXPIRATION DATE: [December 31, 2022]**

**ELIGIBLE LOCATION:**

35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York

_____ __, 201_

TO WHOM IT MAY CONCERN

Re: Dutchess County Industrial Development Agency
(Violet Estates Owner LLC/Violet Estates LLC 2020 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 Lease and Project Agreement, dated as of [December 1, 2020] (the "Lease Agreement"), between the Agency and Violet Estates Owner 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 c/o Reynolds Asset Management at 188 E. Franklin Turnpike, Ho Ho Kus, New Jersey 07423 (the "Company"), the Agency has authorized the Company to act as its agent in connection with the Company 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 Lease Agreement.

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

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project Operator or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which is to be completed by Agent and the Company). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the Company Facility and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

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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 COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY-EIGHT AND THIRTY-SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

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 Company Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Company Facility on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state, "I, [Company/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 Violet Estates Owner LLC/Violet Estates LLC 2020 Project located at 35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6162-10-427650, 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 Company 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 Lease Agreement. The Agent must retain for at least six (6) years from the date of expiration of its contract copies of (a) its contract with the Company to provide services in connection with the Company Facility, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

7. In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file semi-annually with the Company and the Agency (no later than January 15th and July 15th of each calendar year in which



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it has claimed sales and use tax exemptions in connection with the Company 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 Company Facility by completing and submitting to the Company and the Agency the **Sales Tax Registry** attached hereto as **Schedule B**. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Company Facility (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

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

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

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

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

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



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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 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)

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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:

ACCEPTED AND AGREED TO BY:

**[*AGENT*]**

By: _____
Name:
Title:

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**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 Company 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 Company 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 of 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 Company 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 Company 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 Company 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.

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**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 (incl. Serial #,if applicable) | Location of Item | Dollar Amount | Vendor Description | Date of Payment | Purchase order or invoice number | Sales Tax Savings |
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| 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 Company 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.

**Name of Agent:** _____

**Signature By:** _____

**Name (print):** _____

**Title:** _____

**Date:** _____

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EXHIBIT F

Sales Tax Registry

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

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

Certification: I, the undersigned, an authorized officer or principal owner of the Company, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Company Sales Tax Savings realized by the Company below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LEASE AND PROJECT AGREEMENT, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Company, 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.

**Company Name:** _____

**Signature By:** _____

**Name (print):** _____

**Title:** _____

**Date:** _____

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EXHIBIT G

# Policy on Maintaining Performance Based Incentives (MPBI)

The MPBI policy is to be in addition to, and not in lieu of, any recapture requirement pursuant to Article 18A of the New York State General Municipal Law.

## I. Return of 100 per cent of Incentives during construction stage 1 to 2 years or until a Certificate of Occupancy is used:

- Default as defined by legislation and project documents
- Project ceases to be a project during construction and prior to occupancy
- Project ceases to be a project during Year 1, 2 and 3 of operations
- Defaults defined in Legislation and Project Agreement

## II. Establish Performance Based Incentives Review Committee consisting of the entire Board of Directors:

- Committee to review non-compliant projects
- Make recommendations for the return of benefits

## II. Performance Failure

The Agency's goal is to minimize performance failures by providing technical assistance to potential projects prior to the submission of an application for benefits and in helping projects understand the Performance Based Incentive Policy as follows:

- When a project does not achieve expected FTEs at the Project Facility by the dates set in the Project Agreement and falls below a Proportional Amount of 90%.
- The term "Proportional Amount" shall mean the ratio obtained by dividing (x) the number resulting from subtracting the number of FTEs employed at the Project Facility on the relevant date or during the relevant period, from the Base Employment Number (as enumerated in the Project Agreement), by (y) BASE Employment Number.
- Payment in Lieu of Taxes (PILOT) Agreement for each project will establish the terms for increased payments for the year following a performance failure.
- Each year, CEO will meet with projects having a higher Proportional Amount percent of FTEs in a previous year to assess business aspects that may lead to a performance failure in the current or subsequent years. This will mitigate a potential future failure by either terminating the project or amending the project agreement and PILOT with cause, and decreasing incentives.

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## III. Identifying and Reporting Projects with Performance Based Incentive Deficiencies

- Compliance Officer will prepare and submit a report to the MPBI Review Committee annually, detailing projects that utilized excess sales tax abatements, are not current with PILOT Payments, or have not achieved their expected employment jobs as detailed in the Agency's and Project agreements.
- Agency CEO will meet with each project to review deficiencies in performance based measurements; prepare a report for the MPBI Review Committee
- Committee will assess causes of deficiencies and make recommendations to the Board, at its discretion, for action to: cure deficiencies, declare a project default, terminate the project agreement, reduce the value of incentives, terminate future benefits, and require the return of financial assistance made to date.
- Board will meet with the project to jointly discuss deficiencies and resolution option(s).

The following will be used to determine if an explanation exists for failure to achieve the economic benefits projected by the company:

a. Natural Disaster: if a natural disaster such as a fire, flood, or tornado disrupts the business.
b. Industry Trends: An evaluation of industry trends will be made relevant to the company, and a determination reached as to whether the company is in a market that is declining. International and national data will be used in the evaluation. An industry is considered in decline when, measured by the appropriate SIC code, it experiences employment or revenue declines—beyond its control--of 10% or more over 3 years.
c. Loss of Major Supplier or Customer: if the loss of a customer or supplier represents 15% or more of the sales of the company.
d. Productivity Improvements: if new technology, equipment or general productivity improvements result in the need for less than projected employees or investment
e. Unfair Competition: if an international competitor utilizes an unfair competitive advantage to acquire market share.
f. Other economic reversals.

- Company is officially notified by mail of the Board's decision and has 30 days to comply with the Board conditions.
- The IDA granting the economic incentive retains all rights to impose, delay or waive penalties. Further, the Agency, at its sole discretion, may waive all or any portion of any payment owing by the Company.

## IV. Recovery of Incentives

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The terms of Project Agreement will, depending upon the terms of a project include the following formula:

(A) one hundred per cent (100%) of the Benefits if the Recapture Event occurs prior to the Completion of Project Construction, or within the first (1st) or second (2nd) year after the Completion of Project Construction; or

(B) ninety per cent (90%) of the Benefits if the Recapture Event occurs during the third (3rd) year after the Completion of Project Construction; or;

(C) eighty per cent (80%) of the Benefits if the Recapture Event occurs during the fourth (4th) year after the Completion of Project Construction; or;

(D) seventy per cent (70%) of the Benefits if the Recapture Event occurs during the fifth (5th) year after the Completion of Project Construction; or;

(E) sixty per cent (60%) of the Benefits if the Recapture Event occurs during the sixth (6th) year after the Completion of Project Construction; or;

(F) fifty per cent (50%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the Completion of Project Construction; or;

(G) forty per cent (40%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the Completion of Project Construction; or;

(H) thirty per cent (30%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the Completion of Project Construction; or;

(I) twenty per cent (20%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the Completion of Project Construction; or;

(J) ten per cent (10%) of the Benefits if the Recapture Event occurs during the eleventh (11th) year after the Completion of Project Construction;

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***Adopted 7/21/2015***
***Adopted 1/19/2016***
***Re-adopted 1/19/2017***
***Re-adopted 1/16/2018***
***Amended 12/18/2018***
***Re-adopted 1/9/2019***
***Re-adopted 1/8/2020***

EXHIBIT H

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES OF COMPANY

[NONE.]

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EXHIBIT I

FORM OF TENANT AGENCY COMPLIANCE AGREEMENT

THIS TENANT AGENCY COMPLIANCE AGREEMENT, dated as of _____, 20__, is between the DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 3 Neptune Road, Poughkeepsie, New York 12601 (the "**Agency**"), and _____, a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ having its principal office at _____ (the "**Tenant**").

R E C I T A L S

WHEREAS, the Agency was created by Chapter 335 of the Laws of 1977 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "**Act**"); and

WHEREAS, the Agency has agreed to assist in (a) the acquisition of an approximately 7.194-acre parcel of land located at 35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6162-10-427650 (the "**Land**"), the demolition of existing structures on the Land, and the construction of (i) two (2) three-story, 14,400 square-foot mixed-use buildings each with seven (7) residential units and approximately 4,000 square feet of commercial space; (ii) one (1) three-story, 12,960 square-foot building with nine (9) residential units; (iii) one (1) three-story, 19,365 square-foot building with eleven (11) residential units and an approximately 1,443 square foot senior center; (iv) one (1) three-story, 25,380 square-foot building with twenty-three (23) residential units; and (v) one (1) three-story, 28,890 square-foot building with twenty-seven (27) residential units (the "**Improvements**"), and the acquisition and equipping of certain equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased and subleased by the Agency to Violet Estates Owner LLC, a Delaware limited liability company (the "**Company**") and further subleased by the Company to Violet Estates LLC, a Delaware limited liability company (the "**Sublessee**"); and (b) 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 senior housing community and mixed-use commercial facility (the "**Project**"); and

WHEREAS, the Agency acquired a leasehold interest in the Land and the Improvements, all pursuant to the Company Lease Agreement, dated as of [December 1, 2020] (the "**Company Lease**"), by and between the Agency and the Company; and

WHEREAS, the Agency leased the Company Facility to the Company pursuant to the Lease and Project Agreement, dated as of [December 1, 2020] (the "**Lease Agreement**"), by and between the Agency and the Company; and

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WHEREAS, the Company intends to sublease a portion of the Company Facility to be used as _____ (the "**Demised Premises**") to the Tenant pursuant to a [Tenant Lease Agreement], dated as of _____, 20__ (the "**Tenant Lease Agreement**"), by and between the Company and the Tenant, which may be amended from time to time.

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I
REPRESENTATIONS AND COVENANTS OF TENANT

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

(a) The Tenant is a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ [*and authorized to transact business in the State of New York*], and in good standing under the laws of the State of New York[, and the State of [____]] and has full legal right, power and authority to execute, deliver and perform this Tenant Agency Compliance Agreement. This Tenant Agency Compliance Agreement has been duly authorized, executed and delivered by the Tenant.

(b) To the best of the Tenant's knowledge, neither the execution and delivery of this Tenant Agency Compliance Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof 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 Tenant's organizational documents, as amended, or any restriction or any agreement or instrument to which the Tenant is a party or by which it is bound.

(c) Any and all leasehold improvements undertaken by the Tenant with respect to the Demised Premises and the design, acquisition, construction, renovation, equipping and operation thereof by the Tenant will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Company Facility. The Tenant shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorneys' fees, resulting from any failure by the Tenant to comply with the provisions of this subsection.

(d) The Tenant Agency Compliance Agreement constitutes a legal, valid and binding obligation of the Tenant enforceable against the Tenant in accordance with its terms.

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

ARTICLE II
INSURANCE

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Section 2.1 Insurance Required. At all times throughout the Lease Term, the Tenant shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks, and for such amounts, as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto. Such insurance shall include, without limitation, the following (but without duplication of insurance provided by the Company pursuant to the Lease Agreement covering the same risks and insured(s)):

(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 completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Tenant, but in no event less than $1,000,000. During the construction of the Company Facility, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

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

(c) Insurance protecting the Agency and the Tenant against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Tenant under Section 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage), and blanket excess liability coverage, in an amount not less than $5,000,000 combined single limit or equivalent, protecting the Agency and the Tenant against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during any construction or renovation period with respect to the Demised Premises.

(d) During any construction period with respect to the Demised Premises (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Tenant shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

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

(ii) Comprehensive general liability providing coverage for:

Premises and Operations
Products and Completed Operations
Owners Protective

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Contractors Protective
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

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

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

Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Tenant Agency Compliance Agreement 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 2.1(a) hereof 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 of insurance required by Section 2.1 hereof shall provide for at least thirty (30) days prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 2.1(c) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Section 2.1 (d)(ii) and (iv) shall name the Agency and the Tenant as additional insureds.

(b) The certificate of insurance required by Section 2.1(c) hereof shall be delivered to the Agency on or before the date hereof. A copy of the certificates of insurance required by Section 2.1(d)(ii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any construction or renovation of the Demised Premises. The Tenant 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 the current year of the Tenant's insurance policy, insurance of the types and in the amounts required by Section 2.1 hereof and complying with the additional requirements of Section 2.2(a) hereof. Prior to the expiration of each such policy or policies, the Tenant shall furnish to the Agency and any other appropriate Person a new policy or

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policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Tenant Agency Compliance Agreement. The Tenant shall provide such further information with respect to the insurance coverage required by this Tenant Agency Compliance Agreement as the Agency may from time to time reasonably require.

Section 2.3 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(a) hereof shall be applied in accordance with the provisions of the Tenant Lease Agreement.

Section 2.4 Right of Agency to Pay Insurance Premiums. If the Tenant fails to maintain or cause to be maintained any insurance required to be maintained by Section 2.1 hereof, the Agency may pay or cause to be paid the premium for such insurance. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency to the Tenant. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Tenant. The Tenant shall, on demand, reimburse the Agency for any amount so paid pursuant to this Section, together with interest thereon from the date of payment of such amount by the Agency.

## ARTICLE III
## SPECIAL COVENANTS

Section 3.1 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 COMPANY FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE COMPANY FACILITY, OR THE SUITABILITY OF THE DEMISED PREMISES FOR THE PURPOSES OR NEEDS OF THE TENANT OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE TENANT WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE DEMISED PREMISES. THE TENANT ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE TENANT, ON BEHALF OF ITSELF IS SATISFIED THAT THE DEMISED PREMISES IS SUITABLE AND FIT FOR PURPOSES OF THE TENANT. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE TENANT 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.

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Section 3.2 Hold Harmless Provisions.

(a) The Tenant agrees that the Agency and its directors, members, officers, agents (except the Company) and employees shall not be liable for, and agrees to defend, indemnify, release and hold the Agency and its directors, members, officers, agents 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 Demised Premises or to common areas or other portions of the Company Facility to which the Tenant has regular access (such areas, together with the Demised Premises, are hereinafter referred to as the "**Tenant Premises**"), 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 Tenant Premises, and (ii) liability arising from or expense incurred in connection with the Agency's participation in the subleasing of the Demised Premises to the Tenant, including, without limiting the generality of the foregoing, all claims arising from the breach by the Tenant of any of its covenants contained herein, the exercise by the Tenant of any authority conferred upon it pursuant to this Tenant Agency Compliance 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 Tenant Agency Compliance Agreement (including without limitation this Section) or any other documents delivered by the Agency in connection with this Tenant Agency Compliance Agreement), and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, to the extent that any such losses, damages, liabilities or expenses of the Agency are not incurred and do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, agents or employees. Except as otherwise provided herein, the foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Tenant Agency Compliance Agreement, the obligations of the Tenant pursuant to this Section shall remain in full force and effect after the termination of this Tenant Agency Compliance 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 members, directors, officers, agents 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 or employees by any employee or contractor of the Tenant 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 Tenant 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.

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Section 3.3 Right to Inspect Demised Premises. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable prior written notice to inspect the Demised Premises.

Section 3.4 Qualification as Project.

(a) The Tenant will not take any action, or fail to take any action, which action or failure to act would cause the Company Facility not to constitute a "project" as such quoted term is defined in the Act. Without limiting the generality of the foregoing, the Tenant will in no event use the Demised Premises in such a way as to cause or permit the Company Facility to be used in violation of Section 862(2)(a) of the Act.

(b) The occupation of the Demised Premises has not and will not result in the removal of a facility or plant of the Tenant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Tenant located within the State.

Section 3.5 Compliance with Orders, Ordinances, Etc.

(a) The Tenant, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee of the Tenant or occupant of the Demised Premises which is occupying the Demised Premises by permission of the Tenant to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Company Facility or the Demised Premises, or to the acquisition, construction and equipping of the Demised Premises, or to any use, manner of use or condition of the Company Facility or any part of the Demised Premises, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Company Facility or any part thereof, and companies or associations insuring the premises.

(b) The Tenant shall keep or cause the Demised Premises to be kept free of Hazardous Substances. Without limiting the foregoing, the Tenant shall not cause or permit the Demised Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Tenant cause or permit, as a result of any intentional or unintentional act or omission on the part of the Tenant or any of its contractors, subcontractors or tenants, a release of Hazardous Substances onto the Company Facility or onto any other property. The Tenant shall comply with, and ensure compliance by all of its contractors, subcontractors and subtenants with, all applicable federal, state and local environmental laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all of its contractors, subcontractors and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Tenant shall (i) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances released, stored, generated or used by it on, from or affecting the Demised Premises (A) in accordance with all applicable federal, state and local

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laws, ordinances, rules, regulations and policies, (B) to the satisfaction of the Agency, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, its employees, agents, officers, members and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or of any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, and in all cases which result from the intentional or unintentional act or omission of the Tenant or any of its contractors, subcontractors or subtenants, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Tenant may have to the Agency at common law and shall survive the transactions contemplated herein.

(c) Notwithstanding the provisions of subsections (a) and (b) above, the Tenant may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Tenant may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Tenant that, by failure to comply with such requirement or requirements, the Company Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Tenant shall promptly take such action with respect thereto or provide such security as shall be reasonably satisfactory to the Agency. If at any time the then existing use or occupancy of the Demised Premises shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Tenant shall use reasonable efforts not to cause or permit such use or occupancy by the Tenant to be discontinued without the prior written consent of the Agency, which consent shall not be unreasonably withheld.

(d) Notwithstanding the provisions of this Section, if, because of a breach or violation of the provisions of subsection (a) or (b) above (without giving effect to subsection (c)), the Agency or any of its members, directors, officers, agents or employees shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Tenant shall immediately provide legal protection or pay an amount or post a bond in an amount necessary, in the opinion of the Agency and of its members, directors, officers, agents and employees, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(e) Notwithstanding any provisions of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such

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Hazardous Substances. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Tenant.

Section 3.6 Agreement to Provide Information. Annually, the Tenant shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Company 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.[1] The Tenant further agrees to provide and certify or cause to be provided and certified whenever requested by the Agency any other information concerning the Tenant, its respective finances, its respective operations, its respective 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, the Public Authorities Accountability Act of 2005, or 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. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 3.7 Employment Opportunities; Notice of Jobs. The Tenant 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 it is a party, cause any new employment opportunities created in connection with the Demised Premises 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 Company Facility is located (collectively, the "**Referral Agencies**"). The Tenant also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, 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 3.8 Subleasing.

(a) In accordance with Section 862(1) of the Act, the Demised Premises shall not be occupied by a sublessee whose tenancy would result in the removal of a facility or plant of the proposed sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

[1]Cannot be removed or modified; required by GML Section 859-a(6)(b).

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

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

(b) The Tenant may not assign the Tenant Lease Agreement or sub-sublease the Demised Premises without the prior written consent of the Agency. Any assignment or sub-sublease shall conform with the restrictions and requirements set forth in Section 9.3 of the Lease Agreement.

Section 3.9 Approval of Tenant Lease Agreement. The Agency hereby approves the subleasing of the Company Facility by the Company to the Tenant pursuant to the terms of the Tenant Lease Agreement.

Section 3.10 Definitions. All capitalized terms used in this Tenant Agency Compliance Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A.

Section 3.11 Execution of Counterparts. This Tenant Agency Compliance 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.

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

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IN WITNESS WHEREOF, the Agency and the Tenant have caused this Tenant Agency Compliance Agreement to be executed in their respective names by their duly authorized representatives, all as of _____, 20__.

**DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By:_____
Name:
Title:

[NAME OF ENTITY]

By:_____
Name:
Title:

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# EXHIBIT J

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

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of Violet Estates Owner 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 c/o Reynolds Asset Management at 188 E. Franklin Turnpike, Ho Ho Kus, New Jersey 07423 (the "**Company**"), HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.6 of that certain Lease and Project Agreement, dated as of [December 1, 2020] (the "**Lease Agreement**"), between the Duchess County Industrial Development Agency (the "**Agency**") and the Company. If the Company's Final Project Cost Budget deviates materially (more than ten percent (10%)) from the information provided in the Project Application Information, the Company shall provide a written statement explaining the difference to the Agency.

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

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

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

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

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

(iv) check as applicable:

- ☐ all costs for Project Work have been paid, or
- ☐ all costs for Project Work have been paid except for
  - ☐ amounts not yet due and payable (attach itemized list) and/or

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☐ amounts the payments for which are being contested in good faith (attach itemized list with explanations);

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

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

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

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

**VIOLET ESTATES OWNER LLC**

By:_____
Name:
Title:

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Exhibit A

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Exhibit B

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Exhibit C

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EXHIBIT K

**ANNUAL COMPLIANCE CERTIFICATE**

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

1. That s/he is the duly appointed [_____] of VIOLET ESTATES OWNER 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 c/o Reynolds Asset Management at 188 E. Franklin Turnpike, Ho Ho Kus, New Jersey 07423 (the "**Company**").

2. That the Company has previously entered into a straight-lease transaction with the Dutchess County Industrial Development Agency pursuant to a certain Company Lease Agreement, dated as of [December 1, 2020] (the "**Company Lease**") whereby the Company leased the Company Facility (as such term is defined in the hereinafter defined Lease Agreement) to the Agency, and a Lease and Project Agreement, dated as of [December 1, 2020] (the "**Lease Agreement**"), whereby the Agency subleased and leased the Company Facility to the Company.

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

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

5. That the Company has not received written notice of default in payment of any taxes, PILOT Payments, sewer rents or water charges which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

6. That there are no mechanics liens or other liens by reason of any labor, services or materials on the Company Facility, except in compliance with the provisions in the 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 Lease Agreement.

9. That attached hereto as Exhibit B hereto is a certified statement of the Company and documentation (i) enumerating the FTE (as such term is defined in the Lease Agreement) jobs, by category, retained and/or created at the Company 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.

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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.

**VIOLET ESTATES OWNER LLC**

By:_____
Name:
Title:

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

_____
Notary Public

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Exhibit A

Insurance Certificates

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Exhibit B

Form of Certified Statement and Documentation Regarding FTEs

Company Name and Address:

Project Name:

**Job Information**

Number of FTE (as such term is defined in the Lease Agreement) jobs by category and average hourly wage for each **before the Agency's financial assistance provided to the Company:**

| **Category** | **FTE** | **Average Hourly Wage/Salary and/or Fringe Benefits** |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Current number of FTE for 20__ by category and average hourly wage/salary:

| **Category** | **FTE** | **Average Hourly Wage/Salary and/or Fringe Benefits** |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Number of FTE jobs **created** during 20__ as a result of the assistance received from the Agency by category and average hourly wage/salary:

| **Category** | **FTE** | **Average Hourly Wage/ Salary and/or Fringe Benefits** |
|---|---|---|
| Management | _____ | _____ |

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| | | |
|---|---|---|
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Number of FTE jobs **retained** during 20__ as a result of the assistance received from the Agency by category and average hourly wage/salary.

| **Category** | **FTE** | **Average Hourly Wage/Salary and/or Fringe Benefits** |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Total annual payroll for 20__ _____

Total of FTE construction jobs created during 20__ _____

Number of FTE construction jobs during 20__ _____

20__ Capital Investment

| | |
|---|---|
| Real Estate | _____ |
| Construction | _____ |
| Machinery and Equipment | _____ |
| Other Taxable Expenses | _____ |
| Other Non-Taxable Expenses | _____ |
| **Total Capital Investment** | _____ |

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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.

Signed: _____
(authorized company representative)

Date: _____

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Exhibit C

Form NYS-45

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Exhibit D

Form ST-340

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**EXHIBIT L**

# 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.

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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.

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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*
*Re-adopted 1/9/2019*
*Amended 5/8/2019*
*Adopted 1/8/2020*

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SCHEDULE A

SCHEDULE OF DEFINITIONS

"Act" means, collectively, Title 1 of Article 18-A of the General Municipal Law of the State, enacted into law as Chapter 1030 of the Laws of 1969 of the State, as amended, together with Chapter 335 of the Laws of 1977 of the State, as amended.

"Agency" means (i) the Dutchess County Industrial Development Agency, its successors and assigns, and (ii) any local governmental body resulting from or surviving any consolidation or merger to which the Agency or its successors may be a party.

"Agency Compliance Agreement" means the Agency Compliance Agreement, dated as of [December 1, 2020] by and between the Agency and the Sublessee, as the same may be amended from time to time.

"Agency Documents" means the Company Lease, the Lease Agreement, the Agency Compliance Agreement and the Equipment Lease Agreement.

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

"Approving Resolution" or "Authorizing Resolution" means the resolution adopted by the Agency on [December 9, 2020], authorizing the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

"Authorized Representative" means, in the case of the Agency, the Chairman, the Vice Chairman, the Secretary, the Assistant Secretary, the Executive Director or any member or officer of the Agency and such additional persons as, at the time, are designated to act on behalf of the Agency; in the case of the Company, the [members] and such additional persons as, at the time, are designated to act on behalf of the Company; and, in the case of the Sublessee, the [members] and such additional persons as, at the time, are designated to act on behalf of the Sublessee.

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

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

"Closing Date" means [December __], 2020].

"Company" means Violet Estates Owner 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, and its successors and assigns.

"Company Documents" means the Bill of Sale, the Company Lease, the Lease Agreement and the Sublease Agreement.

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

"Company Lease" means the Company Lease Agreement, dated as of [December 1, 2020], by and between the Company and the Agency, as the same may be amended from time to time.

"Company Sales Tax Savings" means all Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent on behalf of the Company, pursuant to this Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Company Facility.

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

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

"Construction Period" means the period beginning on the earlier of (a) Closing Date and (b) the date of commencement of the Project Work of the Facility, and ending on the Completion Date.

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

"Eligible Items" shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Company, the Sublessee and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility: (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Company 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 Company 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 Company Facility.

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

"Environmental Laws" means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection, preservation or remediation of the Environment and/or governing the use, storage,

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treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, written and published policies, guidelines, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

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

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

"Equipment Bill of Sale" means the Equipment Bill of Sale, dated the Closing Date, by the Sublessee to the Agency with respect to the Equipment, as the same may be amended from time to time.

"Equipment Completion Date" means the date of completion of the acquisition, leasing and installation of the Equipment in the Facility as certified pursuant to Section 3.4 of the Equipment Lease Agreement.

"Equipment Lease Agreement" means the Equipment Lease Agreement, dated as of [December 1, 2020], by and between the Agency and the Sublessee, with respect to the Equipment, as the same may be amended from time to time.

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

"Event of Default" means (a) when used with respect to the Lease Agreement, any of the events defined as Events of Default by Section 10.1 of the Lease Agreement, (b) when used with respect to the Equipment Lease Agreement, any of the events defined as Events of Default by Section 10.1 of the Equipment Lease Agreement, and (c) when used with respect to any Mortgage, any of the events defined as Events of Default in such Mortgage.

"Facility" means collectively, the Company Facility leased and subleased to the Company under the Lease Agreement and the Equipment leased to the Sublessee under the Equipment Lease Agreement.

"Facility Equipment" means all machinery, equipment and other personal property used and to be used in connection with Company Facility as described in Exhibit B to the Lease Agreement, but not including the Equipment as described in Exhibit A to the Equipment Lease Agreement.

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

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

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

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

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

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

"Improvements" means all those buildings, improvements, structures and other related facilities (i) affixed or attached to the Land, (ii) not part of the Facility Equipment, and (iii) not part of the Equipment, all as they may exist from time to time.

"Independent Accountant" shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency (such approval not to be unreasonably withheld or delayed).

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

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

(i) vehicles of any sort, including watercraft and rolling stock;

(ii) personalty having a useful life of one year or less;

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(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.

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

"Lease Agreement" means the Lease and Project Agreement, dated as of [December 1, 2020] by and between the Agency, as lessor, and the Company, as lessee, with respect to the Company Facility, as the same may be amended from time to time.

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

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

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

"Loan" has the meaning ascribed to such term in Section 12.4 of the Lease Agreement.

"Loan Documents" has the meaning ascribed to such term in Section 12.4 of the Lease Agreement.

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

"Maximum Company Sales Tax Savings Amount" shall mean the aggregate maximum dollar amount of Company Sales Tax Savings that the Company and all Agents acting on behalf the Company are permitted to receive under this Lease Agreement, which shall equal $[_____], or

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such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

"Maximum Sublessee Sales Tax Savings Amount" shall mean the aggregate maximum dollar amount of Sublessee Sales Tax Savings that the Sublessee and all Agents acting on behalf the Sublessee are permitted to receive under the Equipment Lease Agreement, which shall equal $[_____], or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

"Mortgage" means any mortgage and security agreement granted by the Agency and the Company to a Lender which grants a mortgage lien on and security interest in the Company Facility in favor of the Lender as security for such Lender's Loan to the Company.

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

"Net Proceeds" means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

"NYSDTF" means the New York State Department of Taxation and Finance.

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

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

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

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

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

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"Project" means (a) the acquisition of the Land, [the demolition of existing structures on the Land,] and the construction of (i) two (2) three-story, 14,400 square-foot mixed-use buildings each with seven (7) residential units and approximately 4,000 square feet of commercial space; (ii) one (1) three-story, 12,960 square-foot building with nine (9) residential units; (iii) one (1) three-story, 19,365 square-foot building with eleven (11) residential units and an approximately 1,443 square foot senior center; (iv) one (1) three-story, 25,380 square-foot building with twenty-three (23) residential units; and (v) one (1) three-story, 28,890 square-foot building with twenty-seven (27) residential units, and the acquisition and equipping equipping of the Facility Equipment, which Company Facility is to be leased and subleased by the Agency to the Company and further subleased by the Company to the Sublessee; and (b) the acquisition and installation of the Equipment, which Equipment is to be leased by the Agency to the Sublessee, and which Facility is to be used by the Sublessee as a senior housing community and mixed-use commercial facility.

"Project Application Information" means the application and questionnaire submitted to the Agency on October 29, 2020 by or on behalf of the Company and the Sublessee, for approval by the Agency of the Project, together with all other letters, documentation, reports and financial information submitted in connection therewith.

"Project Work" means the work required to complete the Project.

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

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

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

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

"Recaptured Benefits" has the meaning, as applicable, (a) ascribed to such term in Section 5.4 of the Lease Agreement, or (b) ascribed to such term in Section 5.2 of the Equipment Lease Agreement.

"Recapture Event" has the meaning, as applicable, (a) ascribed to such term in Section 5.4 of the Lease Agreement, or (b) ascribed to such term in Section 5.2 of the Equipment Lease Agreement.

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

"Sales Tax Agent Authorization Letter" shall mean, as applicable, (a) the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit E to the Lease Agreement – "Form of Sales Tax Agent Authorization Letter" and to be delivered in accordance with Section 5.2(d) of the Lease Agreement, and/or (b) the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit B to the Equipment Lease Agreement – "Form of Sales Tax Agent Authorization Letter" and to be delivered in accordance with Section 5.1(c) of the Equipment Lease Agreement.

"Sales Tax Exemption" shall mean an exemption from Sales and Use Taxes resulting from the Agency's participation in the Facility.

"Sales Tax Registry" shall mean, as applicable, (a) the Sales Tax Registry in the form set forth in Exhibit F to the Lease Agreement, and/or (b) the Sales Tax Registry in the form set forth in Exhibit C to the Equipment Lease Agreement.

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

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

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

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

"State" means the State of New York.

"State Sales and Use Taxes" shall mean sales and compensating use taxes and fees imposed by Article 28 of the New York State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

"State Sales Tax Savings" shall mean all Sales Tax Exemption savings relating to State Sales and Use Taxes realized by or for the benefit of the Company and the Sublessee, including any savings realized by any Agent, pursuant to this Lease Agreement, the Equipment Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

"Sublease Agreement" means a certain [Sublease Agreement], dated [_____ __, 20__], by and between the Company, as sublessor, and the Sublessee, as sublessee, as amended from time to time.

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"Sublessee" means Violet Estates 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, as sublessee under the Sublease Agreement, and its successors and assigns.

"Sublessee Documents" means the Agency Compliance Agreement, the Sublease Agreement, the Equipment Lease Agreement and the Equipment Bill of Sale.

"Sublessee Sales Tax Savings" means all Sales Tax Exemption savings realized by or for the benefit of the Sublessee, including any savings realized by any Agent on behalf of the Sublessee, pursuant to the Equipment Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

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

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

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

"Tenant Agency Compliance Agreement" means an agreement in the form attached to the Lease Agreement as Exhibit I between the Agency and a sublessee of the Company Facility.

"Termination Date" shall mean, as applicable, such date on which the Sales Tax Exemption authorization may terminate pursuant to the terms and conditions of Section 5.2 of the Lease Agreement or Section 5.1 of the Equipment Lease Agreement.

"Title Report" means Certificate of Title No. [_____] issued by Poughkeepsie Abstract Inc. to the Agency on [_____], 20[_] and redated and recertified on the Closing Date.

"Transaction Documents" means the Agency Documents, the Company Documents, and the Sublessee Documents.

"Unassigned Rights" means the rights of the Agency and moneys payable pursuant to and under (a) Sections 3.6, 4.3, 4.4, 5.1, 5.2, 5.4, 6.4(c) and (d), 6.7, 8.1, 8.2, 8.5, 8.7, 8.8, 8.10, 8.11, 9.3, 10.2(a), 10.4, 11.2, 11.3 and 14.8 and Article XIII of the Lease Agreement, and (b) Sections 4.3, 4.5, 5.1, 5.2, 6.4(b) and (c), 6.5, 8.2, 8.6, 8.7, 8.8, 10.2(a), 10.4, 11.2, 11.3 and 13.9 of the Equipment Lease Agreement.

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Draft Dated 12/03/2020

DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

(DUTCHESS COUNTY, NEW YORK)

AND

VIOLET ESTATES LLC

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# EQUIPMENT LEASE AGREEMENT

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Dated as of [December 1, 2020]

Dutchess County Industrial Development Agency
(Violet Estates Owner LLC/Violet Estates LLC 2020 Facility)

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THIS EQUIPMENT LEASE AGREEMENT, dated as of [December 1, 2020] (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 VIOLET ESTATES 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 c/o Reynolds Asset Management at 188 E. Franklin Turnpike, Ho Ho Kus, New Jersey 07423 (the "**Sublessee**").

R E C I T A L S

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, Violet Estates Owner 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 c/o Reynolds Asset Management at 188 E. Franklin Turnpike, Ho Ho Kus, New Jersey 07423 (the "**Company**"), 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**") consisting of (a) the acquisition of an approximately 7.194-acre parcel of land located at 35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6162-10-427650 (the "**Land**"), the demolition of existing structures on the Land, and the construction of (i) two (2) three-story, 14,400 square-foot mixed-use buildings each with seven (7) residential units and

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approximately 4,000 square feet of commercial space; (ii) one (1) three-story, 12,960 square-foot building with nine (9) residential units; (iii) one (1) three-story, 19,365 square-foot building with eleven (11) residential units and an approximately 1,443 square foot senior center; (iv) one (1) three-story, 25,380 square-foot building with twenty-three (23) residential units; and (v) one (1) three-story, 28,890 square-foot building with twenty-seven (27) residential units (the "**Improvements**"), and the acquisition and equipping of certain equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased and subleased by the Agency to the Company and further subleased by the Company to the Sublessee; and (b) 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 senior housing community and mixed-use commercial facility; and

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to the terms of a certain Company Lease Agreement, dated as of [December 1, 2020] (the "**Company Lease**"), by and between the Company and the Agency; and

WHEREAS, the Agency has agreed to lease and sublease the Company Facility to the Company, pursuant to a certain Lease and Project Agreement, dated as of [December 1, 2020] (the "**Lease Agreement**"), by and between the Agency and the Company; and

WHEREAS, the Company has agreed to sub-sublease the Company Facility pursuant to the terms of a certain [Sublease Agreement], dated [____ __, 20__] (the "**Sublease Agreement**"), by and between the Company 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 Agreement, which definitions are incorporated herein and made a part hereof by reference.

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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 is authorized to transact business in the State of New York, is in good standing under the laws of the State of Delaware and the State of New York, and

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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.

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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.

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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 [July 31, 2022], 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, [20__] 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

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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

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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

Section 5.1 Sales 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.

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(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 Company 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 Company 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 Company 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.

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(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 Company.

(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

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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 Violet Estates Owner LLC/Violet Estates LLC 2020 Project located at 35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6162-10-427650, 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

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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

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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 Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the 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 Sublesee 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.

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, 2022], 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) 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 that the Sublessee receives Sales Tax Savings in connection with the Project Work in violation of any of the provisions of Section 5.1 hereof or Section 875 of the GML; provided, however, that the foregoing shall constitute a Recapture Event with respect to such unauthorized Sales Tax Savings only. It is

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further provided that failure to repay such authorized Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recaptured Benefits.

(d) 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).

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

## ARTICLE VI
## MAINTENANCE AND INSURANCE

Section 6.1 Maintenance and Modifications of Equipment by 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

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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.

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(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

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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

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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

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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.

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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

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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**"):

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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,

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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.

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(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 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 8.12 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 8.13 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.

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(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

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(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.

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;

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(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,

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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

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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 COMPANY

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.

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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

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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

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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

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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: Sarah Lee, Executive Director

With a copy to:

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

To the Sublessee:

Violet Estates Owner LLC
c/o Reynolds Asset Management

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188 E. Franklin Turnpike
Ho Ho Kus, New Jersey 07423
Attention: [ ]

With a copy to:

Corbally, Gartland & Rappleyea LLP
35 Market Street
Poughkeepsie, New York 12601
Attention: Patrick Gartland, 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

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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.

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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 officers, all as of [December __, 2020].

**DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By:_____
Name: Sarah Lee
Title: Executive Director

**VIOLET ESTATES LLC,**
a Delaware limited liability company

By: _____
Print Name:
Its:

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# EXHIBIT A

## Equipment

All Eligible Items acquired and installed and/or to be acquired and installed by or on behalf of Violet Estates LLC (the "Sublessee") pursuant to the Sales Tax Exemption in connection with the completion of the Dutchess County Industrial Development Agency's Violet Estates Owner LLC/Violet Estates LLC 2020 Project located at 35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6162-10-427650, and leased to the Sublessee pursuant to the Equipment Lease Agreement, dated as of [December 1, 2020].

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**EXHIBIT B**

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

**SALES TAX AGENT AUTHORIZATION LETTER**

**EXPIRATION DATE: [December 31, 2022]**

**ELIGIBLE LOCATION:**

35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York

_____ __, 20__

TO WHOM IT MAY CONCERN

Re: Dutchess County Industrial Development Agency
(Violet Estates Owner LLC/Violet Estates LLC 2020 Project)

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, 2020] (the "Equipment Lease Agreement"), between the Agency and Violet Estates 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 c/o Reynolds Asset Management at 188 E. Franklin Turnpike, Ho Ho Kus, New Jersey 07423 (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

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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 Violet Estates Owner LLC/Violet Estates LLC 2020 Project located at 35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6162-10-427650, 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

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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

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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)

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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:

ACCEPTED AND AGREED TO BY:

**[*AGENT*]**

By: _____
Name:
Title:

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**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 of 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.

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**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 (incl. Serial #,if applicable) | Location of Item | Dollar Amount | Vendor Description | Date of Payment | Purchase order or invoice number | Sales Tax Savings |
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| 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.

**Lessee Name:** _____

**Signature By:** _____

**Name (print):** _____

**Title:** _____

**Date:** _____

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# EXHIBIT C

## Sales Tax Registry

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

| Description of Item (incl. Serial #,if applicable) | Location of Item | Dollar Amount | Vendor Description | Date of Payment | Purchase order or invoice number | Sales Tax Savings |
|---|---|---|---|---|---|---|
| SEMI-ANNUAL PERIOD FROM JULY 1, [____] to DECEMBER 31, [____] | | | | | | |
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| **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, [____] | | | | | | |
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| **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 LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Sublessee, 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.

**Lessee Name:** _____

**Signature By:** _____

**Name (print):** _____

**Title:** _____

**Date:** _____

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**EXHIBIT D**

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES OF SUBLESSEE

[None.]

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# EXHIBIT E

## ANNUAL COMPLIANCE CERTIFICATE

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

1. That s/he is the duly appointed [_____] of VIOLET ESTATES LLC, 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, having an office c/o Reynolds Asset Management at 188 E. Franklin Turnpike, Ho Ho Kus, New Jersey 07423 (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, 2020] (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.

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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.

**VIOLET ESTATES LLC**

By: _____
Name:
Title:

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

_____
Notary Public

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Exhibit A

Insurance Certificates

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Exhibit B

Form of Certified Statement and Documentation Regarding FTEs

Sublessee Name and Address:

Project Name:

**Job Information**

Number of FTE (as such term is defined in the Equipment Lease Agreement) jobs by category and average hourly wage for each **before the Agency's financial assistance provided to the Sublessee:**

| Category | FTE | Average Hourly Wage/Salary and/or Fringe Benefits |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Current number of FTE for 20__ by category and average hourly wage/salary:

| Category | FTE | Average Hourly Wage/Salary and/or Fringe Benefits |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

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Number of FTE jobs **created** during 20__ as a result of the assistance received from the Agency by category and average hourly wage/salary:

| **Category** | **FTE** | **Average Hourly Wage/ Salary and/or Fringe Benefits** |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Number of FTE jobs **retained** during 20__ as a result of the assistance received from the Agency by category and average hourly wage/salary.

| **Category** | **FTE** | **Average Hourly Wage/Salary and/or Fringe Benefits** |
|---|---|---|
| Management | _____ | _____ |
| Professional | _____ | _____ |
| Administrative | _____ | _____ |
| Production | _____ | _____ |
| Other | _____ | _____ |

Total annual payroll for 20__ _____

Total of FTE construction jobs created during 20__ _____

Number of FTE construction jobs during 20__ _____

20__ Capital Investment

Real Estate _____

Construction _____

Machinery and Equipment _____

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Other Taxable Expenses _____

Other Non-Taxable Expenses _____

**Total Capital Investment** _____

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.

Signed: _____
(authorized company representative)

Date: _____

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Exhibit C

Form NYS-45

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Exhibit D

Form ST-340

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**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.

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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.

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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*
*Re-adopted 1/9/2019*
*Amended 5/8/2019*
*Adopted 1/8/2020*

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AGENCY COMPLIANCE AGREEMENT

THIS AGENCY COMPLIANCE AGREEMENT, dated as of [December 1, 2020], is between the DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 3 Neptune Road, Poughkeepsie, New York 12601 (the "**Agency**"), and VIOLET ESTATES 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 c/o Reynolds Asset Management at 188 E. Franklin Turnpike, Ho Ho Kus, New Jersey 07423 (the "**Sublessee**").

R E C I T A L S

WHEREAS, the Agency was created by Chapter 335 of the Laws of 1977 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "**Act**"); and

WHEREAS, the Agency has agreed to assist in (a) the acquisition of an approximately 7.194-acre parcel of land located at 35 Violet Avenue, Town of Poughkeepsie, County of Dutchess, State of New York, bearing Tax Map Grid No. 134689-6162-10-427650 (the "**Land**"), the demolition of existing structures on the Land, and the construction of (i) two (2) three-story, 14,400 square-foot mixed-use buildings each with seven (7) residential units and approximately 4,000 square feet of commercial space; (ii) one (1) three-story, 12,960 square-foot building with nine (9) residential units; (iii) one (1) three-story, 19,365 square-foot building with eleven (11) residential units and an approximately 1,443 square foot senior center; (iv) one (1) three-story, 25,380 square-foot building with twenty-three (23) residential units; and (v) one (1) three-story, 28,890 square-foot building with twenty-seven (27) residential units (the "**Improvements**"), and the acquisition and equipping of certain equipment not part of the Equipment (as such term is defined herein) (the "**Facility Equipment**"; and together with the Land and the Improvements, the "**Company Facility**"), which Company Facility is to be leased and subleased by the Agency to Violet Estates Owner LLC, a Delaware limited liability company (the "**Company**") the Company and further subleased by the Company to the Sublessee; and (b) 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 senior housing community and mixed-use commercial facility (the "**Project**");

WHEREAS, the Agency acquired a leasehold interest in the Land and the Improvements, all pursuant to the Company Lease Agreement, dated as of [December 1, 2020] (the "**Company Lease**"), by and between the Agency and the Company; and

WHEREAS, the Agency leased and subleased the Company Facility to the Company pursuant to the Lease and Project Agreement, dated as of [December 1, 2020] (the "**Lease Agreement**"), by and between the Agency and the Company; and

WHEREAS, the Company intends to sublease the Company Facility (the "**Demised Premises**") to the Sublessee to be used as a senior housing community and mixed-use commercial facility pursuant to a [Sublease Agreement], dated as of [_____ ___, 20__] (the "**Sublease**

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**Agreement**"), by and between the Company and the Sublessee, which may be amended from time to time.

NOW, THEREFORE, the parties hereto hereby agree as follows:

## ARTICLE I
## REPRESENTATIONS AND COVENANTS OF SUBLESSEE

Section 2.1 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 duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, and 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 this Agency Compliance Agreement. This Agency Compliance Agreement has been duly authorized, executed and delivered by the Sublessee.

(b) To the best of the Sublessee's knowledge, neither the execution and delivery of this Agency Compliance Agreement nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof 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.

(c) Any and all leasehold improvements undertaken by the Sublessee with respect to the Demised Premises and the design, acquisition, construction, renovation, equipping and operation thereof by the Sublessee will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Company Facility. The Sublessee shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorneys' fees, resulting from any failure by the Sublessee to comply with the provisions of this subsection.

(d) The Agency Compliance Agreement 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.

## ARTICLE II
## INSURANCE

Section 2.1 Insurance Required. At all times throughout the Lease Term, the Sublessee shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks, and for such amounts, as are customarily insured against by businesses of like size and type and

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shall pay, as the same become due and payable, all premiums with respect thereto. Such insurance shall include, without limitation, the following (but without duplication of insurance provided by the Company pursuant to the Lease Agreement covering the same risks and insured(s)):

(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 completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Sublessee, but in no event less than $1,000,000. During the construction of the Company Facility, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance that the Sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Sublessee or any permitted sublessee who are located at or assigned to the Company Facility. This coverage shall be in effect from and after the date any such employees first occupy the Company 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 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage), and blanket excess liability coverage, in an amount not less than $5,000,000 combined single limit or equivalent, protecting the Agency and the Sublessee against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during any construction or renovation period with respect to the Demised Premises.

(d) During any construction period with respect to the Demised Premises (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Sublessee shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

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

(ii) Comprehensive general liability providing coverage for:

Premises and Operations
Products and Completed Operations
Owners Protective
Contractors Protective
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)

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Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

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

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

Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Agency Compliance Agreement 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 2.1(a) hereof 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 of insurance required by Section 2.1 hereof shall provide for at least thirty (30) days prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 2.1(c) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Section 2.1 (d)(ii) and (iv) shall name the Agency and the Sublessee as additional insureds.

(b) The certificate of insurance required by Section 2.1(c) hereof shall be delivered to the Agency on or before the date hereof. A copy of the certificates of insurance required by Section 2.1(d)(ii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any construction or renovation of the Demised Premises. 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 the current year of the Sublessee's insurance policy, insurance of the types and in the amounts required by Section 2.1 hereof and complying with the additional requirements of Section 2.2(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 policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Agency Compliance Agreement. The Sublessee shall provide such further information with respect to the insurance coverage required by this Agency Compliance Agreement as the Agency may from time to time reasonably require.

Section 2.3 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds

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may be paid. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(a) hereof shall be applied in accordance with the provisions of the Sublease Agreement.

Section 2.4 Right of Agency to Pay Insurance Premiums. If the Sublessee fails to maintain or cause to be maintained any insurance required to be maintained by Section 2.1 hereof, the Agency may pay or cause to be paid the premium for such insurance. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency to the Sublessee. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Sublessee. The Sublessee shall, on demand, reimburse the Agency for any amount so paid pursuant to this Section, together with interest thereon from the date of payment of such amount by the Agency.

## ARTICLE III
## SPECIAL COVENANTS

Section 3.1 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 DEMISED PREMISES 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 DEMISED PREMISES. THE SUBLESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE SUBLESSEE, ON BEHALF OF ITSELF IS SATISFIED THAT THE DEMISED PREMISES 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.

Section 3.2 Hold Harmless Provisions.

(a) The Sublessee agrees that the Agency and its directors, members, officers, agents (except the Company) and employees shall not be liable for, and agrees to defend, indemnify, release and hold the Agency and its directors, members, officers, agents 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 Demised Premises or to common areas or other portions of the Company Facility to which the Sublessee has regular access (such areas, together with the Demised Premises, are hereinafter referred to as the "**Sublessee Premises**"), or arising by reason of or in connection with the

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occupation or the use thereof or the presence of any Person or Property on, in or about the Sublessee Premises, and (ii) liability arising from or expense incurred in connection with the Agency's participation in the subleasing of the Demised Premises to the Sublessee, 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 any authority conferred upon it pursuant to this Agency Compliance 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 Agency Compliance Agreement (including without limitation this Section) or any other documents delivered by the Agency in connection with this Agency Compliance Agreement), and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, to the extent that any such losses, damages, liabilities or expenses of the Agency are not incurred and do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, agents or employees. Except as otherwise provided herein, the foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Agency Compliance Agreement, the obligations of the Sublessee pursuant to this Section shall remain in full force and effect after the termination of this Agency Compliance 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 members, directors, officers, agents 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 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 3.3 Right to Inspect Demised Premises. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable prior written notice to inspect the Demised Premises.

Section 3.4 Qualification as Project.

(a) The Sublessee will not take any action, or fail to take any action, which action or failure to act would cause the Company Facility not to constitute a "project" as such quoted term is defined in the Act. Without limiting the generality of the foregoing, the Sublessee will in no event use the Demised Premises in such a way as to cause or permit the Company Facility to be used in violation of Section 862(2)(a) of the Act.

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(b) The occupation of the Demised Premises has not and will not result in the removal of a facility or plant of the Sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Sublessee located within the State.

Section 3.5 Compliance with Orders, Ordinances, Etc.

(a) The Sublessee, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee of the Sublessee or occupant of the Demised Premises which is occupying the Demised Premises by permission of the Sublessee to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Company Facility or the Demised Premises, or to the acquisition, construction and equipping of the Demised Premises, or to any use, manner of use or condition of the Company Facility or any part of the Demised Premises, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Company Facility or any part thereof, and companies or associations insuring the premises.

(b) The Sublessee shall keep or cause the Demised Premises to be kept free of Hazardous Substances. Without limiting the foregoing, the Sublessee shall not cause or permit the Demised Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Sublessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Sublessee or any of its contractors, or subcontractors, a release of Hazardous Substances onto the Company Facility or onto any other property. The Sublessee shall comply with, and ensure compliance by all of its contractors, and subcontractors with, all applicable federal, state and local environmental laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all of its contractors, and subcontractors obtain and comply with, any and all approvals, registrations or permits required thereunder. The Sublessee shall (i) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Substances released, stored, generated or used by it on, from or affecting the Demised Premises (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the satisfaction of the Agency, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, its employees, agents, officers, members and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or of any policies or requirements of the Agency, which are based upon or in any way related to such Hazardous Substances, and in all cases which result from the intentional or unintentional act or omission of the Sublessee or any

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of its contractors or subcontractors, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Sublessee may have to the Agency at common law and shall survive the transactions contemplated herein.

(c) Notwithstanding the provisions of subsections (a) and (b) above, the Sublessee may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) 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, unless the Agency shall notify the Sublessee that, by failure to comply with such requirement or requirements, the Company Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Sublessee shall promptly take such action with respect thereto or provide such security as shall be reasonably satisfactory to the Agency. If at any time the then existing use or occupancy of the Demised Premises shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Sublessee shall use reasonable efforts not to cause or permit such use or occupancy by the Sublessee to be discontinued without the prior written consent of the Agency, which consent shall not be unreasonably withheld.

(d) Notwithstanding the provisions of this Section, if, because of a breach or violation of the provisions of subsection (a) or (b) above (without giving effect to subsection (c)), the Agency or any of its members, directors, officers, agents or employees shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Sublessee shall immediately provide legal protection or pay an amount or post a bond in an amount necessary, in the opinion of the Agency and of its members, directors, officers, agents and employees, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(e) Notwithstanding any provisions of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Sublessee.

Section 3.6 Agreement to Provide Information. Annually, the Sublessee shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Company 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 whenever requested by the Agency any other information concerning the Sublessee, its respective finances, its respective operations, its respective 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, the Public Authorities Accountability Act of 2005, or the Public Authorities Reform Act of 2009, each as amended from

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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 3.7 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 it is a party, cause any new employment opportunities created in connection with the Demised Premises 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 Company Facility is located (collectively, the "**Referral Agencies**"). The Sublessee also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, 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 3.8 Subleasing.

(a) In accordance with Section 862(1) of the Act, the Demised Premises shall not be occupied by a sublessee whose tenancy would result in the removal of a facility or plant of the proposed sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

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

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

(b) The Sublessee may not assign the Sublease Agreement or sub-sublease the Demised Premises without the prior written consent of the Agency. Any assignment or sub-sublease shall conform with the restrictions and requirements set forth in Section 9.3 of the Lease Agreement.

Section 3.9 Approval of Sublease Agreement. The Agency hereby approves the subleasing of the Company Facility by the Company to the Sublessee pursuant to the terms of the Sublease Agreement.

Section 3.10 Definitions. All capitalized terms used in this Agency Compliance Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A.

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Section 3.11 Execution of Counterparts. This Agency Compliance 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.

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

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IN WITNESS WHEREOF, the Agency and the Sublessee have caused this Agency Compliance Agreement to be executed in their respective names by their duly authorized representatives, all as of [December __, 2020].

**DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By:_____
Name: Sarah Lee
Title: Executive Director

**VIOLET ESTATES LLC,**
a Delaware limited liability company

By: _____
Name:
Its:

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Dutchess County DC ida Industrial Development Agency

*3 Neptune Road, Poughkeepsie, NY 12601*
*Tel. # - (845) 463-5400 / Fax # - (845) 463-0100*

# 2021 Meeting Schedule

*Monthly – 8:00 a.m. (Second Wednesday)*

January 13

February 10

March 10

April 14

May 12

June 9

July 14

August (No meeting)

September 8

October 13

November 10

December 8