

THIS LEASE AGREEMENT, dated as of January 1, 2022, is by and between the **COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the “Agency”), having its principal office at 254 South Main Street, Suite 410, New City, New York 10956, and **FRIENDSHIP VENTURES, LLC**, a limited liability company organized and existing under and by virtue of the laws of the State of New York (the “Lessee”), having its principal office at 32 Pine Tree Drive, Poughkeepsie, New York 12603 (the “Agreement”).

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, as amended (the “Enabling Act”), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish one or more projects for the purpose of promoting, developing, encouraging and assisting in the acquisition, construction, reconstruction, improvement, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, thereby advancing the job opportunities, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 564 of the 1980 Laws of New York (together with the Enabling Act, the “Act”), for the benefit of the County of Rockland (the “County”) and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee for a “project” within the meaning of the Act within the territorial boundaries of the County of Rockland and located on that certain lot, piece or parcel of land generally known as and by the street address 156 West Clarkstown Road, New City, NY 10956 (the “Premises”) and otherwise described in Appendix A attached hereto and made a part hereof; and

WHEREAS, the Project will consist of the acquisition, construction and equipping of an Adult Care Facility with Assisted Living Program beds (ACF/ALP) to provide room and board, food services, personal care services, housekeeping and other services allowed within an ACF/ALP to adults who require assistance, focusing on low-income adults who do not have private funds to pay for these services, to be located at 156 West Clarkstown Road, in the Town of Clarkstown, Rockland County, New York (the “Project”); and

WHEREAS, the Project will be subleased by the Lessee through two separate leases, to (i) Elliot Markowitz, d/b/a L’Dor Adult Home (the “Construction Period Operating Sublease”) and (ii) Elliot Markowitz, d/b/a L’Dor Assisted Living (the “Operating Period Operating Sublease”); and

WHEREAS, concurrently with the execution hereof, and in order to secure the operations of the Lessee, Elliot Markowitz, residing at 55 Barnes Road, Washingtonville, New York 10992 has entered into a certain Guaranty Agreement (the “Guarantee Agreement”) with the Agency guaranteeing, among other things, the performance of the Lessee under this Agreement; and

WHEREAS, to facilitate the Project, the Agency and the Lessee have agreed to consider entering into a “straight-lease transaction” within the meaning of the Act pursuant to which the Lessee, as lessor, will lease the Premises to the Agency, as lessee, and the Agency will appoint the Lessee as agent for the Agency for purposes of developing the Project, and the Agency, as lessor, will sublease the Premises back to the Lessee, as lessee, and, in furtherance of such purposes, on August 26, 2021, the Agency adopted a resolution (the “Inducement Resolution”) authorizing the Lessee to proceed with the Project; and

WHEREAS, on September 10, 2021, the Agency published a notice of public hearing for the Project in *The Journal News*, and held such public hearing on September 20, 2021 at the Town of Clarkstown Town Hall; and

WHEREAS, with respect to the Project, the Company has performed such environmental reviews as may be required by the State Environmental Quality Review Act and has delivered to the Agency a Negative Declaration of the Town of Clarkstown Planning Board; and

WHEREAS, on September 23, 2021, the Agency adopted a resolution (the “Authorizing Resolution”) authorizing the undertaking of the Project, the acquisition of a leasehold estate in the Premises by the Agency and the lease of the Premises by the Agency to the Lessee; and

WHEREAS, concurrently with the execution of this Agreement, the Agency, as lessee, and the Lessee, as lessor, will enter into a Company Lease Agreement (the “Company Lease”) pursuant to which the Lessee will lease the Premises to the Agency; and

WHEREAS, the provision by the Agency of financial assistance to the Lessee through a straight-lease transaction has been determined to be necessary to induce the Lessee to locate and develop the Project within the County and make the Project more affordable; and the Lessee has represented that if the Agency does not provide such financial assistance, the Lessee could not feasibly proceed with the Project; and

WHEREAS, in order to finance a portion of the costs of the Project, Salisbury Bank and Trust Company (the “Lender”) has agreed to lend funds to the Lessee in order to finance a portion of the costs of the Project; and

WHEREAS, in order to evidence its obligation to repay such loan (the “Mortgage Loan”), the Lessee will issue to the Lender a promissory note in the principal amount of the Mortgage Loan; and

WHEREAS, in order to secure its obligations to the Lender under the Mortgage Note, the Lessee and the Agency will grant a mortgage on their respective interests in the Project to the Lender, (as the same may be amended from time to time, the "Mortgage");

WHEREAS, this Agreement shall constitute the uniform agency project agreement required under Paragraph 6 of Section 369-a of the Act;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not create a debt of the State of New York or of the County of Rockland, and neither the State of New York nor the County of Rockland shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals, revenues and receipts derived from or in connection with the Project, including moneys received under this Agreement):

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

Section 1.1 Definitions. The following terms shall have the following meanings in this Agreement:

“Act” shall mean the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 564 of the 1980 Laws of New York, as amended.

“Additional Rent” shall mean any additional rental payments described in Section 3.3(b) and (c) of this Agreement.

“Affiliate” means, with respect to a Person, a Person which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term “control” (including the related terms “controlled by” and “under common control with”) means the power to direct or cause the direction of the management and policies of a Person either: (i) through the possession, directly or indirectly, of the ownership of voting securities, by contract or otherwise, (ii) through the right to designate a majority of the members of its board of directors, trustees or other governing body, or (iii) by contract or otherwise.

“Agency” shall mean the County of Rockland Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

“Agreement” shall mean this Lease Agreement between the Agency and the Lessee, and shall include any and all amendments and supplements hereto hereafter made in conformity herewith.

“Annual Administrative Fee” shall mean that annual administrative fee set forth in Section 3.2(b) of this Agreement and such replacement administrative fee as may be established from time to time by the Agency as generally applicable to entities receiving or that have received Financial Assistance.

“Assessor” shall mean the tax assessor of the Town of Clarkstown.

“Authorized Representative” shall mean (i) in the case of the Agency, the Chairman, Vice Chairman, Secretary or Executive Director of the Agency or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Agency has given written notice to the Lessee, and (ii) in the case of the Lessee, the officers who are authorized representatives of the lessee of the Lessee, or any officer or employee of the Lessee authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Lessee has given written notice to the Agency.

“Authorizing Resolution” shall mean the resolution of the Agency adopted on September 23, 2021 authorizing Project and the Straight-Lease Transaction.

“Base Rent” shall mean the rental payment described in Section 3.3(a) of this Agreement.

“Business Day” shall mean any day which shall not be a Saturday, Sunday, legal holiday or a day on which banking institutions in the County are authorized by law or executive order to close.

“County” shall mean the County of Rockland.

“Commencement Date” shall mean January 21, 2022, on which date the leasehold title to the Premises was transferred to the Agency pursuant to the Company Lease and subleased to the Lessee pursuant to this Agreement.

“Company Lease” shall mean the Company Lease Agreement, dated as of January 1, 2022, between the Lessee, as lessor, and the Agency, as lessee.

“Construction Period Operating Sublease” shall have the meaning set forth in the Premises.

“County” shall mean the County of Rockland in the State.

“Environmental Indemnity Agreement” shall mean the Environmental Indemnity Agreement, dated as of January 1, 2022, from the Lessee to the Agency, a copy of which is attached hereto as Appendix B.

“Event of Default” or “Default” shall mean any of those events defined as Events of Default by Section 7.1 of this Agreement.

“Exempt Property” shall mean only machinery, equipment, appliances, furnishing, fixtures, materials and other tangible personal property conveyed to or acquired by the Agency in connection with the Project on or before the date of completion of the Project (as evidenced in accordance with Section 2.1(d)) for incorporation in the Project or for use in connection with the Project.

“Financial Assistance” shall have the meaning assigned to that term in the Act and which financial assistance has been approved by the Agency for the Project.

“Improvements” shall mean all of those buildings, improvements, structures and related facilities, including accessions thereto and replacements thereof constituting part of the Project.

“Inducement Resolution” shall mean the resolution of the Agency adopted on August 26, 2021 authorizing the Lessee to proceed with the Project.

“Lender” shall have the meaning set forth in the introductory clauses.

“Loss Event” shall have the meaning specified in Section 5.1(a).

“Mortgage” shall have the meaning set forth in the introductory clauses.

“Mortgage Recording Taxes” shall mean those taxes imposed by the County and the State upon the recording of mortgages against real property in the County.

“Net Proceeds” shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount from any such proceeds, award, compensation or damages less all expenses (including attorneys’ fees and any extraordinary expenses of the Agency or the Lenders) incurred in the collection thereof.

“Notice of Public Hearing” shall mean the notice of public hearing for the Project referred to in the introductory clauses of this Agreement.

“Occupancy Date” shall mean the date on which the permanent certificate of occupancy (or temporary certificate of occupancy, if one is issued earlier) for the Project is issued.

“Operating Period Operating Sublease” shall have the meaning set forth in the Premises.

“Operator” shall mean, during the construction period, Elliot Markowitz and/or any entity formed or to be formed of which Elliot Markowitz or Jacob Reckless shall be the majority owner and the managing member.

“Operator Sublease Agreement” shall mean the each of the Construction Period Operating Sublease and the Operating Period Operating Sublease.

“Permitted Encumbrances” shall mean:

(i) this Agreement, the Company Lease, the Operator Sublease Agreement, the PILOT Agreement, any Mortgage, any tenant lease to individual residents of the Premises, and any regulatory agreement, declaration of restrictive covenants, and any renewal, replacement or refinancing of any of the foregoing;

(ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;

(iii) any mechanic’s, workmen’s, repairmen’s, materialmen’s, contractors’, carriers’, suppliers’ or vendors’ Lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.5;

(iv) any lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any vendor of Project property or any contractor hired to perform Project Work may place on or with respect to the Project or any part thereof;

(v) utility, access and other easements and rights-of-way, restrictions and exceptions that will not materially interfere with or materially impair the Lessee's or a tenant's use and enjoyment of the Project as herein provided;

(vi) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Project as do not, either singly or in the aggregate, materially impair the property affected thereby for the purpose for which it was leased by the Agency hereunder or purport to impose liabilities or obligations on the Agency; and

(vii) those exceptions to title to the Project enumerated in the title insurance policy derived pursuant to Section 2.2.

“Person” shall mean an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a trust, any unincorporated organization, a governmental body or a political subdivision, a municipality, a municipal authority or any other group or organization of individuals.

“PILOT Agreement” shall mean a Payment in Lieu of Taxes Agreement relating to the Premises, to be dated as set forth therein, among the Agency, the Lessee, the Town, the East Ramapo Central School District and the Assessor, as the same may be amended from time to time. A copy of the PILOT Agreement shall be attached hereto as Appendix C upon its execution and delivery by all of the parties thereto.

“PILOT Letter of Credit” shall mean a standby letter of credit from a bank acceptable to the Town Assessor, meeting the requirements of the PILOT Agreement.

“Premises” shall mean that certain lot, piece or parcel of land generally known by the street address 156 West Clarkstown Road, New City, New York 10956, all as more particularly described in the Appendices to this Agreement - “Description of the Project Realty” hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4.

“Prohibited Person” shall mean (i) any Person (A) that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the County, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or the County, unless such default or breach has been waived in writing by the Agency or the County, as the case may be, and (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

“Project” shall mean the acquisition, construction and equipping of an Adult Care Facility with Assisted Living Program beds (ACF/ALP) (the “Project”) to provide room and board, food services, personal care services, housekeeping and other services allowed within an ACF/ALP to adults who require assistance, focusing on low-income adults who do not have private funds to pay for these services, to be located at 156 West Clarkstown Road, in the Town of Clarkstown, Rockland County, New York.

“Project Documents” shall mean the agreements listed in Appendix E.

“Project Completion Date” means the date on which the Project Work is completed, as evidenced by the issuance of a temporary certificate of occupancy.

“Project Work” shall mean the work required to complete the construction and/or renovation portion of the Project.

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

“Rental Payments” shall mean Base Rent and Additional Rent.

“Sales Taxes” shall mean any tax(es) imposed by Article 28 of the New York Tax Law, as the same may be amended from time to time.

“Sales Tax Exemption Agreement” shall mean the Sales Tax Exemption Agreement, dated as of January 1, 2022, between the Agency and the Lessee.

“State” shall mean the State of New York.

“Straight-Lease Transaction” shall have the meaning assigned to that term in the Act.

Section 1.2 Construction. In this Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of the execution and delivery of this Agreement.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

Section 1.3 Representations and Warranties by Agency. The Agency represents and warrants as follows:

(a) the Agency is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State,

(b) assuming the accuracy of the representations made by the Lessee, the Agency is authorized and empowered to enter into the transactions contemplated by this Agreement and any other Project Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder and

(c) by proper action of its board of directors, the Agency has duly authorized the execution and delivery of this Agreement and such other Project Documents to which the Agency is a party.

Section 1.4 Findings by Agency. The Agency, based upon the representations and warranties of the Lessee contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Lessee to the Agency, hereby affirms its findings and determinations set forth in the Authorizing Resolution, and further finds and determines, that:

(a) the providing of Financial Assistance through the straight-lease transaction (within the meaning of the Act) contemplated by this Agreement is necessary to induce the Lessee to proceed with the Project;

(b) the transactions contemplated by this Agreement shall not result in the removal of any project or plant of the Lessee or any other occupant or user of the project from one area of the State (but outside of the County) to within the County or in the abandonment of one or more facilities or plants of the Lessee or any other occupant or user of the Project located within the State (but outside of the County);

(c) the transactions contemplated by this Agreement shall not provide Financial Assistance in respect of any project where facilities or property that are primarily used in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs;

(d) undertaking the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the County; and

(e) no funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

Section 1.5 Representations and Warranties by Lessee. The Lessee makes the following representations and warranties:

(a) The Lessee is a limited liability company duly organized, validly existing under the laws of the New York, is not in violation of any provision of its organizational documents, and has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document.

(b) The Lessee is duly qualified to do business in every jurisdiction in which qualification is necessary.

(c) The execution, delivery and performance of this Agreement and each other Project Document and the consummation of the transactions herein contemplated have been duly authorized by all requisite governing body action on the part of the Lessee and will not violate to its knowledge any provision of law, any order of any court or agency of government, or the organizational documents of the Lessee, or any indenture, agreement or other instrument to which the Lessee is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(d) There is no action or proceeding pending or, to the Lessee's best knowledge, threatened against the Lessee by or before any court or administrative agency that is likely to adversely affect the ability of the Lessee to timely and promptly perform its obligations under this Agreement and each other Project Document and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Lessee as of the date hereof in connection with the execution and delivery of this Agreement and each other Project Document or in connection with the performance of the obligations of the Lessee hereunder and under each of the Project Documents have been obtained.

(e) The Project will constitute a "project" under the Act, and the Lessee intends to operate the Project, or cause the Project to be operated, in accordance with this Agreement and as a qualified "project" in accordance with and as defined in the Act.

(f) The Financial Assistance provided by the Agency to the Lessee through the Straight-Lease Transaction as contemplated by this Agreement is necessary to induce the Lessee and the Operator to proceed with the Project.

(g) The transactions contemplated by this Agreement shall not result in the removal of any project or plant of the Lessee or any other occupant or user of the Project from one area of the State (but outside of the County) to within the County or in the abandonment of one or more facilities or plants of the Lessee or any other occupant or user of the Project located within the State (but outside of the County).

(h) The transactions contemplated by this Agreement shall not provide Financial Assistance in respect of any project where facilities or property that are primarily used

in making retail sales (within the meaning of the Act) of goods or services to customers who personally visit such facilities constitute more than one-third of the total project costs.

(i) Undertaking the Project will serve the public purposes of the Act by creating or preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State.

(j) No funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promoting materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(k) This Agreement and the other Project Documents to which the Lessee is a party constitute the legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms.

(l) The Project has been designed, and the operation of the Project will be, in compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and the environment.

(m) Neither the Lessee nor any Affiliate of the Lessee is a Prohibited Person.

(n) Except as permitted by Section 9.2, no Person other than the Lessee and the Operator, the residential tenants is or will be in use, occupancy or possession of any portion of the Project.

ARTICLE II

THE PROJECT

Section 2.1 The Company Lease.

(a) Pursuant to the Company Lease, the Lessee has leased to the Agency the Premises, and all rights or interests therein or appertaining thereto, together with all Improvements existing thereon or therein as of the date thereof, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances.

(b) A valid leasehold interest in all Improvements incorporated or installed in the Premises as part of the Project shall vest in the Agency immediately upon delivery to or installation or incorporation into the Project or payment therefor, whichever shall occur first.

(c) The Lessee shall take all action necessary to so vest a valid leasehold interest in such Improvements in the Agency and to protect such leasehold interest and title claims against claims of any third parties.

(d) All Exempt Property shall become subject to the terms of the Company Lease immediately upon installation or incorporation into the Project. The Lessee shall take such action to identify all materials, furnishings, machinery and equipment that may be Exempt Property as such, and shall provide the Agency with a schedule of such Exempt Property promptly following completion of the Project Work.

Section 2.2 Appointment of Lessee as Agent.

(a) The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency, solely for purposes of undertaking the Project, including, without limitation:

(i) acquiring the Premises and acquiring, constructing and installing the Improvements thereon or therein;

(ii) acquiring such fixtures and furnishings as may be reasonable or necessary to equip and furnish the Premises for its intended purposes;

(iii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to Section 2.4), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf;

(iv) paying all fees, costs and expenses incurred in the acquisition and construction of the Project from funds made available therefor either by the Lessee in accordance with or as contemplated by this Agreement; and

(v) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due 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 and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project.

Section 2.3 Payment of Project Costs. The cost of the Project shall be financed by, and shall be the sole responsibility of, the Lessee. In the event that moneys of the Lessee are not sufficient to pay the costs necessary to complete the Project in full, in no event shall the Agency be liable therefor, and Lessee shall not be entitled to any reimbursement therefor from the Agency, nor shall the Lessee be entitled to any diminution of the Rental Payments or other payments to be made under this Agreement. The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance, the delivery thereof and of any instruments and documents relating thereto and the filing and recording of any such instruments of conveyance or other instruments or documents, if required, (ii) all taxes and charges payable in connection with the conveyance and transfer, or attributable to periods prior to the conveyance and transfer, to the Agency as set forth in Section 2.1, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

Section 2.4 Governmental Approvals. The Lessee represents, warrants, covenants and agrees that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite to the Project and the construction, use and operation of the Project, all of which will be done in material compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, and with the conditions and requirements of all policies of insurance with respect to the Project and this Agreement. Promptly upon completion of construction of the Project, the Lessee will obtain or cause to be obtained all required occupancy permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Project for the purposes contemplated by this Agreement and shall furnish copies of the same to the Agency immediately upon receipt thereof.

Section 2.5 Completion of the Project. The date of completion of the Project shall be evidenced by a certificate of the Lessee, executed by an Authorized Representative of the Lessee, delivered to the Agency, stating, except for any Project costs not then due and payable or the liability for payment of which is being contested or disputed in good faith by the Lessee:

(i) the Project has been completed substantially in accordance with the plans and specifications therefor and the date of completion of the Project,

(ii) all labor, services, machinery, equipment, materials and supplies used therefor have been paid for, or, if the Lessee is reasonably contesting payment of any of the foregoing, the Lessee provides assurance satisfactory to the Agency that such nonpayment will not result in a lien being placed on all or any portion of the Project,

(iii) all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid,

(iv) the Agency has a leasehold interest in the Project and that all property constituting the Project is subject to this Agreement, subject only to Permitted Encumbrances, and

(v) in accordance with all applicable laws, regulations, ordinances and guidelines, the Project is ready for occupancy, use and operation for its intended purposes.

Notwithstanding the foregoing, such certificate may state (i) it is given without prejudice to any rights of the Lessee against third parties which exist at the date of such certificate or which may subsequently come into being, and (ii) no Person other than the Agency may benefit therefrom.

Section 2.6 Evidence of Completion. The certificate delivered pursuant to Section 2.5 shall be accompanied by:

(i) a temporary or permanent certificate of occupancy, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Project for the purposes contemplated by this Agreement,

(ii) a certificate of an Authorized Representative of the Lessee that all costs of the Project have been paid in full or arrangement for payment, reasonably satisfactory to the Agency, has been made, together with releases of mechanics' liens by the general contractor and by all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Project, and

(iii) evidence satisfactory to the Agency that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable under the PILOT Agreement in respect of the Project have been paid in full.

Upon request by the Agency, the Lessee shall make available to the Agency copies of any bills, invoices or other evidences of costs as shall have been incurred in the effectuation of the Project.

Section 2.7 Vesting of Exempt Property. Leasehold interest to all Exempt Property intended to be incorporated or installed as part of the Project shall vest in the Agency pursuant to this Agreement immediately upon delivery to or installation or incorporation into the Project or payment therefor, whichever shall occur first. The Lessee shall take all action necessary to protect such interest of the Agency against claims of any third parties with respect to the Exempt Property.

Section 2.8 Survey. On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency a current survey of the Premises.

Section 2.9 Title Report. On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency a current Title Report of the Premises.

Section 2.10 Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of Exempt Property effected by the Lessee as agent for the Agency, it being the intent

of the parties that no operating expenses of the Lessee and no purchases of equipment or other personal property (other than Exempt Property) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project.

(b) The Sales Tax Exemption Agreement sets forth the rights and obligations of the Agency and the Lessee relating to exemptions from sales and use tax for which certain Project purchases may be eligible, and the Sales Tax Exemption Agreement is referred to herein but is expressly not incorporated by reference herein.

ARTICLE III
LEASE OF PROJECT AND RENTAL PROVISIONS

Section 3.1 Lease of the Project. (a) The Agency hereby leases to the Lessee and the Lessee hereby leases from the Agency the Agency's leasehold interest in the Project derived under the Company Lease, for and during the term herein provided and upon and subject to the terms and conditions herein set forth. The Agency hereby delivers to the Lessee, and the Lessee hereby accepts, sole and exclusive possession of the Project (it being understood by the parties hereto that delivery of possession to the Agency of the Project as the same is acquired and constructed shall take no further act or deed by the parties hereto).

(b) The Lessee hereby unconditionally represents, warrants, covenants and agrees that throughout the term of this Agreement: (i) the Project will be a "project" within the meaning of the Act; (ii) the Lessee will not take any action, or suffer or permit any action, if such action would cause the Project, not to be a "project" within the meaning of the Act; and (iii) the Lessee will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Project not to be a "project" within the meaning of the Act. The Lessee shall not occupy, use or operate the Project, or allow the Project or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Project or for any use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

(c) This Agreement is subject and subordinate to the Company Lease, the Mortgages and to all renewals, replacements, modifications and consolidations thereof.

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire at midnight (New York time) on the earliest to occur of the January 31, 2042 or the date the on which the benefits granted by the PILOT Agreement terminates or such earlier date as this Agreement may be terminated as hereinafter provided. The Agency hereby delivers to the Lessee and the Lessee hereby accepts sole and exclusive possession of the Project.

Section 3.3 Rental Provisions. (a) Base Rent. The Lessee shall pay Base Rent to the Agency, without demand or notice, on the date of execution and delivery of this Agreement, in the amount of ten dollars (\$10.00). No other Base Rent shall be due during the term of this Agreement.

(b) Annual Administration Fee. The Lessee shall pay as additional rent an Annual Administration in the amount of \$500.00, payable upon the Commencement Date and on each January 1 thereafter. Such amount may be adjusted from time to time by the Agency to be an amount equal to any replacement administrative fee as may be established from time to time by the Agency as generally applicable to entities receiving or that have received Financial Assistance.

(c) Additional Agency Expenses. The Lessee further agrees to pay as additional rent the fees, costs and expenses of the Agency together with any reasonable fees and disbursements incurred by the Agency's legal counsel in performing services for the Agency in connection with this Agreement or any other Project Document, including, but not limited to, the

Agency's participation in the preparation, review, implementation and performance of this Agreement, any other Project Document, any mortgage, any additional financing or any refinancing, any re-conveying of the Project to the Lessee, any proceedings for enforcement of the Agency's rights or obligations hereunder and any disputes relating thereto. The provisions of this Section shall survive the termination of this Agreement.

(d) Additional Rent. Throughout the term of this Agreement, the Lessee shall pay to the Agency any additional amounts required to be paid by the Lessee to or for the account of the Agency hereunder, and any such additional amounts shall be paid as, and shall represent payment of, Additional Rent.

(e) Missed Payments. In the event the Lessee should fail to make or cause to be made any of the Rental Payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Lessee until the amount not so paid has been paid in full, together with interest thereon from the date due at the applicable interest rate stated in this Agreement where so provided, or if not so provided, at eighteen percent (18%) per annum.

Section 3.4 Obligation of Lessee Unconditional. The obligation of the Lessee to pay the rent and all other payments provided for in this Agreement and to maintain the Project in accordance with Section 4.2 shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency and the obligation of the Lessee shall arise whether or not the Project has been completed as provided in this Agreement. The Lessee will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Lessee under this Agreement or the Project or any part thereof except as provided in this Agreement or to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder.

Section 3.5 Rental Payments Payable Absolutely Net. The obligation of the Lessee to pay Rental Payments provided for in this Agreement shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement shall yield, net, to the Agency, the Rental Payments provided for herein, and all costs, expenses and charges of any kind and nature relating to the Project, arising or becoming due and payable during or after the term of this Agreement, shall be paid by the Lessee and the Agency shall be indemnified by the Lessee for, and the Lessee shall hold the Agency harmless from, any such costs, expenses and charges.

Section 3.6 Rights to Depreciation. During the entire term of this Agreement, as between the Lessee and the Agency the Lessee shall be the tax owner of the Project, and as such, the Agency shall not claim or be entitled to depreciation, amortization or tax credits for federal and state tax purposes.

Section 3.7 Environmental Indemnity. Concurrently with the Execution of this Agreement the Lessee shall enter into the Environmental Indemnity Agreement. The obligations

of the Lessee under the Environmental Indemnity Agreement are expressly incorporated herein by reference as if fully stated herein, and constitute a part of this Agreement.

Section 3.8 Operator Sublease Agreement.

(a) Concurrently with the execution and delivery of this Agreement, the Lessee shall enter into an Operator Sublease Agreement providing in the aggregate, among other things, for the Operator's use of the Premises for a term at least equal to the term of this Agreement and for the purposes approved by the Agency as set forth in the Authorizing Resolution and Notice of Public Hearing.

(b) The Lessee agrees not to terminate, modify or amend the Operator Sublease Agreement or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of the Agency and any attempted termination, modification or amendment of the Operator Sublease Agreement without such written consent shall be null and void. Notwithstanding the foregoing, Elliot Markowitz, as the original lessee under each Operator Sublease Agreement, may transfer his leasehold interest in either or both of such Operator Sublease Agreements to a legal entity with respect to which Elliot Markowitz has the controlling ownership interests, with such modifications as may be reasonably required to reflect the new form of ownership without the consent of the Agency.

(c) In the exercise of the powers herein granted, no liability shall be asserted or enforced against the Agency, all such liability being hereby expressly waived and released by the Lessee. The Agency shall not be obligated to perform or discharge any obligation, duty or liability under the Operator Sublease Agreement by reason of the rights of the Agency hereunder.

(d) The Operator Sublease Agreement shall be subordinate and subject in all respects to this Agreement and the Company Lease and all renewals, replacements, extensions, modifications, increases, and amendments to this Agreement and the Company Lease.

ARTICLE IV
COMPLETION, MAINTENANCE, TAXES AND INSURANCE

Section 4.1 Project Completion.

(a) The Lessee will complete the Project Work, or cause the Project Work to be completed in a first class workmanlike manner, free of defects in materials and workmanship (including latent defects).

(b) In undertaking the Project Work, the Lessee shall take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers to complete their agreements relating to the Project Work in accordance with the terms of the contracts therefor including the correction of any defective work.

(c) The Lessee will perform or cause to be performed the Project Work in accordance with all applicable laws, rules or regulations and with the conditions and requirements of all policies of insurance with respect to the Project and the Project Work. Promptly upon finishing of the Project Work, the Lessee will obtain or cause to be obtained all required permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility in accordance with this Agreement and shall furnish copies of same to the Agency immediately upon the Agency's demand.

(d) Upon completion of the Project Work, the Lessee shall promptly deliver to the Agency the completion certificate and supporting documentation required by subsection 2.5. Upon request, the Lessee must provide to the Agency such additional documentation to evidence that the Project Work has been completed as may be requested by the Agency.

Section 4.2 Maintenance, Alterations and Improvements. (a) During the term of this Agreement, the Lessee will keep the Project in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Project in the manner for which it was designed and intended and contemplated by this Agreement, and will make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen). All replacements, renewals and repairs shall be equal in quality, class and value to the original work and be made and installed in compliance with the requirements of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Project, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Project, or to furnish any utilities or services for the Project, and the Lessee hereby agrees to assume full responsibility therefor.

(b) The Lessee shall have the privilege of making such alterations of or additions to the Project or any part thereof from time to time as it in its discretion may determine to be desirable for its uses and purposes, provided that:

(i) as a result of such alterations or additions the fair market value of the Project is not reduced below its value immediately before such alteration or addition and the usefulness, structural integrity or operating efficiency of the Project is not impaired,

(ii) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements,

(iii) such additions or alterations are promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and in order that the Project shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances,

(iv) such additions or alterations do not change the nature of the Project so that it would not constitute a qualified "Project" as defined in and as contemplated by the Act, would not materially differ from the Project as set forth in the Authorizing Resolution or the Notice of Public Hearing, or would not materially alter the square footage of the Project, and

(v) such additions or alterations do not require site plan review or approval by any governmental authority and would not require any such review or approval if the Agency were a private Person.

All alterations of and additions to the Project shall constitute a part of the Project, subject to this Agreement. The Lessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey leasehold title to such property to the Agency, at the Lessee's sole cost and expense, and to subject such property to this Agreement free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Lessee shall have the right to install or permit to be installed at the Project realty machinery, equipment and other personal property not constituting part of the Project (the "Lessee's Property") without conveying title to such property to the Agency nor subjecting such property to this Agreement. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property.

(d) The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Project or any part thereof, or the interest of the Lessee in the Project or this Agreement except for Permitted Encumbrances.

Section 4.3 Removal of Property from the Project.

(a) The Lessee shall have the privilege from time to time of removing from the Project any fixture constituting part of the Project realty or any machinery, equipment or other property constituting part of the Project Equipment (the "Existing Project Property") and thereby acquiring such Existing Project Property; provided, however, such Existing Project Property is substituted or replaced by property (i) having materially similar fair market value, operating efficiency and utility, and (ii) free of any mortgages, liens, charges, encumbrances, claims and security interests not permitted under this Agreement. No such removal shall be effected if (a) such removal is to another location other than the Project realty, (b) such removal would change the nature of the Project as a "Project" within the meaning of the Act, (c) such removal would materially impair the usefulness, structural integrity or operating efficiency of the Project, or

(d) such removal would materially reduce the fair market value of the Project below its value immediately before such removal.

(b) The Lessee shall deliver or cause to be delivered to the Agency any necessary documents conveying to the Agency title to any property installed or placed upon the Project pursuant to Section 4.3(a) and subjecting such substitute or replacement property to this Agreement, and, upon written request of the Lessee, the Agency shall deliver, within thirty (30) days after receipt of such written request of the Lessee, to the Lessee appropriate documents conveying to the Lessee all of the Agency's right, title and interest in any property removed from the Project pursuant to Section 4.3(a). The Lessee agrees to pay all costs and expenses (including reasonable counsel fees and expenses) incurred by the Agency in subjecting to this Agreement any property installed or placed on the Project as part of the Project or removed therefrom pursuant to this Section.

(c) The removal from the Project of any Existing Project Property pursuant to the provisions of Section 4.3(a) shall not entitle the Lessee to any abatement or reduction in the Rental Payments payable by the Lessee under this Agreement.

Section 4.4 Payments in Lieu of Real Estate Taxes. (a) The Agency and the Lessee acknowledge that as of the date of this Agreement there is no executed PILOT Agreement, and that the Project remains on the tax rolls as non-exempt property.

(b) Upon the agreement with respect to the terms of a PILOT Agreement among the Company, the Town and the East Ramapo Central School District, and execution of the PILOT Agreement by each of the foregoing, the Agency shall execute the PILOT Agreement in a manner consistent with its uniform tax exemption policies. Promptly thereafter, the Agency shall notify the Town Assessor and the related taxing jurisdictions that it is requesting that the Project be listed on the tax rolls as of the next taxable status date.

(c) Following the applicable taxable status date the terms of the PILOT Agreement shall control with respect to payments in lieu of property taxes.

(d) During the term of this Agreement and so long as the Agency is the lessee of the Project realty under the Company Lease, the Lessee hereby covenants and agrees to make payments to the Agency (or to the taxing jurisdictions, if so directed by the Agency) in those amounts required to be paid by the terms of the PILOT Agreement.

(e) The PILOT Agreement will set forth the rights and obligations of the Agency and the Lessee relating to PILOT, and the PILOT Agreement is referred to herein and attached as an appendix but is expressly not incorporated by reference herein or deemed part of this Agreement.

Section 4.5 Taxes, Assessments and Charges. The Lessee shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Project, this Agreement, any estate or interest of the Agency or the Lessee in the Project, or the rentals hereunder during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law,

and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Project, all of which are herein called "Impositions". The Agency shall promptly forward to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event the Project is exempt from Impositions (other than real estate taxes in respect of which amounts are payable pursuant to the PILOT Agreement, which shall be paid in accordance with the PILOT Agreement) solely due to the Agency's interest in the Project, the Lessee shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions which would have been imposed on the Project if the Agency had no interest in the Project.

Section 4.6 Operation of Project. The Lessee shall continue to operate the Project, or cause the Project to be operated by the Operator, at all times during the term of this Agreement. Such operation shall be solely for the purpose described in Section 3.1 and in accordance with the provisions of the Act. For the purpose of this Agreement, the Lessee shall be deemed to have ceased to operate the Project for the purposes described herein if it (a) materially alters the use of the Project, in the Agency's reasonable judgment, except as permitted hereunder, (b) closes the Project other than for routine maintenance, observance of national holidays or regularly scheduled seasonal closings, or (c) reduces the operations of the Project to such an extent that, in the Agency's reasonable judgment, the public purpose to be derived from the Project in accordance with Section 1.5 has been substantially impaired. Any of the foregoing notwithstanding, the Lessee may use the Project for some purpose other than that described herein with the prior written consent of the Agency, which consent may be withheld in the absolute discretion of the Agency, and provided further that such proposed use constitutes a qualified "Project" in accordance with the Agency's policy and as defined under the Act.

Section 4.7 Insurance.

(a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Project, the Lessee shall maintain insurance, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Lessee, all of which shall be subject to the approval of the Agency and any Lenders, which approval shall not be unreasonably withheld or delayed; provided, however, that, except as may be expressly required below, in no event shall the Agency require insurance materially different in type, coverage or limits than that typically required by a lender, including, without limitation:

(i) To the extent not covered by the public liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Lessee and the Agency in a minimum amount of \$1,000,000.00 coverage per occurrence for personal injury and property damage;

(ii) Builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy" during any period of construction or reconstruction of the Project, and

coverage for property damage insurance, all of which insurance shall include coverage for removal of debris and insuring the buildings, structures, machinery, equipment, facilities, fixtures and other property constituting a part of the Project against loss or damage to the Project by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Lessee or the Agency from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than 100% of the actual replacement value of the Project as determined by a qualified insurance appraiser or insurer (selected by the Lessee and approved by the Agency) upon the request of the Agency, at the expense of the Lessee, and any such insurance may provide that the insurer is not liable to the extent of the first \$10,000 with the result that the Lessee is its own insurer to the extent of \$10,000 of such risks;

(iii) Public liability insurance in accordance with customary insurance practices for similar operations with respect to the Project and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2, (B) may be effected under overall blanket, umbrella or excess coverage policies of the Lessee, the Property Manager, or any Affiliate thereof provided; however, that at least \$500,000 is effected by a comprehensive liability insurance policy, and (C) shall not contain any provisions for a deductible amount;

(iv) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus located on the Project realty from risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar business enterprises;

(v) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Lessee or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Lessee or any contractor or subcontractor performing work with respect to the Project; the Lessee shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by the law;

(vi) Flood insurance, if the Project realty is located in a flood hazard area designated as such under the National Flood Insurance Act of 1968 and qualifies for coverage under such Act, in the maximum amount available; and

(vii) Such other insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require.

(b) All insurance required by Section 4.7(a) shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State with a rating of A-X or better by A.M. Best.

(c) Each of the policies or binders evidencing the insurance required above to be obtained shall

(i) designate (except in the case of workers' compensation insurance) the Agency as an additional insured;

(ii) provide that there shall be no recourse against the Agency for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iii) provide that in respect of the respective interests of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(iv) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency to the extent that such other insurance provides the Agency with contingent and/or excess liability insurance with respect to its respective interest as such in the Project;

(v) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency until at least thirty (30) days after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration or change;

(vi) waive any right of subrogation of the insurers thereunder against the Agency insured under such policy, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Agency insured under such policy; and

(vii) contain such other terms and provisions as any owner or operator of facilities similar to the Project would, in the prudent management of its properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Project owned or operated by it.

(d) Subject to the requirements of each Mortgage, the Net Proceeds of any insurance received with respect to any loss or damage to the property of the Project shall be applied in accordance with Section 5.1 of this Agreement.

(e) The Lessee shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency to collect from insurers for any loss covered by any insurance required to be obtained by this Section. The Lessee shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section would or might be suspended or impaired.

(f) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTEREST OF THE LESSEE.

Section 4.8 Advances by Agency. In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency, after first notifying the Lessee in writing of any such failure on its part, may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement, make such payment or otherwise cure any failure by the Lessee to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Lessee to the Agency which amounts, together with interest thereon at the rate of twelve percent (12%) per annum from the date advanced, the Lessee will pay upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.9 Compliance with Law. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, or any occupant, user or operator of the Project or any portion thereof (including without limitation those relating to zoning, land use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, and employment practices) (the "Legal Requirements"), and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions. The Lessee will not, without the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Project or any part thereof. The Lessee shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure to comply with any Legal Requirement or (b) imposed upon the Lessee or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties with respect to any Legal Requirement, the Lessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

The Lessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Project or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee or, the Agency being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency for failure to comply therewith.

ARTICLE V
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1 Damage, Destruction and Condemnation.

(a) In the event that at any time during the term of this Agreement the whole or part of the Project shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement between the Agency and those authorized to exercise such right, or if the temporary use of the Project shall be so taken by condemnation or agreement (a "Loss Event"):

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

(ii) there shall be no abatement, postponement or reduction in the rent or other amounts payable by the Lessee under this Agreement or any other Project Document, and

(iii) the Lessee will promptly give written notice of such Loss Event to the Agency and each Lender, generally describing the nature and extent thereof.

(b) Upon the occurrence of a Loss Event, the Lessee shall either:

(i) at its own cost and expense (except to the extent paid from the Net Proceeds as provided below), promptly and diligently rebuild, replace, repair or restore the Project to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, nor shall the rent or other amounts payable by the Lessee under this Agreement or any other Project Document be abated, postponed or reduced, or

(ii) exercise its option to purchase the Project and to terminate this Agreement as provided in Section 8.1.

As soon as practicable, but not later than ninety (90) days after the occurrence of a Loss Event, the Lessee shall advise the Agency and each Lender in writing of the action to be taken by the Lessee under this Section.

(c) All rebuilding, replacements, repairs or restorations in respect of or occasioned by a Loss Event shall:

(i) automatically be deemed a part of the Project and held as a leasehold interest by the Agency and be subject to this Agreement,

(ii) be in accordance with plans and specifications and cost estimates approved in writing by the Agency (which approvals shall not be unreasonably withheld or delayed),

(iii) be effected only if the Lessee shall deliver to the Agency a certificate to the effect that such rebuilding, replacement, repair or restoration shall not change the nature of the Project as a qualified "Project" as defined in and as contemplated by the Act,

(iv) be preceded by the furnishing by the Lessee to the Agency of a labor and materials payment bond, or other security, reasonably satisfactory to the Agency, and

(v) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable Legal Requirements and be promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor.

(d) Notwithstanding anything contained herein to the contrary, if all or substantially all of the Project realty shall be taken or condemned, or if the taking or condemnation renders the Project realty unsuitable for use by the Lessee as contemplated hereby, the Lessee shall exercise its option to terminate this Agreement as provided in Section 8.1.

(e) The Lessee shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to improvements, machinery, equipment or other property installed on or about the Project realty but which, at the time of such damage or taking, is not part of the Project nor subject to the Mortgage and is owned by the Lessee.

(f) The Lessee hereby waives the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect.

(i) Nothin be preceded by the furnishing by the Lessee to the Agency of a labor and materials payment bond, or other security, reasonably satisfactory to the Agency, and

(g) g contained in this Agreement shall be deemed to supersede or modify the obligations of the Lessee pursuant to a Mortgage with respect to condemnation or casualty proceeds, and such Mortgage shall control the use of condemnation and casualty proceeds, this Agreement being subject and subordinate to such Mortgage in all respects.

ARTICLE VI
SPECIAL COVENANTS

Section 6.1 Dissolution of Lessee; Restrictions on Lessee. The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence, (ii) continue to be subject to service of process in the State and organized under the laws of, or qualified to do business in, the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets, and (iv) not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it; provided, however, the Lessee, without violating the foregoing but with the prior written consent (not to be unreasonably withheld or delayed) of the Agency, may consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such entity (and thereafter liquidate, wind-up or dissolve or not, as the Lessee may elect) if, (i) the Lessee is the surviving, resulting or transferee entity, and has a net worth (as determined in accordance with generally accepted accounting principles) at least equal to that of the Lessee immediately prior to such consolidation, merger or transfer, or (ii) in the event that the Lessee is not the surviving, resulting or transferee entity (1) the surviving, resulting or transferee entity (A) is solvent and subject to service of process in the State and organized under the laws of the State, or any other state of the United States, and duly qualified to do business in the State, (B) assumes in writing all of the obligations of the Lessee contained in this Agreement and all other Project Documents to which the Lessee shall be a party, and (C) is not a Prohibited Person, and (2) the Lessee delivers to the Agency an opinion of counsel reasonably acceptable to the Agency to the effect that this Agreement and all other Project Documents to which the Lessee shall be a party constitute the legal, valid and binding obligations of such successor Lessee and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Lessee, and (3) in the opinion of an Independent Accountant, such successor Lessee has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of the Lessee immediately prior to such merger, consolidation, sale or transfer. The Lessee further represents, covenants and agrees that it is and throughout the term of this Agreement will (y) continue to be duly qualified to do business in the State and that any company succeeding to its rights under this Agreement shall be and continue to be duly qualified to do business in the State, and (z) not constitute a Prohibited Person.

The Lessee further represents, covenants and agrees that it is and throughout the term of this Agreement will continue to be duly qualified to do business in the State and that any company succeeding to its rights under this Agreement shall be and continue to be duly qualified to do business in the State, and not constitute a Prohibited Person.

Section 6.2 Indemnity.

(a) To the fullest extent permitted by law, the Lessee shall at all times protect and hold the Agency, the County and any director, member, officer, official, employee, servant or agent of either the Agency or the County and persons under the control or supervision of either the Agency or the County (collectively, the "Indemnified Parties" and each an "Indemnified Party") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses (including but not limited to reasonable fees and expenses of counsel) and liabilities for

losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), other than, with respect to each Indemnified Party, losses arising from the negligence, fraud or willful misconduct of such Indemnified Party, arising upon or about the Project realty or resulting from, arising out of, or in any way connected with (i) any actions of the Agency or the County pertaining to the Project on or after the date of the Inducement Resolution, (ii) the financing of the costs of the Project and the participation of the Agency or the County in the transactions contemplated by this Agreement and the other Project Documents, (iii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Project realty, (iv) any defects (whether latent or patent) in the Project, (v) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project or any portion thereof, (vi) the exercise by the Agency of any remedy set forth in Section 7.2 or under any other provision hereof or of any other Project Document, (vii) the execution and delivery by the Indemnified Party of, or performance by the Indemnified Party of any of its obligations under, this Agreement or any other Project Document or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms hereof or thereof or the transactions contemplated hereby or thereby, or (viii) a default by the Lessee hereunder or under any Project Document. No Indemnified Party shall be liable for any damage or injury to the person or property of the Lessee or its directors, officers, partners, employees, agents or servants or Persons under the control or supervision of the Lessee or any tenant or subtenant of the Project, or any other Person who may be about the Project, due to any act defect in the Project, failure of service or utility thereto, any other matter arising at the Project or out of this Agreement or the Project Documents, or act or negligence of any Person other than, with respect to any Indemnified Party, the negligence or willful misconduct of such Indemnified Party.

(b) The Lessee releases the Indemnified Parties from, and agrees that the Indemnified Parties shall not be liable for and agrees to indemnify and hold the Indemnified Parties harmless against, any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters set forth in subdivisions (i) through (v) of Section 6.2(a) or at the direction of the Lessee with respect to any of such matters above referred to, excepting any actions constituting negligence, fraud or willful misconduct. Each Indemnified Party shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section or any other provision of this Agreement. Such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action.

(c) The indemnifications and protections set forth in this Section shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under its control or supervision irrespective of insurance coverage or the failure or refusal of any insurance company to perform any of its obligations under any policy of insurance.

(d) To effectuate the purposes of this Section, the Lessee will provide for and insure, in the public liability policies required in Section 4.7, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section other than the liability pursuant to Section 6.2(a)(i) and (v). Anything to the contrary in this Agreement notwithstanding,

the covenants of the Lessee contained in this Section shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

(e) For the purposes of this Section, the Lessee shall not be deemed an employee, agent or servant of the Agency, or a Person under the control or supervision of the Agency.

(f) The provisions of this Section shall be in addition to any and all other obligations and liabilities the Lessee may have to any Indemnified Party at common law, and shall survive the termination of this Agreement.

Section 6.3 Retention of Interest in Project; Grant of Easements.

(a) The Agency shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its interest in the Project or any part thereof or interest therein during the term of this Agreement, except as set forth below and in Sections 4.3, 5.1 and 7.2, without the prior written consent of the Lessee and each Lender and any purported disposition without such consent shall be void.

(b) The Agency will, however, at the written request of the Lessee, so long as there exists no Event of Default hereunder, grant such rights-of-way or easements over, across, or under, the Project realty, or grant such permits or licenses with respect to the use thereof, free from the leasehold estate of this Agreement, as shall be necessary or convenient for the operation or use of the Project, provided that such leases, rights-of-way, easements, permits or licenses shall not adversely affect the use or operation of the Project or the Agency's rights hereunder. The Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right-of-way or easement or any such permit or license and to release the same from the leasehold estate of this Agreement provided that such instruments shall not impose any obligation or liability upon the Agency.

Section 6.4 Discharge of Liens.

(a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Project or any part thereof or the interest therein of the Agency or against any of the rentals or other amounts payable under this Agreement or the interest of the Lessee under this Agreement other than Liens for Impositions (as defined in Section 4.5) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.4(b), the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain

the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Project.

(b) The Lessee may at its sole cost and expense contest (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Project or any part thereof or interest therein, or in this Agreement, of the Agency or the Lessee or against any of the rentals or other amounts payable under this Agreement, (2) neither the Project nor any interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee nor the Agency would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 6.5 Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, including the right to grant the options to purchase herein contained, and that, subject to the terms and provisions of the Mortgage and Permitted Encumbrances, so long as the Lessee shall pay the rent and all other sums payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein contained obligatory upon it and an Event of Default shall not exist hereunder, the Lessee shall have, hold and enjoy, during the term hereof and to the extent of the Agency's interests in the Project under the Company Lease, peaceful, quiet and undisputed possession of the Project, and the Agency (at the sole cost and expense of the Lessee) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

Section 6.6 No Warranty of Condition or Suitability. 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 PROJECT, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE PROJECT, OR THE SUITABILITY OF THE PROJECT FOR THE PURPOSES OR NEEDS OF THE LESSEE. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE PROJECT EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE IS SATISFIED THAT THE PROJECT IS SUITABLE AND FIT FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE PROJECT 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 6.7 No-Default Certificates. The Lessee shall promptly notify the Agency of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Project Document of which the Lessee has knowledge. Any notice required to be given pursuant to this Section shall be signed by an Authorized Representative of the Lessee and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact in the notice.

Section 6.8 Further Assurances. The Lessee will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Lessee, as the Agency deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder or under the Mortgage.

Section 6.9 Recording and Filing. The Lessee shall cause a title company to record a Memorandum of Lease Agreement and a Memorandum of Company Lease Agreement in the appropriate office of the County Clerk of Rockland County, New York.

Section 6.10 Employment Information, Equal Employment Opportunities, and Guidelines.

(a) By October 1 of each year, the Lessee shall submit to the Agency an employment report relating to the period commencing July 1 of the previous year and ending June 30 of the year of the obligation of the filing of such report. This employment report shall be in the form required by the Agency or the State and certified as to accuracy by the chief financial or accounting officer of the Lessee.

(b) The Lessee shall ensure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination and shall comply with New York General Municipal Law §858-b.

(c) Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project (whether by the Lessee or any other occupant of the Project) shall be listed by the Lessee or, if applicable, by such other occupant with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee agrees, and shall cause any other occupant of the Project to agree, where practicable, to first consider persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(d) The Lessee (on behalf of itself) hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor

("DOL"), to release to the Agency and/or the County of Rockland Economic Development Corporation ("EDC"), and/or to the successors and assigns of either (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with its reporting requirements required by any applicable laws, rules or regulations. In addition, upon the Agency's written request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee which is pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with any reporting requirements required by applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee, or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or the County of Rockland, as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

(e) Nothing in this Section shall be construed to require the Lessee to violate any existing collective bargaining agreement with respect to hiring new employees.

Section 6.11 Cooperation With State Reporting Requirement. The Agency is subject to periodic reporting requirements with applicable State agencies and officials. Such requirements may include, among other things, information concerning the Lessee or the Project, including, without limitation, information on tax benefits claimed and job creation. The Lessee agrees to promptly comply with all requests made by the Agency for purposes of complying with such reporting and information requirements.

Section 6.12 Operation and Maintenance of the Project. The Lessee shall operate and maintain, or shall cause the Operator to operate and maintain, the Project as a high quality adult care and assisted living facility, with due regard for the health, comfort, recreational, entertainment, availability of personal assistance and similar needs of residents.

Section 6.13 Compliance With Agency Policies. The Lessee has reviewed the duly adopted policies of the Agency as now in effect, and agrees that during the course of this Agreement shall at all times be in compliance with such policies.

Section 6.14 Performance by Operators. The Lessee shall require in each Operating Lease that the Operator perform its operations in a manner consistent with the undertakings of requirements imposed on the Lessees pursuant to this Agreement. Any failure by the Operator to do so shall be deemed non-performance under this Agreement by the Lessee.

Section 6.15 Labor Policy. The Lessee agrees to comply with the Agency's Labor Policy attached hereto as Appendix G.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default. Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Lessee to pay any rental that has become due and payable by the terms of Section 3.3 and continuance of such failure for a period of ten (10) days after receipt by the Lessee of written notice thereof;

(b) Failure of the Lessee to pay any amount (except the obligation to pay rent under Section 3.3) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 4.3, 4.4 or 4.6 (other than the obligation to maintain insurance coverage) hereof and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency;

(c) Failure of the Lessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a), (b) or (f)) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency; or (2) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same;

(d) The Lessee or the Operator shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) take any action for the purpose of effecting any of the foregoing, or (vii) be adjudicated a bankrupt or insolvent by any court;

(e) A proceeding or case shall be commenced, without the application or consent of the Lessee in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Lessee or of all or any substantial part of its assets, (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing against the Lessee shall be entered and continue unstayed and in effect, for a period of ninety (90) days or (iv) the Lessee shall fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such Bankruptcy Code or any order for relief against the Lessee shall be entered in an involuntary case

under such Bankruptcy Code; the terms “dissolution” or “liquidation” of the Lessee as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1;

(f) Any representation or warranty made by or on behalf of the Lessee in the application, commitment letter and related materials submitted to the Agency for approval of the Project, or by the Lessee herein or in any of the other Project Documents delivered to the Agency, or in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing shall prove to be false, misleading or incorrect in any material respect as of the date made;

(g) An “Event of Default” under any Project Document shall occur and be continuing beyond the expiration of any applicable notice and cure period;

(h) An event of default under the Guaranty shall occur and be continuing beyond the expiration of any applicable notice and cure period;

(i) A termination of the Company Lease shall occur;

(j) Failure of the Lessee to maintain the insurance coverage required under Section 4.7 or to continuously operate or cause the Project to be operated in accordance with Section 4.6; and

(k) Failure to pay any amount due pursuant to Section 8.3 within 30 days after the due date.

Section 7.2 Remedies on Default. Whenever any Event of Default referred to in Section 7.1 shall have occurred and be continuing, the Agency may take any one or more of the following remedial steps:

(a) The Agency may send to the Lessee a notice stating that this Agreement shall terminate on a date certain, which date shall not be less than ten (10) days after the date of such notice, in which event this Agreement shall expire and terminate on the date set forth in such notice as if such date were the herein stated expiration date of this Agreement, provided that the Agency shall, on or about the date on which this Agreement terminates, convey all of the Agency’s right, title and interest in the Project to the Lessee, which the Agency may accomplish by delivering notice of termination of the Company Lease, and the Lessee hereby waives delivery and acceptance of such notice of termination as a condition to its validity, and 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 termination of Company Lease; provided further, however, that the Agency is only required to make such conveyance if the Lessee has paid all amounts payable to the Agency hereunder as of the date of termination;

(b) The Agency may bring an action for injunction or specific performance;

(c) The Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the rental payments then due, or to enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement; or

(d) The Agency may take whatever action at law or in equity as may appear necessary or desirable to collect as damages the amount payable pursuant to Section 8.3 of this Agreement.

Section 7.3 Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Lessee hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Lessee with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Lessee be continued or repeated, or of the right to recover possession of the Project by reason thereof.

Section 7.4 No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and the Lessee or any delay or omission on the part of the Agency in exercising any rights hereunder or under any other Project Document shall operate as a waiver. To the extent permitted by applicable law, the Lessee hereby waives the benefit and advantage of, and covenants not to assert against the Agency, any valuation, inquisition, stay, appraisal, extension or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any sale or reletting made under the judgment, order or decree of any court or under the powers of sale and reletting conferred by this Agreement or otherwise.

Section 7.5 Effect on Discontinuance of Proceedings. In case any proceeding taken by the Agency under or this Agreement or under any other Project Document on account of any Event of Default hereunder shall have been discontinued or abandoned for any reason, then, and in every such case, the Agency shall be restored, to its former positions and rights hereunder and thereunder.

Section 7.6 Agreement to Pay Attorneys' Fees and Expenses. In the event of the occurrence of an Event of Default, and the Agency should employ attorneys or incur other expenses for the collection of rentals or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained, the Lessee agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

Section 7.7 Mortgagee Rights and Remedies. The Lessee shall have the right to place a Qualified Leasehold Mortgage on the Lessee's interest in this Lease without the Agency's

consent. The execution and delivery of a Qualified Leasehold Mortgage shall not be deemed to constitute a transfer of Lessee's leasehold interest nor shall the holder of a Qualified Leasehold Mortgage be deemed to be a Transferee of this Agreement so as to require such holder to assume the performance of any of the terms, covenants or conditions on the part of Lessee to be performed hereunder; and the Agency's consent shall not be required with respect to any sale of Lessee's interest hereunder upon or in lieu of the foreclosure of any Qualified Leasehold Mortgage; provided, however, that no purchaser at a foreclosure sale or sale in lieu of foreclosure shall acquire any interest in the leasehold unless such purchaser or its designee shall execute, acknowledge and deliver to the Agency an instrument in recordable form whereby such purchaser or designee assumes and agrees duly to perform all of the obligations, terms and conditions of this Agreement to be performed on the part of the Lessee (including its obligations to perform under the other Project Documents). If Lessee shall grant a Qualified Leasehold Mortgage on its interest in this leasehold, the Lessee or the holder of such mortgage shall deliver to the Agency a true copy of such mortgage, together with written notice specifying the name and address of the mortgagee under such mortgage and the recording date, along with evidence that the mortgagee is a Qualified Leasehold Mortgagee.

As used herein, the term "Qualified Leasehold Mortgage" and "Qualified Leasehold Mortgagee" shall mean, respectively, (i) any mortgage granted and held in full compliance with the terms of this Agreement and constituting a lien upon the interest of the Lessee in this Agreement and the leasehold estate hereby created, and (ii) the party acting as mortgagee under such mortgage, provided, however, that any Qualified Leasehold Mortgagee must be qualify as an Institutional Lender and may not be a Prohibited Person.

The term "Institutional Lender" shall mean a Person who, at the time it acquires an interest in any mortgage loan relating to financing the Project, a federal or state governmental agency, a savings bank, savings and loan association, credit union, commercial bank or trust company organized or chartered under the laws of the United States or any state thereof or the District of Columbia or a foreign banking institution (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an insurance company organized and existing under the laws of the United States of America or any state thereof or the District of Columbia or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as agency) capacity); an institutional investor such as a publicly held real estate investment trust, an entity that qualifies as a "REMIC" under the Code or other public or private investment entity (in each case whether acting as principal or agent); a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as agency) capacity) as principal or agent); an employees' welfare, benefit, pension or retirement fund; an institutional leasing company; an institutional financing company; any governmental agency or entity insured by a governmental agency or any combination of the foregoing entities; provided that each of the above entities shall qualify as an Institutional Lender only if (at the time acquires an interest in any senior loan of record) it (together with such entities, if any, with which its financial statements are consolidated) shall have net assets (determined in accordance with generally accepted accounting principles) of not less than \$ 500,000,000.

ARTICLE VIII

OPTIONS; OPTION TO PURCHASE AGENCY'S INTEREST IN PROJECT

Section 8.1 Option to Purchase Agency's Interest In Project and to Terminate Agreement.

(a) The Lessee shall have the option to purchase the Agency's interest in the Project and to terminate this Agreement on any date during the term hereof by paying all Rental Payments due (other than rent not yet accrued under Section 3.3(a)) hereunder through and including the date of termination, regardless of whether there shall then be in existence an Event of Default. The Lessee shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Lessee stating that the Lessee has elected to exercise its option under this Section and the date on which such purchase and termination is to be made. In addition, the Lessee shall purchase the Agency's interest in the Project realty on the scheduled expiration date of this Agreement or any earlier termination of the term of this Agreement by paying on such date any and all Rental Payments then due hereunder.

(b) The Lessee, in purchasing the Agency's interest in the Project and terminating this Agreement pursuant to Section 8.1(a), shall pay to the Agency, as the purchase price, in legal tender, an amount equal to (i) all Rental Payments then having accrued or become due hereunder, plus (ii) the amount payable pursuant to Section 8.3 of this Agreement, plus (iii) all amounts then having accrued or become payable under the PILOT Agreement (including Reimbursement Amounts as defined therein), plus (iv) all amounts that may become due under the Sales Tax Agreement (including Reimbursement Amounts as defined therein), plus (v) one dollar (\$1.00).

(c) The Lessee shall not, at any time, assign or transfer its option to purchase the Agency's interest in the Project as contained in this Section separate and apart from an assignment of this Agreement without the prior written consent of the Agency.

Section 8.2 Termination of Company Lease on Exercise of Option to Purchase.

At the closing of any purchase of the Agency's interest in the Project pursuant to Section 8.1, the Agency shall, upon payment of the purchase price, deliver or cause to be delivered to the Lessee (i) an acknowledgment of termination of the Company Lease and all other necessary documents conveying to the Lessee all of the Agency's right, title and interest in and to the Project and terminating this Agreement, and (ii) all necessary documents releasing and conveying to the Lessee all of the Agency's rights and interests in and to any rights of action (other than as against the Lessee or any insurer of the insurance policies under Section 4.7(a)), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards, with respect to the Project or any portion thereof.

Upon termination of the Agency's interest in the Project pursuant to this Section or pursuant to Section 8.2, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee which are expressly stated to survive, and all obligations of the Lessee accruing prior to the date of such termination, shall survive such termination.

Section 8.3 Reimbursement of Agency Benefits.

(a) It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide Financial Assistance to the Lessee for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees that if a Reimbursement Event (as defined below) occurs, the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency the following amounts:

(i) one hundred percent (100%) of the Mortgage Recording Taxes if the Reimbursement Event occurs within the first four (4) years after the Commencement Date;

(ii) eighty percent (80%) of the Mortgage Recording Taxes if the Reimbursement Event occurs during the 5th or 6th year after the Commencement Date;

(iii) sixty percent (60%) of the Mortgage Recording Taxes if the Reimbursement Event occurs during the 7th or 8th year after the Commencement Date;

(iv) forty percent (40%) of the Mortgage Recording Taxes if the Reimbursement Event occurs during the 9th year after the Commencement Date; and

(v) zero percent (0%) of the Mortgage Recording Taxes if the Reimbursement Event occurs during the 10th year or thereafter after the Commencement Date.

(b) The Sales Tax Exemption Agreement and the PILOT Agreement will govern the amount of benefits that are required to be reimbursed by the Lessee if a Reimbursement Event occurs.

(c) “Reimbursement Event” shall mean any of the following events:

(i) The Lessee shall have liquidated its operations or assets at the Project (absent a showing of extreme hardship as determined by the Agency in its reasonable discretion);

(ii) The Lessee shall have ceased all or substantially all of its operations at the Project (whether by relocation to another facility, or otherwise, or whether to another location either within, or outside of the County);

(iii) The Lessee shall have transferred all or substantially all of its employees to a location outside of the County;

(iv) The Lessee shall have effected a substantial change in the scope and nature of the operations at the Project, as determined by the Agency in its reasonable discretion;

(v) The Lessee shall have subleased all or any portion of the Project in violation of the limitations imposed by Section 9.2, without the prior written consent of the Agency;

(vi) The Lessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Project, except (i) in connection with a transfer or

other disposition to any corporation or other entity into or with which the Lessee may be merged or consolidated or to any corporation or other entity which shall be an affiliate, subsidiary, parent or successor of the Lessee or (ii) as permitted under Section 9.2; or

(vii) An Event of Default shall have occurred.

Notwithstanding the foregoing, a Reimbursement Event shall not be deemed to have occurred if the Reimbursement Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Project, or (ii) the inability at law of the Lessee to rebuild, repair, restore or replace the Facility after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee or any Affiliate.

(d) The Lessee covenants and agrees to furnish the Agency with written notification upon any Reimbursement Event or disposition of the Project or any portion thereof during the term of this Agreement, which notification shall set forth the terms of such Reimbursement Event or disposition.

(e) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Lessee under this Section.

(f) The Lessee covenants and agrees to furnish the Agency with written notification upon any such disposition of the Facility or any portion thereof made within ten (10) years of its completion, which notification shall set forth the terms of such sale.

(g) The provisions of this Section shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

Section 8.4 Agency Termination Fee. If a Reimbursement Event occurs, the Lessee shall pay to the Agency a sum equal to one percent (1%) of the Mortgage Recording Taxes reimbursed pursuant to Section 8.3.