
LEASE AGREEMENT

Dated as of May 5, 2017

by and between

COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY

and

CONGERS LLC and ECD NY INC.

Affecting the Land generally known by the street address

4 Burts Road,
Congers,
Town of Clarkstown
in the County of Rockland,
State of New York
as more particularly described in
Exhibit A to this Lease Agreement
and which is also known as
Section 35.14 Block 1 Lot 43, 44 and 45
on the Official Tax Map of the
Town of Clarkstown
Rockland County

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LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into as of the 5th day of May 2017 (this "**Agreement**"), 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 67 North Main Street, 3rd Floor, New City, New York 10956, **party of the first part**, and **CONGERS LLC**, a New York limited liability company duly registered and authorized to transact business in the State of New York, (the "**Lessee**") having an office at 4 Burts Road, Congers, New York 10920, and **ECD NY INC.**, a New York Corporation, duly registered and authorized to transact business in the State of New York, having an office at 35-12 19th Avenue, Astoria, New York 11105 (the "**Sublessee**"), collectively party of the second part:

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws 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, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, any building or other improvement, and all real and personal properties, including but not limited to machinery and equipment, deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic purposes, to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; 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, as amended (together with the Enabling Act, (the "**Act**") for the benefit of the County of Rockland 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 4 Burts Road, Congers, Town of Clarkstown, County of Rockland, New York and otherwise described in **Exhibit A** attached hereto; and

WHEREAS, the Project will consist of the acquisition, renovation and redevelopment an of existing facility, all to be used for storage of equipment and machinery and administrative offices and the acquisition of additional equipment, as more fully described in the application and supplemental materials, for a cost of \$15,350,000.00 (the "Project") the Land and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures

and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land and/or the buildings and improvements located thereon or placed on any part thereof, and attached thereto, which are used or usable in connection with the present or future operation thereof or the activities at any time conducted therein and certain machinery, equipment and other tangible personal property (and all repairs, replacements, improvements and substitutions thereof or therefor, and all parts, additions and accessories incorporated therein), subject to the terms hereof, are collectively referred to herein as the “**Facility**”; and

WHEREAS, to facilitate the Project, the Agency and the Lessee have entered into negotiations to enter into a “straight lease transaction” within the meaning of the Act in which the Agency will acquire a leasehold interest in the Land and Improvements and the Agency will lease its interest in the Facility to the Lessee pursuant to this Agreement, and, in furtherance of such purposes, on April 20, 2017 the Agency adopted a resolution (the “**Authorizing Resolution**”) authorizing the undertaking of the Project, the acquisition of a leasehold interest in the Facility by the Agency and the lease of the Facility by the Agency to the Lessee; 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 renovate and equip the Facility; and if the Agency does not provide such financial assistance, the Lessee may not proceed with the Project; and

WHEREAS, Signature Bank (the “**Lender**”) has agreed to enter into a mortgage or mortgages, dated as of May 5, 2017 (the “**Mortgage**”), between the Lessee and the Lender, simultaneously with the execution and delivery of this Agreement, and pursuant to the Mortgage, to lend to the Lessee in accordance with the terms thereof, an amount up to and including \$3,500,000.00 for the purpose of financing a portion of the acquisition and renovation costs of the Project; and

WHEREAS, simultaneously with the execution and delivery of this Agreement, the Lessee will convey, or cause there to be conveyed, to the Agency pursuant to a Head Lease Agreement, dated the date hereof (the “**Head Lease**”), a leasehold interest in and to the Land, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other improvements existing thereon or therein as of the date thereof; and

WHEREAS, pursuant to this Agreement, the Agency will lease to the Lessee and the Sublessee, the Agency's interest in the Facility; and

WHEREAS, pursuant to a payment in lieu of taxes agreement (“**PILOT Agreement**”) to be entered into between the Agency and Lessee and the appropriate municipalities, the Lessee will agree to make certain payments in lieu of real estate taxes with respect to the Land and the Improvements.

NOW, THEREFORE, in consideration of the Facility 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 Facility (as hereinafter defined), 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, collectively, the New York State Industrial Development Agency Act (constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws 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) of this Agreement.

An **Affiliate** of a Person shall mean 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 (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of at least fifty-one percent (51%) of the voting stock or other equity interest of such Person.

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 Agreement and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith.

Application shall mean the application by the Lessee and Sublessee to the County of Rockland Industrial Development Agency for financial assistance.

Approved Facility shall mean a commercial facility for storage of equipment and machinery and for administrative offices.

Authorized Representative shall mean, (a) in the case of the Agency, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary or

Executive Director of the Agency, or any other member, officer, manager or employee of the Agency who is 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 (b) in the case of the Lessee, a Member or Manager of Lessee and in the case of Sublessee, the President or any officer thereof who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Lessee or Sublessee has given written notice to the Agency.

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.

Commencement Date shall mean May 5, 2017 on which date this Agreement was executed and delivered.

County shall mean the County of Rockland, New York.

Event of Default shall have the meaning specified in Section 7.1 hereof.

Exempt Property shall mean only tangible personal property conveyed to or acquired by the Agency in connection with the Project up to the Maximum Sales Tax Benefit (as evidenced in accordance with Section 2.4 hereof) for incorporation in the Facility or for use in connection with the Facility.

Facility Equipment shall mean that machinery, equipment and other tangible personal property acquired and installed pursuant to the Sales Tax Letter as part of the Project pursuant to Section 2.2 hereof, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor and all parts, additions and accessories incorporated therein or affixed thereto (but excluding Lessee's Property within the meaning of Section 4.1(c) hereof or Existing Facility Property released pursuant to Section 4.2 hereof), as more particularly described in **Exhibit B** "Description of the Facility Equipment" hereto, which is made a part of this Agreement. "Facility Equipment" shall not include (i) rolling stock, (ii) any item of personality which shall have a useful life of less than one year or which shall not constitute a tangible capital asset, (iii) plants, shrubs, trees, flowers, lawns or plants, or (iv) fine art, objects d'arte or other similar decorative items.

Facility shall mean, collectively, the Facility Realty and the Facility Equipment.

Facility Realty shall mean, collectively, the Land and the Improvements.

Fiscal Year of the Lessee shall mean a year of 365 or 366 days, as the case may be, commencing on January 1 and ending on December 31 of each calendar year, or such other fiscal year of similar length used by the Lessee for accounting purposes as to which the Lessee

shall have given prior written notice thereof to the Agency at least ninety (90) days prior to the commencement thereof.

Head Lease shall mean the Head Lease referred to in the recitals to this Agreement.

Improvements shall mean all buildings, structures, foundations, related facilities, fixtures and other improvements existing on the Commencement Date or at any time made, erected or situated on the Land (including any improvements made as part of the Project pursuant to Section 2.2 hereof) and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto.

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

Land shall mean that certain lot, piece or parcel of land generally known by the street address 4 Burts Road, Congers, Town of Clarkstown, County of Rockland, State of New York, all as more particularly described in **Exhibit A** - "Description of the Land" 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 hereof.

Lessee shall be Congers LLC, a New York limited liability company duly registered and authorized to transact business in the State of New York and its permitted successors and assigns pursuant to Section 9.2 hereof.

Lessee's Property shall have the meaning specified in Section 4.1(c) hereof.

Liens shall have the meaning specified in Section 6.5(a) hereof.

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

Maximum Sales Tax Benefit shall mean a maximum aggregate amount of sales and use tax exemptions conferred collectively upon the Lessee and Sublessee pursuant to the Sales Tax Letter and/or this Agreement until the date which is the earliest to occur of (i) the receipt by the Lessee and Sublessee of \$766,312.50 of sales and use tax exemptions on qualified expenditures of up to \$9,150,000.00 or (ii) three (3) years from the date hereof.

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

Opinion of Counsel shall mean a written opinion of counsel for the Lessee and Sublessee which shall be reasonably acceptable to the Agency.

Permitted Encumbrances shall mean:

(a) this Agreement, the Mortgage and Security Agreement with Assignment of Leases and Rents and the filed UCC-1s;

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

(c) 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 hereof;

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

(e) utility, access and other easements and rights-of-way restrictions and exceptions that an Authorized Representative of the Lessee certifies to the Agency will not materially interfere with or impair the Lessee's use and enjoyment of the Facility as herein provided;

(f) 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 Facility as do not, as set forth in a certificate of an Authorized Representative of the Lessee delivered to the Agency, either singly or in the aggregate, render title to the Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired and held by the Agency hereunder or purport to impose liabilities or obligations on the Agency; and

(g) those exceptions to title to the Facility enumerated in the title insurance policy delivered pursuant to Section 2.3 hereof, a copy of which is on file at the offices of the Agency.

Person shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof or other entity.

PILOT Agreement shall mean that certain payment in lieu of taxes agreement to be entered into between the Agency, Lessee, and the appropriate municipalities.

Project shall have the meaning set forth in the recitals of this Agreement.

Project Counsel shall mean Montalbano, Condon & Frank, P.C., selected by the Agency to render legal advice to the Agency in connection with the transactions contemplated by this Agreement.

Project Documents shall mean the Head Lease, this Agreement, the PILOT Agreement, the Indemnification Agreement, the Indemnification Agreement Regarding Hazardous Materials, the Mortgage, Assignment of Leases and Rents, the Sales Tax Letter and all other documents executed by Lessee and/or Sublessee in connection with this transaction.

Rental Payments shall mean, collectively, 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 Letter shall mean the Letter of Authorization for Sales Tax Agent Authorization Letter, which the Agency shall make available to the Lessee and Sublessee in accordance with and substantially in the form set forth in the appendices to this Agreement.

State shall mean the State of New York.

Sublessee shall mean ECD NY Inc., a New York Corporation, duly registered and authorized to transact business in the State of New York and its permitted successors and assigns pursuant to Section 9.2 hereof.

Section 1.2 Construction. In this Agreement, unless the context otherwise requires, 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 that the Agency (i) 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, (ii) 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 (iii) by proper action of its members, 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 and Sublessee contained in this Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Lessee and Sublessee 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 (within the meaning of the Act) through the straight-lease transaction (within the meaning of the Act) contemplated by this Agreement is necessary to induce the Lessee and Sublessee to proceed with the Project;

(b) the Project is reasonably necessary to discourage the Lessee and Sublessee from locating a facility or plant to a location outside the State;

(c) the Lessee and Sublessee but for the financial assistance provided by the Agency as contemplated by this Agreement would consider locating the related jobs outside the State; and

(d) 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 promotional 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 a manufacturing plant within the State.

Section 1.5 Representations and Warranties by the Lessee and Sublessee. The Lessee and Sublessee each make and affirm the following representations and warranties:

(a) The Lessee is a limited liability company duly organized in the State of New York and duly authorized to do business in, validly existing and in good standing under the laws of the State of New York. Lessee is not in violation of any provision of its Articles of Organization or Operating Agreement, has the power and authority to own its properties and assets, to carry on its businesses as now being conducted by it and to execute and deliver and perform this Agreement and each other Project Document to which it is or shall be a party.

(b) The Sublessee is a corporation duly organized in the State of New York and duly authorized to do business in, validly existing and in good standing under the laws of the State of New York. Sublessee is not in violation of any provision of its Certificate of Incorporation or its Bylaws, has the power and authority to own its properties and assets, to carry on its businesses as now being conducted by it and to execute and deliver and perform this Agreement and each other Project Document to which it is or shall be a party.

(c) The execution, delivery and performance of this Agreement and each other Project Document to which they are or shall be a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite action on the part of the Lessee and Sublessee, and will not violate any provision of law, any order of any court or agency of government, or any indenture, agreement or other instrument to which either the Lessee or Sublessee is a party or by which they or any of their respective 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 threatened by or against either the Lessee or Sublessee by or before any court or administrative agency that would adversely affect the ability of either the Lessee or Sublessee to perform their obligations under this Agreement and each other Project Document to which they shall be a party and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Lessee or Sublessee as of the date hereof in connection with the execution and delivery of this Agreement and each other Project Document to which the Lessee or Sublessee shall be a party or in connection with the performance of the obligations hereunder and under each of the Project Documents have been obtained.

(e) The Facility will constitute a “project” under the Act, and the Lessee and Sublessee intend to operate the Facility, or cause the Facility to be operated, in accordance with this Agreement and as an Approved Facility and a qualified “project” in accordance with and as defined under the Act.

(f) The financial assistance (within the meaning of the Act) provided by the Agency through the straight-lease transaction (within the meaning of the Act) as contemplated by this Agreement is reasonably necessary to induce the Lessee and Sublessee to proceed with the Project.

(g) Subject to Sections 4.2 and 5.1 hereof, no Facility Equipment shall be located at any site other than the Facility Realty.

(h) The Project is reasonably necessary to encourage the Lessee and Sublessee from moving a facility or plant from a location outside the State to a location within the State.

(i) The Lessee and Sublessee, but for the financial assistance provided by the Agency as contemplated by this Agreement, would consider locating the related jobs outside 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 promotional 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 they are a party constitute the legal, valid and binding obligations of the Lessee and Sublessee enforceable against each of them in accordance with their respective terms.

(l) Lessee and Sublessee are in compliance, and will continue to comply, with all Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality applicable to the Project and the operation of the Facility.

(m) Lessee and Sublessee represent and warrant that the moneys available to them are sufficient to pay all costs in connection with the completion of the Project.

(n) No Person other than the Lessee and Sublessee or a permitted tenant is or will be in use, occupancy or possession of any portion of the Facility.

ARTICLE II CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE

Section 2.1 The Head Lease. The Agency has acquired, for good and valuable consideration therefor, pursuant to the Head Lease, a leasehold interest in and to the Land, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures and other 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.

Section 2.2 The Project. (a) The Agency hereby appoints the Lessee and Sublessee their true and lawful agents, and the Lessee and Sublessee hereby accept such agency, for purposes of undertaking the Project, including, without limitation, (i) renovating and installing the Improvements and the Facility Equipment thereon or therein, (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons (subject in each case to Section 2.4 hereof), 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, (iii) paying all fees, costs and expenses incurred in the renovation, and equipping of the Facility from funds made available therefor in accordance with or as contemplated by this Agreement and (iv) 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. The Lessee and Sublessee unconditionally represent, warrant, covenant and agree that they will complete the Project, or cause the Project to be completed in a first class workmanlike manner, using high grade materials, free of defects in materials and workmanship (including latent defects); provided, however, they may revise the scope of the Project, subject to the prior written consent of the Agency. In undertaking the Project, the Lessee and Sublessee, as agents of the Agency, 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 in accordance with the terms of the contracts therefor including, without limitation, the correction of any defective work. The cost of the Project shall be financed from (i) funds of the Lessee and Sublessee, and (ii) other funds of the Lessee and Sublessee to the extent such funds shall be necessary to cover costs of the Project which exceed such other sources of funds.

(b) The Lessee and Sublessee 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 hereof, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

(c) The Lessee and Sublessee unconditionally represent, warrant, covenant and agree that they will obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite to the Project and operation of the Facility, all of which will be done in 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 Facility and this Agreement. Promptly upon acquisition of the Facility Realty, the Lessee and Sublessee 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 Facility for the purposes contemplated by this Agreement and each of the Agency, Lessee and Sublessee agree to execute any documents, agreements and instruments reasonably necessary to obtain such permits, authorizations and licenses. Lessee and Sublessee shall furnish copies of same to the Agency immediately upon receipt thereof.

(d) The date of completion of the Project shall be evidenced by a certificate of an Authorized Representative of the Lessee or Sublessee, 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 or Sublessee, (i) that the Project has been completed substantially in accordance with the plans and specifications therefor and the date of completion of the Project, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor have been paid for, (iii) that 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) that all property constituting the Facility is subject to this Agreement and the Head Lease, subject only to Permitted Encumbrances, (v) that, in accordance with all applicable laws, regulations, ordinances and guidelines, the Facility is ready for occupancy, use and operation for its intended purposes, and (vi) the amount, if any, required in the opinion of such Authorized Representative for the payment of any remaining part of the costs of the Project.

Notwithstanding the foregoing, such certificate shall state (i) that it is given without prejudice to any rights of the Lessee and Sublessee against third parties which exist at the date of such certificate or which may subsequently come into being and (ii) that no Person other than the Agency may benefit therefrom. Such certificate of the Authorized Representative of the Lessee and Sublessee shall be accompanied by (i) either a permanent certificate of occupancy or temporary certificate of occupancy, with conditions reasonably acceptable to the Agency, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) a certificate of an Authorized Representative of the Lessee and Sublessee that all costs of the Project have been paid in full, 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; (iii) evidence

satisfactory to the Agency that all real property taxes and assessments, and payments in lieu of taxes, if any, due and payable pursuant to the PILOT Agreement in respect of the Facility have been paid in full; and (iv) a final endorsement to the title insurance policy theretofore delivered under Section 2.3 hereof, indicating that since the issuance of the title insurance policy there has been no change in the state of title and no survey exceptions not theretofore approved the Agency, which endorsements shall contain no exception for inchoate mechanic's liens (with such affirmative insurance relating thereto as the Agency shall reasonably require) and shall have the effect of redating such policy to the date of completion. Upon request by the Agency, the Lessee and Sublessee 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 2.3 Title Insurance. On or prior to the Commencement Date, the Lessee will obtain and deliver to the Agency (a) a leasehold insurance policy in the amount of \$35,000.00 insuring the Agency's leasehold interest in the Land and the Improvements against loss as a result of defects in title, subject only to Permitted Encumbrances and (b) a current survey of the Land certified to the Lessee, the title company issuing such title insurance policy, and the Agency. Any proceeds of such title insurance shall be paid to the Lessee and applied by the Lessee to remedy the applicable defect in title in respect of which such proceeds shall be derived. If not so capable of being applied or if a balance remains after such application, the proceeds or the remaining balance of proceeds, as the case may be, derived from any such title insurance policy insuring the Agency's title interest shall be applied (a) first, to the payment of any Rental Payments due hereunder (b) second, to any payments then due and owing by the Lessee under and pursuant to the PILOT Agreement, (c) third, to remedy the applicable defect in title by the Lessee in respect of which such proceeds shall be derived and (d) fourth, paid to the Lessee for use for any corporate purpose.

Section 2.4 Limitation on 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 or Sublessee as agent for the Agency, it being the intent of the parties that no operating expenses of the Lessee or Sublessee 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 Lessee and Sublessee covenant and agree that they shall include the following language (through an attached rider or otherwise) in and as part of each contract, invoice, bill or purchase order entered into by the Lessee and Sublessee as agents for the Agency in connection with the Project:

“This contract is being entered into by CONGERS LLC, a New York limited liability company or ECD NY Inc., a New York corporation (collectively the “Agent”), as agent for and on behalf of the **COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”) in connection with a certain project of the Agency for the Agent consisting of the acquisition, renovation and redevelopment of an existing facility and the acquisition and installation of machinery, equipment and furnishings thereon, located at 4 Burts Road, Congers,

Town of Clarkstown, all to be used as a storage facility for machinery and equipment and administrative offices (the "Project"), for lease to the Agency, and lease-back to the Agent. The renovation and capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property to be used for the Project which is the subject of this agreement shall be exempt from the sales and use tax levied by the State of New York and the County of Rockland if effected in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this agreement is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption. By execution or acceptance of this agreement, the vendor or contractor hereby acknowledges the terms and conditions set forth in this paragraph."

If the Lessee or Sublessee shall fail to include, incorporate by reference or otherwise cause the contract, agreement, invoice, bill or purchase order to be, together with the vendor or contractor, subject to the above applicable language in substantially the above form, such contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits able to be conferred by the Agency, and the Lessee and Sublessee shall not claim any sales or use tax benefits or exemptions with respect to any such contract, invoice, bill or purchase order and the Lessee and Sublessee shall return to the Agency any such benefits or exemptions so taken, together with interest on such amount at the rate of eighteen percent (18%) per annum, from the date of such taking.

(c) On the Commencement Date, the Agency shall make available to the Lessee and Sublessee the Sales Tax Authorization Letter. The Agency, at the sole cost and expense of the Lessee and Sublessee, shall also execute such other authorizations, letters and documents (and such amendments to the Sales Tax Authorization Letter) as may be reasonably necessary to permit the Lessee and Sublessee to obtain the intended benefits hereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the sales and use tax benefits received by the Lessee and Sublessee pursuant to this Agreement and the Sales Tax Authorization Letter shall be limited in both duration and amount by the Maximum Sales Tax Benefit.

(i) The Sales Tax Authorization Letter shall be dated the Commencement Date and shall be effective for a term commencing on the Commencement Date and expiring upon the date which is the earliest to occur of (A) the termination of this Agreement, (B) three (3) years from the date hereof, (C) the termination of the Sales Tax Authorization Letter pursuant to Section 7.2 hereof or (D) such time as the aggregate amount of sales and use tax exemptions availed of by the Lessee and/or Sublessee pursuant to the Sales Tax Authorization Letter shall equal the Maximum Sales Tax Benefit (such date, the "Sales Tax Letter Expiration Date").

(ii) The authorizations set forth in the Sales Tax Authorization Letter shall automatically be suspended twenty (20) days after notice to the Lessee and Sublessee that

the Lessee and Sublessee are in default beyond applicable grace periods under this Agreement until the Lessee and Sublessee shall cure such Event of Default.

(iii) The sales and use tax exemption to be provided pursuant to the Sales Tax Authorization Letter:

(A) shall not be available for payment of any costs other than the costs of the Project, or for any items of personalty other than those items of Facility Equipment located at the Facility Realty,

(B) shall only be utilized for items of Exempt Property which shall be purchased, completed or installed for use only by the Lessee, Sublessee and their Affiliates at the Facility Realty until the Maximum Sales Tax Benefit is achieved, it being the intention of the Agency and the Lessee and Sublessee that the sales and use tax exemption shall not be made available with respect to any item of Exempt Property unless such item is used solely by the Lessee and Sublessee and their Affiliates at the Facility Realty,

(C) shall not be available for any item of (i) rolling stock, or (ii) computer software unless the computer software is in the form of tangible personal property and of a type that is capable of being capitalized in accordance with generally accepted accounting principles as a capital expenditure, and has been purchased for a mainframe computer or other data processing equipment constituting Facility Equipment, and in each case for use only at the Facility Realty by the Lessee, Sublessee or an Affiliate,

(D) shall not be available for any item subsequent to the conferral of the Maximum Sales Tax Benefit of aggregate sales and use tax exemptions pursuant to the Sales Tax Authorization Letter and this Agreement,

(E) shall not be available for any date subsequent to which the Sales Tax Authorization Letter shall have been suspended as provided in Section 2.4(c)(ii) hereof; provided, however, that in the event the Lessee and Sublessee shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver,

(F) shall not be available for or with respect to any tangible personal property having a useful life of less than one year, and shall be available only if purchased by the Lessee or Sublessee with funds received from the Lessee, or Sublessee, or any other source, (including their own funds) as agent for the Agency for use by the Lessee, or Sublessee, or any of its Affiliates at the Facility Realty,

(G) shall not be available for any cost of utilities, cleaning service or supplies,

(H) shall not be available subsequent to the termination of this Agreement, and

(I) shall only be available for those costs set forth in Exhibit A to the Sales Tax Authorization Letter.

(J) In the event that the Lessee or Sublessee shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Authorization Letter in violation of the provisions of Section 2.4(c)(iii) hereof, the Lessee and Sublessee shall promptly deliver notice of same to the Agency, and the Lessee and Sublessee shall, upon demand by the Agency, pay to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of eighteen percent (18%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Lessee and Sublessee.

(v) The Lessee and Sublessee shall, on or before January 15th of each year, commencing January 15, 2018 and ending on the earlier of the termination of this Agreement and the attaining of the Maximum Sales Tax Benefit (and on January 15th following the earlier of the termination of this Agreement and the attaining of the Maximum Sales Tax Benefit),

(A) deliver to the Agency a certificate of an Authorized Representative certifying (i) as to each sales or use tax exemption availed of by the Lessee, the dollar amount of same and the date availed of, all as availed of in the immediately preceding calendar year, and the specific items of Project costs to which they shall relate, (ii) that all such sales or use tax exemptions so availed of were in compliance with the provisions of the Sales Tax Authorization Letter and Section 2.4(c) hereof, (iii) as to the dollar amount of all sales and use tax exemptions availed of by the Lessee from the Commencement Date through the end of the calendar year period to which such certificate shall relate, and (v) as to the unused amount remaining of the Maximum Sales Tax Benefit, and

(B) deliver to the Agency, on request, an opinion of an Independent Accountant to the effect that such Independent Accountant has audited the certificates provided in paragraph (A) above for the preceding calendar year, and such certificates were properly prepared and accurately reflect the matters certified therein.

(vi) Upon request by the Agency of, and reasonable notice to the Lessee and Sublessee, the Lessee and Sublessee shall make available at reasonable times to the Agency and the Independent Accountant all such books and records of the Lessee and Sublessee and require all appropriate officers and employees of the Lessee and Sublessee to respond to reasonable inquiries by the Agency and the Independent Accountant, as shall be necessary to indicate in reasonable detail those costs to which the Lessee and Sublessee shall have utilized the Sales Tax Authorization Letter and the dates and amounts so utilized.

(vii) The Lessee and Sublessee shall obtain covenants to the Agency from each materialman, supplier, vendor or laborer to whom the Sales Tax Authorization Letter is presented to the effect that such materialman, supplier, vendor or laborer shall not utilize the Sales Tax Authorization Letter for any purpose other than for the Project.

(d) Prior to the Sales Tax Letter Expiration Date, the Lessee and Sublessee shall annually file a statement with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Lessee, Sublessee or agents of them in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Agreement. The Lessee and Sublessee shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should they fail to comply with the foregoing requirement, the Lessee and Sublessee shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Lessee and Sublessee shall be deemed to have automatically lost their authority as agent of the Agency to purchase and/or lease Exempt Property in the Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued by the Agency which is in the possession of Lessee, Sublessee, or in the possession of any agent of them. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State.

ARTICLE III LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1 Lease of the Facility. (a) The Agency hereby leases to the Lessee, and the Lessee hereby leases from the Agency, the Facility for and during the term herein 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 Facility (it being understood by the parties hereto that delivery of possession to the Agency of the Facility as the same is renovated shall take no further act or deed by the parties hereto).

(b) The Lessee and Sublessee each hereby unconditionally represent, warrant, covenant and agree that throughout the term of this Agreement (i) the Facility will be an Approved Facility and a “project” within the meaning of the Act; (ii) they will not take any action, or suffer or permit any action, if such action would cause the Facility not to be an Approved Facility or a “project” within the meaning of the Act; and (iii) they will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause the Facility not to be an Approved Facility or a “project” within the meaning of the Act. The Lessee and Sublessee shall not occupy, use or operate the Facility, or allow the Facility or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility 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.

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire on the expiration of the PILOT Agreement or such earlier date as this Agreement may be terminated as hereinafter provided.

Section 3.3 Rental Provisions. (a) **Base Rent.** The Lessee shall pay Base Rent to the Agency, without demand or notice, on the Commencement Date in the amount of \$1.00, which shall constitute the entire amount of Base Rent payable hereunder.

(b) **Additional Rent.** Throughout the term of this Agreement the Lessee and Sublessee shall pay to the Agency (except as otherwise provided in the PILOT Agreement) any additional amounts required to be paid to or for the account of the Agency hereunder, including all taxes, PILOT payments, fire district taxes, special district benefits assessments or user charges, including sewer and water rents relating to the Project, solid waste charges, and other assessments or fees imposed on the Project or which may subsequently be imposed on the Project in the future. Any such additional amounts shall be paid as, and shall represent payment of, Additional Rent.

(c) **Missed Payments.** In the event the Lessee or Sublessee 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 and Sublessee 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 Rental Payments Payable Absolutely Net. The obligation 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 Facility, arising or becoming due and payable during or after the term of this Agreement, shall be paid by the Lessee and Sublessee and the Agency shall be indemnified by the Lessee and Sublessee for, and the Lessee and Sublessee shall hold the Agency harmless from, any such costs, expenses and charges.

Section 3.5 Nature of Lessee's Obligation Unconditional. The obligations under this Agreement to pay Rental Payments shall be absolute, unconditional and general obligations, and 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 they might otherwise have against the Agency or any other Person and the obligations shall arise whether or not the Project has been completed as provided in this Agreement. The Lessee and Sublessee will not suspend or discontinue payment of any Rental Payment due and payable hereunder or performance or observance of any covenant or agreement required hereunder for any cause whatsoever, and the Lessee and Sublessee waive all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction in the Rental Payments hereunder.

Section 3.6 Assignment of Subleases. In order to secure the payment and performance of obligations of the Lessee and Sublessee under this Agreement, the Lessee and

Sublessee do hereby assign, transfer and set over to the Agency all of the Lessee's and Sublessee's right, title and interest in and to all sublease rentals, revenues and receipts therefrom, and the right to enforce all of the Lessee's rights and remedies thereunder during the existence of an Event of Default.

The Lessee and Sublessee agree not to terminate, modify or amend any sublease 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 any sublease without such written consent shall be null and void.

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 and Sublessee. The Agency shall not be obligated to perform or discharge any obligation, duty or liability under any sublease, or under or by reason of this assignment.

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1 Maintenance, Alterations and Improvements (a) During the term of this Agreement, the Lessee and Sublessee will keep the Facility in good and safe operating order and condition, ordinary wear and tear excepted, will occupy, use and operate the Facility in the manner for which it was 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) necessary to ensure that the operations at the Facility shall not be impaired or diminished in any way. All replacements, renewals and repairs shall be equal to or better 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 Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility and the Lessee and Sublessee hereby agree to assume full responsibility therefor.

(b) The Lessee and Sublessee shall have the privilege of making such alterations of or additions to the Facility or any part thereof from time to time as they in their 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 Facility is not materially reduced below its value immediately before such alteration or addition and the usefulness, the structural integrity or operating efficiency of the Facility is not materially impaired,

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

(iii) such additions or alterations do not change the nature of the Facility so that it would not constitute an Approved Facility and a “project” within the meaning of the Act.

All alterations of and additions to the Facility shall constitute a part of the Facility, subject to this Agreement, and the Lessee and Sublessee shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey title and/or a leasehold interest to such property to the Agency 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 and Sublessee shall have the right to install or permit to be installed at the Facility machinery, equipment and other personal property at their own cost and expense (the “**Lessee's Property**”) without conveying title to such Lessee's Property to the Agency nor subjecting such Lessee's Property to this Agreement. The Lessee's Property shall not constitute part of the Facility leased hereunder. The Agency shall not be responsible for any loss of or damage to the Lessee's Property. The Lessee and Sublessee 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, without the consent of or notice to the Agency.

Section 4.2 Removal of Property of the Facility. (a) The Lessee and Sublessee shall have the privilege from time to time of removing from the Facility any fixture constituting part of the Facility Realty or any machinery, equipment or other property constituting part of the Facility Equipment (in either case, the “**Existing Facility Property**”) and thereby acquiring such Existing Facility Property, **provided, however,** no such removal shall be effected if (x) such removal is to another location other than the Facility Realty, (y) such removal is for a purpose contrary to the provisions of Section 2.4(c)(iii)(B) hereof or (z) such removal would change the nature of the Facility as an Approved Facility and a “project” within the meaning of the Act.

(b) The removal from the Facility of any Existing Facility Property pursuant to the provisions of Section 4.2(a) hereof shall not entitle the Lessee to any abatement or reduction in the Rental Payments payable by the Lessee under this Agreement.

(c) Within one hundred twenty (120) days after the close of each Fiscal Year of the Lessee and Sublessee (i) during which Fiscal Year action was taken by either Lessee or Sublessee pursuant to Section 4.1(b) or 4.2(a) hereof, the Lessee and Sublessee shall furnish to the Agency a written report of an Authorized Representative summarizing the action taken by them during such preceding Fiscal Year and stating that, in its opinion, such action complied with the applicable provisions of Section 4.1(b) or 4.2(a) hereof, as the case may be; or (ii) during which Fiscal Year no action was taken by the Lessee or Sublessee pursuant to Section 4.1(b) or 4.2(a) hereof, the Lessee and/or Sublessee shall furnish to the Agency a certificate of an Authorized Representative certifying to the fact that no such action was taken pursuant to such Section 4.1(b) or 4.2(a) during such preceding Fiscal Year.

Section 4.3 Taxes, Assessments and Charges. The Lessee and Sublessee shall pay when the same shall become due all taxes (other than those taxes for which payments in lieu thereof are being paid pursuant to the PILOT Agreement) and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Agreement, any estate or interest of the Agency or the Lessee and Sublessee in the Facility, or the Rental Payments or other amounts payable 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 Facility, all of which are herein called “**Impositions**”.

Section 4.4 Insurance. (a) At all times throughout the term of this Agreement, including without limitation during any period of construction or reconstruction of the Facility, the Lessee and Sublessee shall maintain or cause to be maintained 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 and Sublessee, including, without limitation:

(i) During any period of construction, renovation, improvement or reconstruction of the Facility to the extent not covered by the public liability insurance referred to below, Owners & Contractors Protective Liability insurance for the benefit of the Lessee, Sublessee, and the Agency in a minimum amount of \$2,000,000.00 aggregate coverage for personal injury and property damage;

(ii) (A) Property damage insurance and (B) during any period of construction, renovation, improvement or reconstruction of the Facility, Builders' All Risk insurance, whether by endorsement or otherwise, written on one hundred percent (100%) builders' risk completed value, non-reporting form including coverage therein for completion and/or premises occupancy, all of which insurance shall in each case include coverage for removal of debris, insuring the buildings, structures, facilities, machinery, equipment, fixtures and other property constituting a part of the Facility against loss or damage to the Facility 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, Sublessee, and 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 eighty percent (80%) of the actual replacement value of the Facility as determined by a qualified insurance appraiser or insurer (selected by the Lessee or Sublessee and approved by the Agency) not less often than once every year, at the expense of the Lessee or Sublessee; any such insurance may provide that the insurer is not liable to the extent of the first \$10,000.00 with the result that the Lessee and Sublessee are their own insurer to the extent of \$10,000.00 of such risks it being understood that from and after the date hereof, such amount may be increased provided that such amount shall in no event exceed deductible amounts customarily included in policies of financially sound and

reputable insurers with entities of established reputations engaged in the same or similar businesses;

(iii) Public liability insurance in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$2,000,000.00, which insurance (A) will also provide coverage of the obligations of indemnity under Section 6.2 hereof (other than the liability pursuant to Section 6.2(a)(i) and (v) hereof, and with respect to Section 6.2(c) hereof, only to the extent such insurance is reasonably available), (B) may be effected under overall blanket or excess coverage policies of the Lessee, Sublessee, or any Affiliate, **provided, however**, that at least \$500,000.00 is effected by a comprehensive liability insurance policy, and (C) as of the date hereof, shall not contain any provisions for a deductible amount greater than \$10,000.00 per occurrence, it being understood that from and after the date hereof, such amount may be increased, **provided** that such amount shall in no event exceed deductible amounts customarily included in policies of financially sound and reputable insurers with entities of established reputations engaged in the same or similar businesses;

(iv) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus located at the Facility from risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar business enterprises and in each case approved by the Agency;

(v) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Lessee, Sublessee, or the Agency is required by law to provide; and

(vi) Such other insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require as set forth in a written notice from an Authorized Representative of the Agency submitted to an Authorized Representative of the Lessee and Sublessee.

(b) All insurance required by Section 4.4(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State.

(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 as its interests may appear;

(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 interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee, Sublessee, 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 interest in the Facility;

(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, reduction or change;

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

(vii) contain such other terms and provisions as any owner or operator of facilities similar to the Facility 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 Facility owned or operated by it.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility shall be applied in accordance with Section 5.1 of this Agreement.

(e) As a condition to the execution and delivery of this Agreement by the Agency, the Lessee or Sublessee, at or prior to the Commencement Date, shall deliver or cause to be delivered to the Agency duplicate copies of the insurance policies and binders or certificates evidencing compliance with the insurance requirements of this Section 4.4. At least seven (7) Business Days prior to the expiration of any such policy, the Lessee or Sublessee shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Lessee and Sublessee, at their own cost and expense, shall 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 4.4, and shall cause any sublessee, contractor or other insuring party under this Section 4.4 to take similar action with respect to such party's insurance required hereunder. The Lessee and Sublessee shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.4 would or might be suspended or impaired.

(g) **THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OF COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE OPERATION OF THE FACILITY OR THE BUSINESS, OPERATIONS OR FINANCIAL CONDITION OF THE LESSEE AND SUBLESSEE.**

Section 4.5 Compliance with Law. The Lessee and Sublessee each agree 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 and Sublessee, the Facility, any occupant, user or operator of the Facility or any portion thereof (including, without limitation, those relating to zoning, land use, building codes, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wages, employment practices, and the Agency's Labor Policy, a copy of which is annexed hereto as **Appendix A**) (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 and Sublessee 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 that may be made of the Facility or any part thereof. The Lessee and Sublessee each shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure by the Lessee and Sublessee (or any other Person occupying, operating or using the Facility or any part thereof) to comply with any Legal Requirement, or (b) imposed upon the Lessee, Sublessee, or any of the Indemnified Parties by any Legal Requirement; in case any action or proceeding is brought against any of the Indemnified Parties in respect of any Legal Requirement, the Lessee and Sublessee shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

The Lessee and Sublessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility 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, Sublessee, or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Lessee or Sublessee 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 Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement among the Agency, the Lessee and Sublessee and those authorized to exercise such right, or if the temporary use of the Facility 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 Facility,

(ii) the Net Proceeds, to be used for restoration of the Facility, shall be provided to Lessee and Sublessee in accordance with this Lease,

(iii) there shall be no abatement, postponement or reduction in the Rental Payments payable by the Lessee and Sublessee under this Agreement or any other Project Document to which it is a party, and

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

(b) In the event a Loss Event shall occur, the Lessee and Sublessee shall

(i) at their 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 Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function and the Lessee and Sublessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, nor shall the Rental Payments payable by the Lessee and Sublessee under this Agreement or any other Project Document to which it is a party be abated, postponed or reduced.

As soon as practicable but no later than ninety (90) days after the occurrence of the Loss Event, the Lessee and Sublessee shall advise the Agency in writing of the action to be taken by the Lessee and Sublessee under this Section 5.1(b).

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

(i) automatically be deemed a part of the Facility and shall be subject to this Agreement,

(ii) be effected only if the Lessee and Sublessee shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that such rebuilding,

replacement, repair or restoration shall not change the nature of the Facility as an Approved Facility and a qualified "project" as defined in the Act,

(iii) be effected only if the Lessee or Sublessee shall deliver to the Agency a labor and materials payment bond, or other security, satisfactory to the Agency, and

(iv) 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 and Sublessee in accordance with the terms of the applicable contract(s) therefor.

(d) The date of completion of the rebuilding, replacement, repair or restoration of the Facility after the occurrence of a Loss Event shall be evidenced to the Agency by a certificate of an Authorized Representative of the Lessee or Sublessee stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for, (iii) that the Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, (iv) that the Agency has good and valid title to all personal property constituting part of the Facility and all property of the Facility is subject to this Agreement, subject to Permitted Encumbrances, and (v) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Lessee or Sublessee against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and (z) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by (i) a certificate of occupancy, if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; and (ii) a search prepared by a title company, or other evidence satisfactory to the Agency, indicating that there has not been filed with respect to the Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the Facility and that there exists no encumbrances on or affecting the Facility or any part thereof other than Permitted Encumbrances or those encumbrances consented to by the Agency.

(e) Notwithstanding anything contained herein to the contrary, if all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation renders the Facility unsuitable for use by the Lessee and Sublessee as contemplated hereby, the Lessee and Sublessee may exercise their option to terminate this Agreement as provided in Section 8.1 hereof.

(f) The Lessee and Sublessee shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to the Lessee's Property.

(g) The Lessee and Sublessee each hereby waive the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect.

ARTICLE VI PARTICULAR COVENANTS

Section 6.1 Restrictions on Lessee and Sublessee. The Lessee and Sublessee covenant and agree that at all times during the term of this Agreement, they will (i) maintain their existence, (ii) continue to be subject to service of process in the State of New York and organized under the laws of, or qualified to do business in, the State of New York, and (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of their property, business or assets remaining after the Commencement Date.

The Lessee and Sublessee each further covenant and agree that they are and throughout the term of this Agreement will continue to be duly qualified to do business in the State of New York and that any corporation or entity organized and existing pursuant to the laws of the State of New York succeeding to the rights of the Lessee and Sublessee under this Agreement shall be and continue to be duly qualified to do business in the State.

Section 6.2 Indemnity. (a) The Lessee and Sublessee shall each at all times protect and hold the Agency and any director, member, officer, employee, servant or agent thereof and persons under the Agency's control or supervision (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 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 gross negligence or willful misconduct of such Indemnified Party, arising upon or at the Facility or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Facility and the participation of the Agency in the transactions contemplated by this Agreement and the other Project Documents, (ii) 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 Facility, (iii) any defects (whether latent or patent) in the Facility, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof, or (v) the execution and delivery by the Indemnified Party, the Lessee or the Sublessee of, or performance by the Indemnified Party, the Lessee, or the Sublessee, as the case may be, 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 their terms hereof or thereof or the transactions contemplated hereby or thereby. The Indemnified Parties, jointly or severally, shall not be liable for any damage or injury to the person or property of the Lessee, or the Sublessee, or their respective managers, members, partners, employees, agents or servants or persons under the control or supervision of the Lessee, Sublessee, or any other Person who may be at the Facility, due to any act or negligence of any Person other than, with respect to any Indemnified Party, the gross negligence or willful misconduct of such Indemnified Party.

(b) Lessee and Sublessee each releases the Indemnified Parties from, and agrees that the Indemnified Parties shall not be liable for and the Lessee and Sublessee, agree 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 subdivision (i) through (v) of Section 6.2(a) hereof or at the direction of the Lessee or Sublessee with respect to any of such matters above referred to. Each Indemnified Party, as the case may be, shall promptly notify the Lessee and Sublessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee or Sublessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee and Sublessee to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee and Sublessee under this Section 6.2.

(c) To effectuate the purposes of this Section 6.2, the Lessee and Sublessee will provide for and insure, in the public liability policies required in Section 4.4 hereof, not only their own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2 (other than the liability pursuant to Section 6.2(a)(i) and (v) hereof). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee and Sublessee contained in this Section 6.2 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 Agency relating to the enforcement of the provisions herein specified.

(d) For the purposes of this Section 6.2, the Lessee and Sublessee shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

Section 6.3 Compensation and Expenses of the Agency. The Lessee and Sublessee shall pay the fees, costs and expenses of the Agency together with any reasonable and necessary fees and disbursements incurred by the Agency's Project Counsel and the Agency's general counsel in performing services for the Agency in connection with this Agreement or any other Project Document.

The Lessee and Sublessee further agree to pay, as an annual administrative servicing fee to the Agency, the amount of \$500.00 payable upon the Commencement Date and on every January 1 thereafter until the termination of this Agreement.

Section 6.4 Retention of Title to Facility; Grant of Easements; Release of Facility Realty. (a) The Agency shall not sell, assign, encumber (other than for Permitted Encumbrances), convey or otherwise dispose of the Facility or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.2, 5.1 and 7.2 hereof, without the prior written consent of the Lessee and Sublessee, and any purported disposition without such consent shall be void.

Notwithstanding the foregoing paragraph, the Agency will, at the written request of an Authorized Representative of the Lessee or Sublessee, so long as there exists no Event of Default hereunder, grant such rights of way or easements over, across, or under, the Facility Realty, or grant such permits or licenses in 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 Facility, provided that such leases, rights of way, easements, permits or licenses shall not adversely affect the use or operation of the Facility. The Agency agrees, at the sole cost and expense of the Lessee and Sublessee, 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.

(b) No conveyance or release affected under the provisions of this Section 6.4 shall entitle the Lessee and Sublessee to any abatement or diminution of the Rental Payments payable under Section 3.3 hereof required to be made by the Lessee and Sublessee under this Agreement or any other Project Document to which it shall be a party.

Section 6.5 Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted (including, without limitation, any lien for the performance of any labor or services or the furnishing of materials), 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 Facility or any part thereof or the interest therein of the Agency, the Lessee or Sublessee, or against any of the Rental Payments payable under this Agreement or the interest of the Agency, the Lessee or Sublessee under this Agreement, other than Liens for Impositions (as defined in Section 4.3 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.5(b) hereof, the Lessee and Sublessee 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 the Lessee and Sublessee 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 Facility.

(b) The Lessee and Sublessee may at their sole 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 Facility or any part thereof or interest therein, or in this Agreement, of the Agency, the Lessee or Sublessee or against any of the Rental Payments payable under this Agreement, (2) neither the Facility nor any part thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee, or Sublessee nor the Agency would be in any danger of any civil or any criminal liability, for failure to comply therewith, and (4) the Lessee or Sublessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 6.6 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 FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE LESSEE OR ANY SUBLESSEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE LESSEE AND SUBLESSEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. LESSEE AND SUBLESSEE ACKNOWLEDGE THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE AND SUBLESSEE ARE SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE AND SUBLESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE AND SUBLESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.7 Financial Statements; No-Default Certificates. The Lessee and Sublessee agree to furnish to the Agency, as soon as available and in any event within one hundred twenty (120) days after the close of each fiscal year of the Lessee and Sublessee, a copy of the most recent fiscal year annual reviewed and certified financial statements of Lessee, Sublessee and their subsidiaries (including balance sheets as at the end of such most recent fiscal year and the related statements of income, earnings, retained earnings and changes in financial position) for such fiscal year, prepared in accordance with generally accepted accounting principles and practices.

Section 6.8 Employment Information, Opportunities and Guidelines. (a) Annually, by October 1 of each year until the termination of this Agreement, the Lessee and Sublessee 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, in the form required by the Agency and/or the State, certified as to accuracy by the chief financial or accounting officer of the Lessee and Sublessee.

(b) The Lessee and Sublessee shall ensure that all employees and applicants for employment by the Lessee, Sublessee or their Affiliates with regard to the Facility are afforded equal employment opportunities without discrimination and shall comply New York General Municipal Law §858-b. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed 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 Facility Realty is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee and Sublessee agree, where practicable,

to first consider, and cause each of its Affiliates at the Facility 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.

(c) The Lessee and Sublessee hereby authorize 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 their control and pertinent to the Lessee and Sublessee and the employees of each to enable the Agency and/or EDC to comply with its reporting requirements required by any and all applicable laws, rules or regulations. In addition, upon the Agency's request, the Lessee and Sublessee shall provide to the Agency any employment information in the possession of them which is pertinent to the Lessee and Sublessee and their employees to enable the Agency and/or EDC to comply with its reporting requirements required by any and all 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 Sublessee, 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, and/or 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 pursuant to applicable laws, rules or regulations, (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.

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

(e) The Lessee and Sublessee shall comply with New York State Labor Law Article 8, Section 220 et seq. regarding prevailing wages during the term of this Lease and shall ensure that not less than the prevailing rate of wages as determined by the New York Department of Labor shall be paid to all laborers, workers and mechanics performing work on, at or for the Project. All contracts and contractor's bonds if required, shall include a provision to guarantee the faithful performance of New York State Labor Law Article 8, Section 220 et seq. regarding prevailing wages.

Section 6.9 Further Assurances. The Lessee and Sublessee shall 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, if applicable, at the sole cost and expense of the Lessee and Sublessee, as the Agency deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency hereunder.

Section 6.10 Recording and Filing. A memorandum of this Agreement shall be recorded in the appropriate office of the Clerk of the County of Rockland, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

Section 6.11 Further Encumbrances. The Lessee and Sublessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Lessee and Sublessee in the Facility or this Agreement, except for Permitted Encumbrances.

ARTICLE VII EVENTS OF DEFAULT; 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 or Sublessee to pay any amount (including Rental Payment, fee or charge or PILOT Payments) within fifteen (15) days of the due date thereof;
- (b) Failure of the Lessee and Sublessee to observe and perform any covenant, condition or agreement on its part to be performed under this Agreement and (i) continuance of such failure for a period of thirty (30) days after receipt by the Lessee and Sublessee of written notice specifying the nature of such default from the Agency, or (ii) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Lessee and Sublessee fail to proceed within (thirty) 30 days after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same;
- (c) The Lessee or Sublessee 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) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;
- (d) A proceeding or case shall be commenced, without the application or consent of the Lessee or Sublessee, 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 Sublessee or of all or any substantial part of their respective assets, or (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 shall be entered and continue unstayed and in effect,

for a period of sixty (60) days; or any order for relief against the Lessee or Sublessee shall be entered in an involuntary case under the Federal Bankruptcy Code; the terms “dissolution” or “liquidation” as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(e) Any representation or warranty made (i) by the Lessee or Sublessee in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Agreement, or (ii) by the Lessee or Sublessee herein or by the Lessee or Sublessee in any other Project Document, or (iii) 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;

(f) The commencement of proceedings to foreclose the lien of any mortgage or lien on the Facility Realty;

(g) Any loss by the Agency of its leasehold rights to the Facility Realty;

(h) The Lessee or Sublessee shall have transferred all or substantially all of their employees at the Facility to a location outside of the County;

(i) The failure of the Lessee and Sublessee to: (i) meet the job predictions set forth in the Application; (ii) comply with the Agency’s Labor Policy (Appendix A attached); (iii) provide required reports to the State or the Agency; or (iv) comply with the terms of the Sales Tax Letter, if any;

(j) The Lessee or Sublessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of the Facility Equipment; or

(k) The Lessee or Sublessee shall have vacated all or part of the Facility at any time during the Lease Term.

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

(a) The Agency may terminate this Agreement (with the effect that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of this Agreement) in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Lessee and Sublessee shall cease and terminate, and convey all of the Agency's right, title and interest in the Facility to the Lessee or Sublessee, which the Agency may accomplish by executing, at the sole cost and expense of the Lessee or Sublessee, a termination of the Head Lease therefor as required by law, and a bill of sale, and the Lessee or Sublessee hereby waives delivery and acceptance of such termination of Head Lease and bill of sale as a condition to its validity, and appoints the Agency their 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 Head Lease or a memorandum thereof, provided however, that if the Lender obtains a Judgment of Foreclosure, this Agreement shall terminate upon the Agency's receipt of notice of same ; or

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

(c) The Agency may suspend or terminate the Sale Tax Letter or require the Lessee and Sublessee to surrender the Sales Tax Letter to the Agency for cancellation;

(d) The Agency may require the Lessee and Sublessee to make payments in lieu of real estate taxes under and pursuant to the PILOT Agreement with respect to the Facility Realty in an amount equal to that amount which the Lessee or Sublessee would otherwise be required to pay if it were the owner of the Facility Realty without the Agency's financial assistance in an amount determined pursuant to Article 8, Section 8.5 "Recapture of Benefits"; or

(e) 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 and Sublessee under this Agreement.

No action taken pursuant to this Section 7.2 (including termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Lessee and Sublessee from their obligations hereunder, including without limitation, the obligations of the Lessee and Sublessee under and pursuant to the PILOT Agreement (until such time as the Lessee and Sublessee shall again pay taxes as the record owner of the Facility Realty), and under Sections 6.2, 8.5, 9.12 and 9.14 hereof all of which shall survive any such action.

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 or Sublessee 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 and Sublessee 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 or Sublessee be continued or repeated.

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 any 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 and Sublessee 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.

Section 7.5 Effect on Discontinuance of Proceedings. In case any proceeding taken by the Agency under this Agreement or under any other Project Document on account of any Event of Default hereunder or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Agency, then, and in every such case, the Agency shall be restored to its former position and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency shall continue as in effect prior to the commencement of such proceedings.

Section 7.6 Agreement to Pay Attorneys' Fees and Expenses. In the event the Lessee and Sublessee should default under any of the provisions of this Agreement and the Agency should employ attorneys or incur other reasonable and necessary expenses for the collection of the Rental Payments payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee and Sublessee herein contained, the Lessee and Sublessee agree that they will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

ARTICLE VIII

OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS

Section 8.1 Option to Purchase Facility and to Terminate Agreement.

(a) The Lessee and Sublessee shall have the option to purchase the Agency's interest in the Facility and to terminate this Agreement on any date during the term hereof by paying, or causing to be paid, all Rental Payments due hereunder. The Lessee and Sublessee shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Lessee and Sublessee to an Authorized Representative of the Agency stating that the Lessee or Sublessee has elected to exercise its option under this Section 8.1(a) and the date on which such purchase and termination is to be made. In addition, the Lessee or Sublessee shall purchase the Agency's interest in the Facility on the scheduled expiration date of this Agreement by paying on such date any and all Rental Payments then due hereunder.

(b) The Lessee or Sublessee, in purchasing the Agency's interest in the Facility and terminating this Agreement pursuant to Section 8.1(a) hereof, shall pay to the Agency, as the purchase price, in legal tender, an amount equal to all Rental Payments due hereunder, plus one dollar (\$1.00).

(c) Except to the extent permitted under Section 3.2 hereof, the Lessee and Sublessee shall not, at any time, assign or transfer their option to purchase the Agency's interest in the Facility as contained in this Section 8.1 separate and apart from a permitted assignment of this Agreement pursuant to the terms of Section 9.2 hereof without the prior written consent of the Agency.

Section 8.2 Conveyance on Exercise of Option to Purchase. At the closing of any purchase of the Agency's interest in the Facility pursuant to Section 8.1 hereof, the Agency will, upon payment of the purchase price, deliver or cause to be delivered to the Lessee or Sublessee (i) a termination of the Head Lease, and all other necessary documents conveying to the Lessee or Sublessee all of the Agency's right and interest in and to the Facility and terminating this Agreement; and (ii) all necessary documents releasing and conveying to the Lessee or Sublessee all of the Agency's rights and interests in and to any rights of action (other than as against the Lessee or Sublessee or any insurer of the insurance policies under Section 4.4(a)(iii) hereof), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards, with respect to the Facility or any portion thereof.

Upon conveyance of the Agency's interest in the Facility pursuant to this Section 8.2, this Agreement and all obligations of the Lessee and Sublessee hereunder shall be terminated except the obligations of the Lessee and Sublessee under and pursuant to the PILOT Agreement (until such time as the Lessee or Sublessee shall again pay taxes as the record owner of the Facility Realty) and under Sections 6.2, 8.5, 9.12 and 9.14 hereof shall survive such termination.

Section 8.3 [Reserved].

Section 8.4 [Reserved].

Section 8.5 Recapture of Agency Benefits. 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 and Sublessee for the Project and to accomplish the public purposes of the Act. In consideration therefor, the Lessee and Sublessee hereby agree that if there shall occur a Recapture Event (as defined below) at any time during the term of this Agreement the Lessee and Sublessee shall pay to the Agency as a return of public benefits conferred by the Agency the following amounts:

(a) one hundred percent (100%) of the Benefits (as defined below) if the Recapture Event occurs within the first four (4) years after the Commencement Date;

(b) eighty percent (80%) of the Benefits if the Recapture Event occurs during the 5th or 6th year after the Commencement Date; and

(c) sixty percent (60%) of the Benefits if the Recapture Event occurs during the 7th or 8th year after the Commencement Date; and

(d) forty percent (40%) of the Benefits if the Recapture Event occurs during the 9th year after the Commencement Date; and

(e) zero percent (0%) of the Benefits if the Recapture Event occurs during the 10th year or thereafter after the Commencement Date.

The term "**Benefits**" shall mean, collectively:

(a) all real estate tax benefits which have accrued to the benefit of the Lessee and Sublessee during such time as the Agency was the Head Lessee of the Facility, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under and pursuant to the PILOT Agreement from those payments which the Lessee and Sublessee would have been required to pay during the term of this Agreement (within the meaning of Section 3.2 hereof) together with interest at the rate of one percent (1%) per month on the amount calculated due hereunder from the Commencement Date of this Agreement to the date of recapture of benefits are paid. Said payment to include the expenses, costs and disbursements and reasonable attorneys' fees necessary to collect the amounts due hereunder; and

(b) all miscellaneous benefits derived from the Agency's participation in the straight-lease transaction contemplated by this Agreement, including, but not limited to, any exemption from any applicable mortgage recording tax, transfer tax, sales or use tax and filing and recording fees.

The term "**Recapture Event**" shall mean any of the following events:

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

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

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

(d) The Lessee or Sublessee shall have effected a substantial change in the scope and nature of the operations at the Facility as determined by the Agency in its reasonable discretion;

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

(f) The Lessee or Sublessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility, except (i) in connection with a transfer or other disposition to any corporation or other entity into or with which the Lessee or Sublessee 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 Sublessee or (ii) as permitted under Section 9.2 hereof; or

(g) An Event of Default shall have occurred pursuant to the provisions of Section 7.1.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture 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 Facility, or (ii) the inability at law of the Lessee and Sublessee 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, Sublessee, or any Affiliate.

(a) The Lessee and Sublessee covenant and agree to furnish the Agency with written notification upon any Recapture Event or disposition of the Facility or any portion thereof during the term of this Agreement, which notification shall set forth the terms of such Recapture Event and/or disposition.

(b) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Lessee and Sublessee under this Section 8.5.

(c) The Lessee and Sublessee covenant and agree 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.

(d) The provisions of this Section 8.5 shall survive the termination of this Agreement for any reason whatsoever, notwithstanding any provision of this Agreement to the contrary.

Section 8.6 Agency Termination Fee. In the event a Recapture of Benefits event shall occur under Section 8.5, the Lessee and Sublessee shall also pay to the Agency a sum equal to one percent (1%) of the Benefits Recaptured as a result of the early termination of this Agreement.

ARTICLE IX MISCELLANEOUS

Section 9.1 Force Majeure. In case by reason of *force majeure* the Agency, the Lessee or Sublessee shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Lessee and Sublessee to make the Rental Payments required under the terms hereof, or to comply with Sections 4.4 or 6.2 hereof), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes,

storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* hereunder by acceding to the demands of the opposing person or persons.

The Lessee and Sublessee shall promptly notify the Agency upon the occurrence of each *force majeure*, describing such *force majeure* and its effects in reasonable detail. The Lessee and Sublessee shall also promptly notify the Agency upon the termination of each such *force majeure*. The information set forth in any such notice shall not be binding upon the Agency, and the Agency shall be entitled to dispute the existence of any *force majeure* and any of the contentions contained in any such notice received from the Lessee or Sublessee.

Section 9.2 Assignment or Sublease. (a) Lessee and Sublessee shall not at any time except as permitted by this Section 9.2, (i) assign or transfer this Agreement, or (ii) sublet the whole or any part of the Facility without the prior written consent of the Agency, and provided that

(i) the Lessee or Sublessee shall deliver to the Agency an Opinion of Counsel acceptable to the Agency to the effect that the assignment or sublease shall not cause the Facility to cease being an Approved Facility and a “project” under the Act;

(ii) the Lessee and Sublessee shall remain primarily liable to the Agency for the payment of all Rental Payments hereunder and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Project Document to which it shall be a party;

(iii) any assignee or transferee of the Lessee or Sublessee in whole of the Facility shall have assumed in writing (and shall have executed and delivered to the Agency an instrument in form for recording) and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee and Sublessee to be kept and performed, shall be jointly and severally liable with the Lessee and Sublessee, for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iv) any assignee, transferee or sublessee shall utilize the Facility as an Approved Facility and a qualified “project” within the meaning of the Act;

(v) such assignment, transfer or sublease shall not violate any provision of this Agreement or any other Project Document;

(vi) with respect to any subletting in part, the term of each such sublease does not exceed the term of this Agreement, and no more than an aggregate of twenty percent (20%) of the Facility Realty would be subleased;

(vii) in the Opinion of Counsel, such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Lessee and Sublessee for the payment of all Rental Payments nor for the full performance of all of the terms, covenants and conditions of this Agreement which Lessee and Sublessee are obligated to perform or of any other Project Document to which the Lessee and Sublessee shall be a party;

(viii) such sublease shall in no way diminish or impair the obligation to carry the insurance required under Section 4.4 of this Agreement and the Lessee and Sublessee shall furnish written evidence satisfactory to the Agency that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease; and

(ix) each such sublease contains such other provisions as the Agency may reasonably require.

The Lessee or Sublessee shall furnish or cause to be furnished to the Agency a copy of any such assignment, transfer or sublease in substantially final form at least ten (10) days prior to the date of execution thereof and the parties hereto agree that such assignment, transfer or sublease shall not be effective until the Agency has granted its consent to same in accordance with the provisions of this Section 9.2.

(b) Any consent by the Agency to any act of assignment, transfer or sublease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Lessee, Sublessee or their successors or assigns to obtain from the Agency consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of the Agency under the foregoing covenant.

(c) If the Facility or any part thereof is sublet or occupied by any Person other than the Lessee, or the Sublessee (or any permitted sublessee or permitted sub-sublessee), the Agency, in the event of a default in the payment of Rental Payments hereunder may, and is hereby empowered to, collect Rental Payments from the sublessee or occupant during the continuance of any such default. In case of such event, the Agency may apply the net amount received by it to the Rental Payments herein provided, and no such collection shall be deemed a waiver of the covenant herein against assignment, transfer or sublease of this Agreement, or constitute the acceptance of the undertenant or occupant as tenant, or a release of the Lessee and Sublessee from the further performance of the covenants herein contained on the part of the Lessee and Sublessee.

(d) Lessee and Sublessee covenant and agree that they shall not, without the prior written consent of the Agency, amend, modify, terminate or assign, or suffer any amendment, modification, termination or assignment of any sublease entered into in accordance with this Section.

(e) The limitations in this Section 9.2 on assignment or transfer of this Agreement and subletting in whole or in part of the Facility shall have equal application to any sub-subletting in whole or in part of the Facility.

(f) Intentionally omitted.

(g) Promptly after receipt from the Agency of any subtenant survey and questionnaire pertaining to the Facility, the Lessee and Sublessee shall complete and execute such survey and questionnaire and return the same to the Agency.

Section 9.3 Amendments. This Agreement may be amended by a written instrument executed and delivered by the parties hereto.

Section 9.4 Notices. All notices, certificates or other communications hereunder shall be sufficient if sent (a) by registered or certified United States mail, postage prepaid, (b) by a nationally recognized overnight delivery service, charges prepaid or (c) by hand delivery, addressed, as follows:

If to the Agency, to the Chairperson, County of Rockland Industrial Development Agency, 67 North Main Street, New City, New York 10956 with a copy to the Executive Director of the Agency at the same address, with an additional copy to Montalbano, Condon & Frank, P.C., 67 North Main Street, P.O. Box 1070 New City, New York 10956, Attention: Brian J. Quinn, Esq.

If to Lessee, to Congers LLC., 4 Burts Road, Congers, New York 10920 Attention: Barry McKenna, Member, with a copy to Jake LaSala, Esq., 125-10 Queens Boulevard, Suite 320, Kew Gardens, New York 11415.

If to Sublessee, to ECD NY Inc., 35-12 19th Avenue, Suite 2W, Astoria, New York 11105, Attention: Barry McKenna, President, with a copy to Jake LaSala, Esq., 125-10 Queens Boulevard, Suite 320, Kew Gardens, New York 11415.

The Agency, the Lessee and Sublessee may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given (i) three (3) Business Days following posting if transmitted by mail, (ii) one (1) Business Day following sending if transmitted by a nationally recognized overnight delivery service, or (iii) upon delivery if given by hand delivery, with refusal by an Authorized Representative of the intended recipient party to accept delivery of a notice given as prescribed above to constitute delivery hereunder. Notices may also be given in compliance with this Agreement by telecopy, provided that the recipient party consents to the use of telecopy transmissions for giving of notices hereunder and receipt of any such telecopy transmission is confirmed by the transmitting party.

Section 9.5 Prior Agreements Superseded. This Agreement, together with the Head Lease, the PILOT Agreement and other Project Documents shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency, the Lessee and Sublessee relating to the Facility.

Section 9.6 Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 9.7 Inspection of Facility. The Lessee and Sublessee will permit the Agency, or its duly authorized agent, at all reasonable times and upon reasonable notice, to enter the Facility but solely for the purpose of (y) assuring that the Lessee and Sublessee are operating the Facility, or are causing the Facility to be operated, as an Approved Facility and a qualified “project” within the meaning of the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and (z) determining whether the Facility and/or the use thereof is in violation of any environmental law, and not for any purpose of assuring the proper maintenance or repair of the Facility as such latter obligation is and shall remain solely the obligation of the Lessee and Sublessee.

Section 9.8 Effective Date; Counterparts. This Agreement shall become effective upon its delivery on the Commencement Date. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.9 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Lessee, and the Sublessee and their respective successors and assigns.

Section 9.10 Third Party Beneficiaries. It is the intention of the parties hereto that nothing contained herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto.

Section 9.11 Law Governing. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD OR GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS THEREOF.

Section 9.12 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Agreement.

The provision of this Agreement relating to waiver of a jury trial and the right of re-entry or re-possession shall survive the termination or expiration of this Agreement.

Section 9.13 Non-Discrimination. (a) At all times during the maintenance and operation of the Facility, the Lessee and Sublessee shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee and Sublessee shall use their best efforts to ensure that employees and applicants for employment with the Lessee and Sublessee or any subtenant of the Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term “treated”

shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Lessee and Sublessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee and Sublessee, state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(c) The Lessee and Sublessee shall furnish to the Agency all information required by the Agency pursuant to this Section and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section.

(d) The Agency, the Lessee, and Sublessee shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work with respect to the Facility.

Section 9.14 Recourse under This Agreement. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in such person's individual capacity, and no recourse shall be had for any reason whatsoever hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency. In addition, in the performance of the agreements of the Agency herein contained, any obligation the Agency may incur for the payment of money shall not create a debt of the State or the County and neither the State nor the County shall be liable on any obligation so incurred, by any such obligation shall be payable solely out of amounts payable to the Agency by the Lessee and Sublessee hereunder.

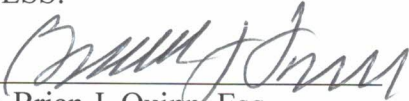
Section 9.15 Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered as of May 5, 2017.

Section 9.16 Subordination of Lease to Mortgage. The Agency, Lessee, and Sublessee acknowledge and agree that this Lease is subject and subordinate to the Mortgage and that the Agency's rights under this Lease are subject and subordinate to the Lender's rights under the Mortgage; provided however that the foregoing shall not impose or imply any additional obligations on the Agency not expressly set forth in the Mortgage.

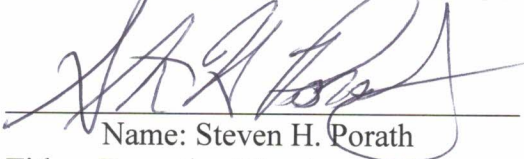
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written in their respective names and by their duly authorized representatives.

**COUNTY OF ROCKLAND
INDUSTRIAL DEVELOPMENT AGENCY**

WITNESS:




Name: Brian J. Quinn, Esq.
Title: Agency Counsel

By: 

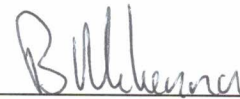
Name: Steven H. Porath
Title: Executive Director

WITNESS:



Name: Jake LaSala, Esq.
Title: Lessee's Counsel

CONGERS LLC

By: 

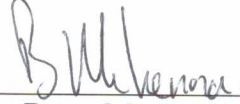
Name: Barry McKenna
Title: Member

WITNESS:



Name: Jake LaSala, Esq.
Title: Sublessee's Counsel

ECD NY INC.

By: 

Name: Barry McKenna
Title: President

EXHIBIT A

DESCRIPTION OF THE LAND

(See Attached)

SCHEDULE A Description

ALL those certain plots, pieces or parcels of land, situate, lying and being in the Town of Clarkstown, County of Rockland and State of New York and shown and designated as lots 5, 6 & 7 on a certain map entitled, " Town Road Construction and Subdivision for long Clove Road Association., located in the Town of Clarkstown, Rockland County, New York" and filed in the Rockland County Clerk's Office on January 8th, 1987 in book 107 of Maps, at page 5 as Map No. 5998.

TOGETHER with an easement for ingress, egress and utilities over Burts Road to N.Y.S. Route 304, the nearest public highway, but reserving the fee to said Burts Road for dedication to the Town of Clarkstown.

FOR INFORMATION ONLY:

AS SAID PREMISES: 4 Burts Road, Congers, NY 10920 .

FOR CONVEYANCING ONLY, IF INTENDED TO BE CONVEYED: TOGETHER WITH ALL RIGHT, TITLE AND INTEREST OF, IN AND TO ANY STREETS, ROADS, OR AVENUES ABUTTING THE ABOVE DESCRIBED PREMISES, TO THE CENTER LINE THEREOF.

EXHIBIT B

DESCRIPTION OF THE FACILITY EQUIPMENT

All fixtures, equipment, machinery, furnishings and real estate related assets now owned or hereafter affixed to, or used in connection with the premises described on attached Schedule A and any and all replacements thereof and additions thereto.

APPENDIX A

LABOR POLICY

**County of Rockland Industrial Development Agency
Declaration of Motivation
For the employment of local trades people
During the construction phase of IDA-benefited projects**

The County of Rockland Industrial Development Agency (IDA), formed pursuant to the New York State Industrial Development Act (the "Act"), was created for the purpose of promoting employment opportunities for, and the general prosperity and economic welfare of Rockland County residents. The IDA is authorized by the Act to enter into agreements making benefits available to qualified applicants in order to facilitate the location or the expansion of their businesses or facilities in Rockland County. When the IDA approves a project, these benefits are made available to the applicant.

Construction jobs, although limited in time duration, are vital to the overall employment opportunities in Rockland County. The IDA believes that companies benefiting from its programs should encourage the employment of local contractors and professionals during the construction phase of projects. In this way the IDA can generate significant benefits to advance the County's general prosperity. It is, therefore, the policy of the IDA that firms benefiting from its programs be encouraged to promote employment opportunities in Rockland County during all project phases, including the construction phase.

The IDA also requires companies benefiting from its programs to pay prevailing wages, in and during the project construction phase and to make efforts to employ local contractors and professionals.

Upon receipt of IDA benefits, all applicants are required to provide to the IDA's Executive Director the following information:

1. Contact information of the applicant contact person who will be responsible and accountable for providing information about the bidding for and awarding of future construction contracts relative to the application and project.
2. Description of the nature of construction jobs created by the project, including, in as much detail as possible, the number, type and duration of construction positions.
3. A *Construction Completion Report* listing the names and business locations of prime contractors, subcontractors and vendors who have been engaged in the construction phase of the project and confirmation that prevailing wages have been paid.

The IDA will post the contact information and description of construction jobs available on its website, www.redc.org "IDA."

The IDA reserves the right to modify and/or rescind benefits granted to any company under its *Uniform Tax Exemption Policy* for the failure to comply with any of the provisions contained herein.

Approved/Effective: November 30, 2004