
LEASE AGREEMENT

Dated as of June ___, 2021

by and between

COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY

and

**SUFFERN DUNNIGAN DRIVE, LLC
AND
RAYMOURS FURNITURE COMPANY, INC.**

Affecting the Land generally known by the street address
30 Dunnigan Drive (a/k/a 22 Hemion Road), Suffern

Village of Montebello
Town of Ramapo
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 55.6 Block 1 Lot 3.1

on the Official Tax Map of the
Village of Montebello
Town of Ramapo
Rockland County

TABLE OF CONTENTS

PAGE NO.

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

Section 1.1	<u>Definitions</u>	-3-
Section 1.2	<u>Construction</u>	-8-
Section 1.3	<u>Representations and Warranties by Agency</u>	-8-
Section 1.4	<u>Findings by Agency</u>	-8-
Section 1.5	<u>Representations and Warranties by the Lessee and Sublessee</u>	-8-

ARTICLE II

CONVEYANCE TO THE AGENCY; THE PROJECT; AND TITLE INSURANCE

Section 2.1	<u>Intentionally Deleted</u>	-10-
Section 2.2	<u>The Project</u>	-11-
Section 2.3	<u>Title Insurance</u>	-12-
Section 2.4	<u>Intentionally Deleted</u>	-13-

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1	<u>Lease of the Facility</u>	-17-
Section 3.2	<u>Duration of Term</u>	-17-
Section 3.3	<u>Rental Provisions</u>	-17-
Section 3.4	<u>Rental Payments Payable Absolutely Net</u>	-18-
Section 3.5	<u>Nature of Lessee's Obligation Unconditional</u>	-18-

Section 3.6 Assignment of Subleases.....-18-

ARTICLE IV

MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES
AND INSURANCE

Section 4.1 Maintenance, Alterations and Improvements -18-

Section 4.2 Removal of Property of the Facility -20-

Section 4.3 Taxes, Assessments and Charges..... -20-

Section 4.4 Insurance -20-

Section 4.5 Compliance with Law -23-

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1 Damage, Destruction and Condemnation..... -24-

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1 Restrictions on Lessee and Sublessee -26-

Section 6.2 Indemnity..... -26-

Section 6.3 Compensation and Expenses of the Agency -27-

Section 6.4 Retention of Title to Facility; Grant of Easements;
Release of Facility Realty -28-

Section 6.5 Discharge of Liens..... -28-

Section 6.6 No Warranty of Condition or Suitability..... -29-

Section 6.7 Financial Statements; No-Default Certificates..... -29-

Section 6.8 Employment Information, Opportunities and Guidelines -30-

Section 6.9 Further Assurances..... -31-

Section 6.10	<u>Recording and Filing</u>	-31-
Section 6.11	<u>Further Encumbrances</u>	-31-
Section 6.12	<u>Agreement to Grant Mortgage</u>	-31-

ARTICLE VII

EVENTS OF DEFAULT; REMEDIES

Section 7.1	<u>Events of Default</u>	-31-
Section 7.2	<u>Remedies on Default</u>	-33-
Section 7.3	<u>Remedies Cumulative</u>	-34-
Section 7.4	<u>No Additional Waiver Implied by One Waiver</u>	-34-
Section 7.5	<u>Effect on Discontinuance of Proceedings</u>	-34-
Section 7.6	<u>Agreement to Pay Attorneys' Fees and Expenses</u>	-34-

ARTICLE VIII

OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS.

Section 8.1	<u>Option to Purchase Facility and to Terminate Agreement</u>	-35-
Section 8.2	<u>Conveyance on Exercise of Option to Purchase</u>	-35-
Section 8.3	<u>[Reserved]</u>	-35-
Section 8.4	<u>[Reserved]</u>	-35-
Section 8.5	<u>Recapture of Agency Benefits</u>	-36-
Section 8.6	<u>Agency Termination Fee</u>	-38-

ARTICLE IX

MISCELLANEOUS

Section 9.1	<u>Force Majeure</u>	-38-
Section 9.2	<u>Assignment or Sublease</u>	-39-

Section 9.3	<u>Amendments</u>	-40-
Section 9.4	<u>Notices</u>	-41-
Section 9.5	<u>Prior Agreements Superseded</u>	-41-
Section 9.6	<u>Severability</u>	-41-
Section 9.7	<u>Inspection of Facility</u>	-41-
Section 9.8	<u>Effective Date; Counterparts</u>	-42-
Section 9.9	<u>Binding Effect</u>	-42-
Section 9.10	<u>Third Party Beneficiaries</u>	-42-
Section 9.11	<u>Law Governing</u>	-42-
Section 9.12	<u>Waiver of Trial by Jury</u>	-42-
Section 9.13	<u>Non-Discrimination</u>	-42-
Section 9.14	<u>Recourse under This Agreement</u>	-43-
Section 9.15	<u>Date of Agreement for Reference Purposes Only</u>	-43-
Section 9.16	<u>Subordination of Lease to Mortgage</u>	-43-

LEASE AGREEMENT

This **LEASE AGREEMENT**, made and entered into as of June ____, 2021 (this “**Agreement**”), by and between **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 Two Blue Hill Plaza, Pearl River, New York 10965, party of the first part, and **SUFFERN DUNNIGAN DRIVE, LLC**, a New York limited liability company duly organized and existing under the laws of the State of New York, (the “**Lessee**”) having an office at 7248 Morgan Road, P.O. Box 220, Liverpool, New York 13090, and **RAYMOURS FURNITURE COMPANY, INC.**, a New York corporation with offices at 7248 Morgan Road, P.O. Box 220, Liverpool, New York 13090 (“**Raymours**”, or at times “**Sublessee**”), 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 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 30 Dunnigan Drive (a/k/a 22 Hemion Road), Village of Montebello, Town of Ramapo, County of Rockland, New York and otherwise described in **Exhibit A** attached hereto; and

WHEREAS, the Project will consist of the refinance of the existing mortgage secured by the Premises and the placing of an additional mortgage secured by the Premises which shall be consolidated with the existing mortgage so as to constitute a single, joint, first mortgage in the principal amount of \$110,000,000.00 which will allow the Lessee to (a) obtain a lower rate of

interest, and (b) provide additional working capital for Lessee and Raymours and (c) allow Lessee and Raymours to remain competitive and maintain jobs; and

WHEREAS, 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, shall collectively be 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 by a Head Lease Agreement and the Agency will sublease its interest in the Facility to the Lessee pursuant to this Agreement, and, in furtherance of such purposes, by resolution dated June 17, 2021, the Agency adopted a resolution (the “**Authorizing Resolution**”) authorizing the undertaking of the Project, the leasing of the Facility by the Agency and the sublease 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 refinance the mortgage secured by the Facility; and if the Agency does not provide such financial assistance, the Lessee may not proceed with the Project; and

WHEREAS, to facilitate the Project and assist the Lessee to obtain permanent financing for its maintaining and operation of the Facility, the Agency has agreed the Lessee may enter into a new additional mortgage secured by the Facility with a lender selected by the Lessee to be consolidated with the existing mortgage in an amount not to exceed \$110,000,000.00 upon such terms and conditions agreed to by the Lessee and the lender, and the Agency shall join in the mortgage to mortgage its interest in the Facility provided the mortgage contains the exculpatory provisions required by the Agency when it mortgages its interest in a facility (the “**Mortgage**”); 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, dated the date hereof (the “**Head Lease**”), a leasehold interest in the Land and Improvements, 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 the Agency's interest in the Facility; and

WHEREAS, simultaneously with the execution of this Agreement the Lessee will enter into a Sublease Agreement (the “**Sublease**”) with RAYMOURS (the “**Sublessee**”) whereby the Sublessee will lease a portion of the Facility from the Lessee, and pursuant to which the Sublessee makes the representations, warranties and covenants of the Lessee set forth herein; and

WHEREAS, pursuant to a payment in lieu of taxes agreement (the “**Original PILOT Agreement**”) previously entered into between the Agency and Suffern CDC, LLC, an affiliated entity of the Lessee and Raymours and the appropriate municipalities and dated as of May 31, 2012, Suffern CDC, LLC and Raymours agreed to make certain payments in lieu of real estate taxes with respect to the Premises and the Facility; and

WHEREAS, the Original PILOT Agreement was amended by that certain Amended Payment in Lieu of Taxes Agreement dated as of March 1, 2015 (the “**First Amended PILOT Agreement**”)

WHEREAS, the Original PILOT (as amended by the First Amended PILOT Agreement”) is being further amended by a certain Second Amended Payment in Lieu of Taxes Agreement dated of even date herewith (the “**Second Amended PILOT Agreement**”) by which the Lessee will become a party to the PILOT Agreement (as defined below) and will assume all of the terms, covenants, conditions, agreements and obligations of Suffern CDC, LLC under the terms of the original PILOT Agreement.

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 Raymours Furniture Company, Inc. to the County of Rockland Industrial Development Agency dated May 12, 2021, for financial assistance.

Approved Facility shall mean a warehousing, distribution facility and 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; (b) in the case of the Lessee, the Member, Manager or any other officer or employee thereof who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Lessee has given written notice to the Agency; and (c) in the case of the Sublessee, the President of Sublessee or any other officer or employee thereof who is authorized to perform specific acts or to discharge specific duties hereunder and of whom another Authorized Representative of the Lessee has given written notice to the Agency

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 as of June __, 2021 on which date this Agreement was executed and delivered.

County shall mean the County of Rockland, State of New York.

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

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

Facility Equipment shall mean that machinery, equipment and other tangible personal property presently installed at the Premises, 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 Realty shall mean, collectively, the Land and the Improvements.

First Amended PILOT Agreement shall have the meaning ascribed to such term in the recitals.

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.

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 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 of 30 Dunnigan Drive (a/k/a 22 Hemion Road), Village of Montebello, Town of Ramapo, County of Rockland, State of New York, all as more particularly described in **Exhibit A** 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.

Lender shall mean the Bank of America, N.A. or such other bank, insurance company, conduit lender, savings and loan or any other entity in the business of making commercial real estate loans.

Lessee shall be **Suffern Dunnigan Drive, LLC** a New York limited liability company organized and existing under the laws of the State of New York and its permitted successors and assigns pursuant to Sections 6.1 or 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.

Mortgage shall mean a mortgage on the Facility Realty in an amount of up to \$110,000,000.00 to be granted by the Agency and the Lessee to a Lender to refinance the Lessee's existing mortgage loan.

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) incurred in the collection thereof.

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

Original PILOT Agreement shall have the meaning ascribed to such term in the recitals.

Permitted Encumbrances shall mean:

(a) this Agreement, the Sublease, and the Mortgage of the Property contemplated by this Agreement and the Third-Party Sublease Agreements;

(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 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 insuring the leasehold interest of the Agency to the Facility Realty, a copy of which will be provided to Agency contemporaneously herewith.

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 the Original PILOT Agreement, as amended by the First Amended PILOT Agreement and the Second Amended PILOT Agreement.

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

Project Counsel shall mean **Bleakley Platt & Schmidt LLP**, 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 Lease Agreement, the PILOT Agreement, the ADA Agreement, the Indemnity Agreement Regarding Hazardous Materials,, the Indemnification Agreement Regarding Hazardous Materials, the Mortgage, and all other documents executed by Lessee and Raymours in connection with this transaction.

Rental Payments shall mean, collectively, Base Rent and Additional Rent.

Second Amended PILOT Agreement shall have the meaning ascribed to such term in the recitals.

State shall mean the State of New York.

Sublessee shall mean Raymours Furniture Company, Inc., a New York corporation organized and existing under the laws of the State of New York and its permitted successors and assigns, if any, under the Sublease (referred to as "Sublessee" or "Raymour").

Sublease shall mean that certain Sublease Agreement dated as of the date hereof, by and between the Lessee, as sublessor, and the Sublessee, as the same may be amended and supplemented in accordance with its terms and as permitted by the terms hereof.

Third-Party Sublease Agreements shall mean lease or sublease agreements between Lessee and Persons for a portion of the Facility Realty not occupied by the Sublessee, including (i) lease, as amended and assigned to and assumed by Lessee, dated July 17, 2002 with Par Pharmaceuticals, Inc. for approximately 190,000 square feet used for warehousing purposes; and (ii) one or more subleases entered into by Lessee 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 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 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 to proceed with the Project;

(b) the Project is reasonably necessary (i) to retain the existing jobs at the Facility, (ii) provide additional working capital to allow Lessee and Sublessee to remain competitive, (iii) obtain a lower rate of interest on the existing mortgage which is scheduled to mature in three (3) years, and (iv) to discourage the Lessee 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, jointly and severally, make and affirm the following representations and warranties:

(a) The Lessee is a limited liability company and Sublessee is a corporation, both duly organized and validly existing and in good standing under the laws of the State of New York. Lessee and Sublessee are not respectively in violation of any provision of its articles of organization and operating agreement or its certificate of incorporation and bylaws, and each 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 each is or shall be a party.

(b) The execution, delivery and performance of this Agreement and each other Project Document to which it is 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 the Lessee or Sublessee is a party or by which it or any of its 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.

(c) There is no action or proceeding pending or threatened by or against the Lessee or Sublessee by or before any court or administrative agency that would adversely affect the ability of the Lessee or Sublessee to perform its obligations under this Agreement and each other Project Document to which it shall be a party and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Lessee and 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 of the Lessee and Sublessee hereunder and under each of the Project Documents have been obtained.

(d) 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.

(e) The financial assistance (within the meaning of the Act) provided by the Agency to the Lessee and Sublessee 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 maintain and continue to operate the Facility and to retain the existing jobs at the Facility

(f) 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.

(g) No funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment 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.

(h) This Agreement and the other Project Documents to which they are parties constitute the legal, valid and binding obligations of the Lessee and Sublessee, respectively, and is enforceable against the Lessee and Sublessee in accordance with their respective terms.

(i) Each of Lessee and Sublessee is 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.

(j) Each of the Lessee and Sublessee represents and warrants that the moneys available to the Lessee, are sufficient to pay all costs in connection with the completion of the Project.

(k) No Person other than the Lessee, 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 Intentionally deleted.

Section 2.2 The Project. (a) The Agency hereby appoints the Lessee its true and lawful agent, and the Lessee hereby accepts such agency, for purposes of maintaining and operating the Facility, including, without limitation, (i) acquiring and maintaining 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 maintaining and operating the Facility 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 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 Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Facility. The Lessee unconditionally represents, warrants, covenants and agrees that they will maintain the Facility in a first-class workmanlike manner, using high grade materials, free of defects in materials and workmanship (including latent defects). The Lessee, as agent of the Agency, shall take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers working at the Facility to complete their agreements relating to the Facility in accordance with the terms of the contracts therefor including, without limitation, the correction of any defective work. The cost of maintaining the Facility shall be financed from (i) funds of the Lessee and (ii) other funds of the Lessee to the extent such funds shall be necessary to cover costs of the Facility which exceed such other sources of funds.

(b) The Lessee shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance, the delivery thereof and of any instruments and documents relating thereto and the filing and recording of any such instruments of conveyance or other instruments or documents, if required, (ii) all taxes and charges payable in connection with the conveyance and transfer, or attributable to periods prior to the conveyance and transfer, to the Agency as set forth in Section 2.1 hereof, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Facility.

(c) The Lessee unconditionally represents, warrants, covenants and agrees that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite for the 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 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 and Lessee agree to execute any documents, agreements and instruments reasonably necessary to permit Lessee to obtain such permits, authorizations and licenses. Lessee 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, delivered to the Agency, stating, except for any Project costs not then due and payable or the liability for payment of which is being contested or disputed in good faith by the Lessee, (i) 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, 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 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 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 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 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 closing of the mortgage, the Lessee will obtain and deliver to the Agency (a) a leasehold title insurance policy in an amount not less than \$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 fee 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 leasehold 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. Intentionally deleted.

ARTICLE III
LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1 Lease of the Facility. (a) The Agency hereby subleases to the Lessee, and the Lessee hereby subleases 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, hereby unconditionally represents, warrants, covenants and agrees 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) the Lessee or Sublessee 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) the Lessee or Sublessee 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 or 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 June ____, 2026 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 shall pay to the Agency (except as otherwise provided in the PILOT Agreement) any additional amounts required to be paid by the Lessee to or for the account of the Agency hereunder, including all 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 should fail to make or cause to be made any of the Rental Payments required under the foregoing provisions of this Section, the item or installment not so paid shall continue as an obligation of the Lessee until the amount not so paid has been paid in full, together with interest thereon from the date due at the applicable interest rate stated in this Agreement where so provided, or if not so provided, at eighteen percent (18%) per annum.

Section 3.4 Rental Payments Payable Absolutely Net. The obligation of the Lessee to pay Rental Payments provided for in this Agreement shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Agreement shall yield, net, to the Agency, the Rental Payments provided for herein, and all costs, expenses and charges of any kind and nature relating to the Facility, arising or becoming due and payable during or after the term of this Agreement, shall be paid by the Lessee and the Agency shall be indemnified by the Lessee for, and the Lessee shall hold the Agency harmless from, any such costs, expenses and charges.

Section 3.5 Nature of Lessee's Obligation Unconditional. The Lessee's 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 it might otherwise have against the Agency, or any other Person and the obligation of the Lessee shall arise whether or not the Project has been completed as provided in this Agreement. The Lessee will not suspend or discontinue payment of any Rental Payment due and payable hereunder or performance or observance of any covenant or agreement required on the part of the Lessee hereunder for any cause whatsoever, and the Lessee 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 under this Agreement, the Lessee does hereby assign, transfer and set over to the Agency all of the Lessee'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 agrees not to terminate, modify or amend the 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 the 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. 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 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 of the Lessee and Sublessee 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 hereby agrees to assume full responsibility therefor.

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

(i) as a result of such alterations or additions, the fair market value of the 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 by the Lessee 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 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 shall have the right to install or permit to be installed at the Facility machinery, equipment and other personal property at the Lessee's 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 or the Sublease. 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 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 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 and twenty (120) days after the close of each Fiscal Year of the Lessee (i) during which Fiscal Year action was taken by the Lessee pursuant to Section 4.1(b) or 4.2(a) hereof, the Lessee shall furnish to the Agency a written report of an Authorized Representative of the Lessee summarizing the action taken by the Lessee 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 of the Lessee no action was taken by the Lessee pursuant to Section 4.1(b) or 4.2(a) hereof, the Lessee shall furnish to the Agency a certificate of an Authorized Representative of the Lessee certifying to the fact that no such action was taken by the Lessee 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 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, the Sublease, any estate or interest of the Agency or the Lessee or the Sublessee in the Facility, or the Rental Payments or other amounts payable hereunder or under the Sublease 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 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 and

the Agency in a minimum amount of \$5,000,000.00 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 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 eight percent (80%) of the actual replacement value of the Facility as determined by a qualified insurance appraiser or insurer (selected by the Lessee and approved by the Agency) not less often than once every year, at the expense of the Lessee; any such insurance may provide that the insurer is not liable to the extent of the first \$100,000.00 with the result that the Lessee is its own insurer to the extent of \$100,000.00 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 as Lessee or Sublessee;

(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 \$5,000,000.00, which insurance (A) will also provide coverage of the Lessee's 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 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 \$50,000.00 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 as Lessee and Sublessee;

(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 with a \$100,000.00 deductible and in amounts obtained for similar business enterprises;

(v) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Lessee, the 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.

(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 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, at or prior to the Commencement Date, shall deliver or cause to be delivered to the Agency 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 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, at its 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 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 OR THE SUBLESSEE.**

Section 4.5 Compliance with Law. The Lessee agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Lessee, 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 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 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 (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 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 shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

The Lessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the 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 or the Agency being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency for failure to comply therewith.

ARTICLE V DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1 Damage, Destruction and Condemnation. (a) In the event that at any time during the term of this Agreement the whole or part of the 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 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 in accordance with this Lease,

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

(iv) the Lessee 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 shall

(i) at its own cost and expense (except to the extent paid from the Net Proceeds as provided below) promptly and diligently rebuild, replace, repair or restore the 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 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 under this Agreement or any other Project Document to which it is a party be abated, postponed or reduced, or

(ii) to exercise its option to purchase the Agency's interest in the Facility and to terminate this Agreement as provided in Section 8.1.

As soon as practicable but no later than ninety (90) days after the occurrence of the Loss Event, the Lessee shall advise the Agency in writing of the action to be taken by the Lessee 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 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 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 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 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 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 as contemplated hereby, the Lessee may exercise its option to terminate this Agreement as provided in Section 8.1 hereof.

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

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

ARTICLE VI PARTICULAR COVENANTS

Section 6.1 Restrictions on Lessee and Sublessee. The Lessee, on behalf of itself and each Sublessee, covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its limited liability company existence, (ii) continue to be subject to service of process in the State and organized under the laws of, or qualified to do business in, the State, and (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the Commencement Date.

The Lessee, on behalf of itself and each Sublessee, further covenants and agrees that it is and throughout the term of this Agreement will continue to be duly qualified to do business in the State and that any corporation or entity organized and existing pursuant to the laws of the State of New York succeeding to the rights of the Lessee under this Agreement or the Sublessee under the Sublease shall be and continue to be duly qualified to do business in the State.

Section 6.2 Indemnity. (a) The Lessee shall 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 or the Lessee of, or performance by the Indemnified Party or the Lessee, 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 Sublessee or their respective managers, members, partners, employees, agents or servants or persons under the control or supervision of the Lessee or 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, on behalf of itself and each Sublessee, releases the Indemnified Parties from, and agrees that the Indemnified Parties shall not be liable for and the Lessee agrees to indemnify and hold the Indemnified Parties harmless against any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters set forth in subdivision (i) through (v) of Section 6.2(a) hereof or at the direction of the Lessee with respect to any of such matters above referred to. Each Indemnified Party, as the case may be, shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Lessee 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 under this Section 6.2.

(c) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the public liability policies required in Section 4.4 hereof, not only its 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 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 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 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 further agrees 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 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, 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, 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 to any abatement or diminution of the Rental Payments payable under Section 3.3 hereof required to be made by the Lessee 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 or the Lessee or the Sublessee or against any of the Rental Payments payable under this Agreement or the interest of the Agency or the Lessee or the 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 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 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 may at its sole expense (after prior written notice to the Agency), by appropriate action conducted in good faith and with due diligence, contest 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 or the Lessee 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 nor the Agency would be in any danger of any civil or any criminal liability, for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency.

Section 6.6 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 WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. LESSEE, ON BEHALF OF ITSELF AND EACH SUBLESSEE, ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE, ON BEHALF OF ITSELF AND ANY AND ALL SUBLESSEES, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE LESSEE AND THE SUBLESSEE AND ANY OTHER SUBLESSEE(S) OR SUB-SUBLESSEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE, THE SUBLESSEE OR ANY OTHER SUBLESSEE OR CO-SUBLESSEE OR SUB-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 agrees to furnish to the Agency, as soon as available and in any event within one hundred and twenty (120) days after the close of each fiscal year of the Lessee, a copy of the most recent fiscal year annual reviewed and certified financial statements of Lessee and its 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 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. Sublessee agrees to retain a minimum of 375 full-time employees at the Facility for the entire term of this Agreement.

(b) The Lessee shall ensure that all employees and applicants for employment by the Lessee or its Affiliates with regard to the Facility are afforded equal employment opportunities without discrimination and shall comply with 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 agrees, 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 its control and pertinent to the Lessee and the Sublessee and the employees of the Lessee and the Sublessee 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 shall provide to the Agency any employment information in the possession of the Lessee which is pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with 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 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 and/or Sublessee to violate any existing collective bargaining agreement with respect to hiring new employees.

(e) The Lessee shall itself, and shall cause Sublessee to, 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 shall itself, and shall cause Sublessee to 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, 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 by the Lessee 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. Neither the Lessee shall nor shall the Lessee permit the Sublessee to 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 of the Sublessee in the Facility or this Agreement, except for Permitted Encumbrances.

Section 6.12 Agreement to Grant Mortgage. To facilitate the Project and assist the Lessee to obtain permanent financing for its operating and maintaining of the Facility, the Agency agrees that (a) the Lessee may enter into a Mortgage with a Lender on such terms and conditions as agreed to by the Lessee and the Lender; (b) the Agency shall join in the Mortgage to mortgage its interest in the Facility provided the Mortgage contains usual and customary exculpatory provisions required by the Agency and (c) the Agency shall execute and deliver such documents as may be required to obtain an exemption from any applicable mortgage recording tax with respect to the Mortgage. The Agency shall not impose an additional administrative fee in connection with its performance of the actions in subsections (b) and (c) above.

**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 to pay any amount (including Rental Payment, fee or charge or PILOT Payments) within fifteen (15) days of the due date after written notice to cure;

(b) Failure of the Lessee 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 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 fails 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” of the Lessee or Sublessee 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 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 of title by the Agency to the Facility Realty;

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

(i) The failure of the Lessee or Sublessee to: (i) meet the job predictions set forth in the Application and maintain for the entire term of this Agreement a minimum of 375 full-time jobs at the Facility; (ii) comply with the Agency's Labor Policy (Appendix A attached); or (iii) provide required reports to the State or the Agency;

(j) The Lessee and/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 shall cease and terminate, and convey all of the Agency's right, title and interest in the Facility to the Lessee, which the Agency may accomplish by executing, at the sole cost and expense of the Lessee, a deed therefor as required by law, and a bill of sale, and the Lessee hereby waives delivery and acceptance of such deed and bill of sale as a condition to its validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such deed; or

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

(c) The Agency may require the Lessee 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 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

(d) 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 or Sublessee from their respective obligations hereunder, including without limitation, the obligations of the Lessee and the Sublessee under and pursuant to the PILOT Agreement (until such time as the Lessee 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 and 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, as the case may be, 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 either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and the Lessee or 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 or 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 or Sublessee herein contained, the Lessee agrees that it will on demand therefor pay to the Agency the reasonable fees and disbursements of such attorneys and such other expenses so incurred.

ARTICLE VIII
OPTIONS TO PURCHASE THE FACILITY; RECAPTURE OF BENEFITS

Section 8.1 Option to Purchase Facility and to Terminate Agreement.

(a) The Lessee 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 shall exercise such option by delivering to the Agency a written notice of an Authorized Representative of the Lessee to an Authorized Representative of the Agency stating that the Lessee 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 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, and any fees due pursuant to Section 8.5 for Recapture of Agency Benefits.

(b) The Lessee, 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 9.2 hereof, the Lessee shall not, at any time, assign or transfer its 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 (i) all necessary documents conveying to the Lessee all of the Agency's right, title and interest in and to the Facility and terminating this Agreement; and (ii) all necessary documents releasing and conveying to the Lessee all of the Agency's rights and interests in and to any rights of action (other than as against the Lessee or any insurer of the insurance policies under Section 4.4(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 hereunder shall be terminated except the obligations of the Lessee under and pursuant to the PILOT Agreement (until such time as the Lessee 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 for the refinancing of the Mortgage and to accomplish the public purposes of the Act. In consideration therefor, the Lessee hereby agrees that if there shall occur a Recapture Event (as defined below) at any time during the term of this Agreement the Lessee 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 (1) year after the Commencement Date;

(b) eighty percent (80%) of the Benefits if the Recapture Event occurs during the 2nd year after the Commencement Date;

(c) sixty percent (60%) of the Benefits if the Recapture Event occurs during the 3rd and 4th year after the Commencement Date; and

(d) forty percent (40%) of the Benefits if the Recapture Event occurs during the 5th year 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 during such time as the Agency was the Lessee of the Facility Realty by reason of the Head Lease, 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 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 had the County determined the amount of such real estate taxes as would be due if the Lessee had been the owner of the Facility Realty during such term; 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 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 of the Sublessee 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, (ii) in connection with the Sublease, or (iii) as permitted under Section 9.2 hereof.

(g) An Event of Default shall have occurred and be continuing pursuant to the provisions of Section 7.1 of this Agreement.

(h) The Lessee covenants and agrees 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.

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

(j) 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.

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 to rebuild, repair, restore or replace the Facility after the occurrence of a Loss Event to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith through no fault on the part of the Lessee or any Affiliate.

Section 8.6 Agency Termination Fee. In the event a Recapture of Benefits event shall occur under Section 8.5, the Lessee shall 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 and/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 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 and 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 shall promptly notify the Agency upon the occurrence of each *force majeure*, describing such *force majeure* and its effects in reasonable detail. The Lessee 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.

Section 9.2 Assignment or Sublease. (a) Neither the Lessee shall, nor shall the Lessee permit the Sublessee to, 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, as the case may be, 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 the 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 or Sublessee, as the case may be, to be kept and performed, shall be jointly and severally liable with the Lessee, as the case may be, 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, no more than an aggregate of sixty percent (60%) of the Facility Realty shall be subleased by the Lessee pursuant to Third Party Sublease Agreements;

(vii) in the Opinion of Counsel, such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Lessee 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 is obligated to perform or of any other Project Document to which the Lessee shall be a party;

(viii) such sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 4.4 of this Agreement and the Lessee 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 shall, or Lessee shall cause Sublessee, as applicable, to 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 or Sublessee, as applicable or the successors or assigns of the Lessee or Sublessee, as applicable, 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 by the Lessee and Sublessee.

(c) If the Facility or any part thereof is sublet or occupied by any Person other than the Lessee or Sublessee (or any permitted sublessee or permitted sub-sublessee), the Agency, in the event of the Lessee's 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 or Sublessee from the further performance of the covenants herein contained on the part of the Lessee and Sublessee, as applicable.

(d) Lessee, on behalf of itself and each Sublessee, covenants and agrees that it 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 assignment or transfer of the Sublease and any sub-subletting in whole or in part of the Facility.

(f) Promptly after receipt from the Agency of any subtenant survey and questionnaire pertaining to the Facility, the Lessee 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:

(a) If to the Agency, to the Chairperson, County of Rockland Industrial Development Agency, 67 North Main Street, 3rd Floor, New City, New York 10956 with a copy to the Executive Director of the Agency at the same address, with an additional copy to Bleakley Platt & Schmidt LLC, One North Lexington Avenue, White Plains, New York 10601, Attn: Brian J. Quinn, Esq..

(b) If to Lessee, to Suffern Dunnigan Drive, LLC, 7248 Morgan Road, P.O. Box 220, Liverpool, New York 13090, Attention: Legal Department, with a copy to Jonathan Ream, Esq. at the same address,

(c) If to Sublessee, to Raymours Furniture Company, Inc., 7248 Morgan Road, Liverpool, New York 13090, Attention: Legal Department.

The Agency and 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 Sublease, 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, and the Lessee and the 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 will permit, and will cause the Sublessee to 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 (i) assuring that the Lessee is operating the Facility, or is 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 (ii) 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.

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 and 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 and venue in any such action shall be the Supreme Court of the State of New York, Rockland County.

The provision of this Agreement relating to waiver of a jury trial and the right of reentry or repossession 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 shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with the Lessee 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 shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee, 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 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 and the Lessee 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 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 the date noted on page one (1) of this Agreement.

Section 9.16 Subordination of Lease to Mortgage. The Agency, Lessee and Sublessee acknowledge and agree that this Agreement is subject and subordinate to the Mortgage and that the Agency's rights under this Agreement 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.

(SIGNATURE PAGE TO FOLLOW)

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.

WITNESS:

**COUNTY OF ROCKLAND
INDUSTRIAL DEVELOPMENT AGENCY**


Name: Brian J. Quinn
Title: Agency Counsel

By: 
Name: Steven H. Porath
Title: Executive Director

STATE OF NEW YORK)
) ss.:
COUNTY OF ROCKLAND)

On the 22 day of June in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared **STEVEN H. PORATH** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

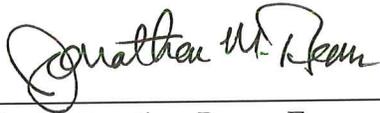
BRIAN J. QUINN
Notary Public, State of New York
No. 02QU4694957
Qualified in Rockland County
Commission Expires November 19, 2021

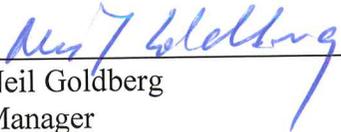
[Signature Page – Lease Agreement]

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.

WITNESS:

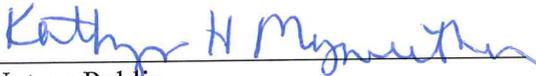
SUFFERN DUNNIGAN DRIVE, LLC
By: Suffern Dunnigan Managing Member, LLC


Name: Jonathan Ream, Esq.
Title: Lessee's Counsel

By: 
Name: Neil Goldberg
Title: Manager

STATE OF NEW YORK)
)ss.:
COUNTY OF Onondaga

On the 21st day of June in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared, **NEIL GOLDBERG** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public
KATHRYN H. MERRYWEATHER
Notary Public, State of New York
Qualified in Onondaga County
No. 01ME4857761
My Commission Expires April 28, 2022

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.

WITNESS:

RAYMOURS FURNITURE COMPANY, INC.

Jonathan M. Ream
Name: Jonathan Ream, Esq.
Title: Sublessee's Counsel

By: Neil Goldberg
Name: Neil Goldberg
Title: Chief Executive Officer

STATE OF NEW YORK)
)ss.:
COUNTY OF Onondaga)

On the 21st day of June in the year 2021 before me, the undersigned, a notary public in and for said state, personally appeared, **NEIL GOLDBERG** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Kathryn H. Merryweather
Notary Public

KATHRYN H. MERRYWEATHER
Notary Public, State of New York
Qualified in Onondaga County
No. 01ME4857761
My Commission Expires April 28, 2022

Exhibit A

DESCRIPTION OF THE LAND

(See Attached)

SCHEDULE A

(AMENDED 6/8/2021: TH)

ALL that certain plot, piece or parcel of land, situate, lying and being in the Village of Montebello, Town of Ramapo, County of Rockland and State of New York, shown as Lot 1 on a map entitled "ALTA/ACSM Land Title Survey for land now or formerly of Dunnigan Realty LLC Tax Lots 55.06-1-3.1 & 3.2", by Maser Consulting, P.A., dated June 3, 2003, and last revised June 27, 2014, and being more particularly described as follows:

COMMENCING at a point on the easterly boundary of Hemion Road, where the same is intersected by the division line of lands now or formerly of County of Rockland Industrial Development Agency (Instrument number 2012-00023406, Tax Lot 55.06-1-3.2) and lands of Piermont Branch Erie Lackawanna Railroad;

THENCE along the easterly boundary of Hemion Road the following five (5) courses and distances:

1. North 05 degrees 05 minutes 03 seconds East, 531.34 feet to a point of curve;
2. On a curve to the right with a radius of 1,800.00 feet and a chord bearing North 08 degrees 06 minutes 16 seconds East as distance of 189.69 feet, a distance along said curve of 189.78 feet;
3. South 71 degrees 43 minutes 37 seconds East, 5.00 feet to a point;
4. North 14 degrees 18 minutes 24 seconds East, 221.38 feet to a point;
5. North 21 degrees 22 minutes 29 seconds East, 48.51 feet to a point in the line of lands now or formerly of the Town of Ramapo (Tax Lot No. 55.06-1-5 & 55.06-1-2);

THENCE with the Town of Ramapo the following three (3) courses and distances:

1. North 89 degrees 15 minutes 44 seconds East, 119.82 feet to a point;
2. North 25 degrees 34 minutes 08 seconds East, 49.28 feet to a point;
3. South 85 degrees 43 minutes 25 seconds East, 93.97 feet to the true point of BEGINNING;

RUNNING THENCE from said point of beginning along the land of Town of Ramapo the following six (6) courses and distances:

1. North 26 degrees 30 minutes 01 seconds East, 82.53 feet to a point;
2. South 89 degrees 36 minutes 52 seconds East, 43.12 feet to a point;
3. North 32 degrees 51 minutes 05 seconds East, 61.00 feet to a point;
4. North 57 degrees 08 minutes 55 seconds West, 143.00 feet to a point;
5. South 32 degrees 51 minutes 05 seconds West, 31.00 feet to a point;
6. North 59 degrees 08 minutes 55 seconds West, 111.87 feet to a point in the easterly boundary of Hemion Road;

FOR CONVEYANCING ONLY IF INTENDED TO BE CONVEYED: *Together with all the right, title and interest of the party of the first part, of in and to any streets and roads abutting the above described premises*

THENCE along said easterly boundary of Hemion Road the following six (6) courses and distances:

1. North 28 degrees 55 minutes 35 seconds East, 154.79 feet to a point;
2. South 76 degrees 00 minutes 14 seconds East, 18.64 feet to a point;
3. North 28 degrees 23 minutes 32 seconds East, 95.26 feet to a point;
4. North 41 degrees 08 minutes 25 seconds East, 213.26 feet to a point;
5. North 50 degrees 25 minutes 55 seconds West, 15.00 feet to a point;
6. North 45 degrees 34 minutes 00 seconds East, 67.26 feet to a point in the southerly boundary of the New York State Thruway;

THENCE along the said boundary the following three (3) courses and distances:

1. South 60 degrees 51 minutes 54 seconds East, 457.70 feet to a point;
2. South 77 degrees 33 minutes 54 seconds East, 276.15 feet to a point;
3. South 66 degrees 10 minutes 18 seconds East, 1,112.56 feet to a point in the line of lands now or formerly of Stef Two Realty LLC (Instrument number 2008-00018557, Tax Lot No. 55.07-1-12);

THENCE with Stef Two Realty LLC South 01 degree 02 minutes 34 seconds West, 972.73 feet to a point at the intersection of the southwesterly corner of the terminus of Dunnigan Drive and lands now or formerly of Piermont Branch Erie Lackawanna Railroad;

THENCE along said railroad North 88 degrees 52 minutes 11 seconds West, 1,492.67 feet to a point;

THENCE with other lands now or formerly of County of Rockland Industrial Development Agency (Instrument number 2012-00023406, Tax lot 55.06-1-3.2) the following two (2) courses and distances:

1. North 01 degrees 02 minutes 34 seconds East, 980.18 feet to a point;
2. North 85 degrees 43 minutes 25 seconds West 391.10 feet to the point and place of BEGINNING.

FOR CONVEYANCING ONLY IF INTENDED TO BE CONVEYED: *Together with all the right, title and interest of the party of the first part, of in and to any streets and roads abutting the above described premises*

Exhibit B

DESCRIPTION OF THE FACILITY EQUIPMENT

(See Attached)

EXHIBIT B

DESCRIPTION OF THE FACILITY EQUIPMENT

(A) (1) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land (collectively, the "Buildings"), (2) all right, title and interest of Lessee, of whatever character (whether as owner, chattel lessee or otherwise, whether vested or contingent and whether now owned or hereafter acquired), in and to all building materials, supplies and other property now or hereafter stored at or delivered to the Land or any other location for installation in or on the Land or any of the Buildings, and all fixtures, fittings, machinery, appliances, equipment, apparatus, furnishings and personal property of every nature whatsoever (other than inventory) now or hereafter located in or on, or attached to, and used or intended to be used in connection with the Land, any of the Buildings or any business or other operations now or hereafter conducted in or on the Land or any of the Buildings or in connection with any construction or other work now or hereafter conducted in or on the Land or any of the Buildings including all substitutions and replacements therefor, all accessions and additions thereto, all of which now owned or hereafter acquired by the Lessee including, but not limited to all equipment employed in the operation of the Lessee's business and all proceeds and insurance as to the foregoing.

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