

EQUIPMENT LEASE AGREEMENT

Dated as of May 4, 2023

by and between

COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY

and

NATIXIS NORTH AMERICA LLC

RELATING TO THE FOLLOWING PROJECT

Natixis North America LLC Project  
(Building Renovation and Equipment Acquisition)

IDA PROJECT NUMBER: 3901-23-01A

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APPENDIX A	Description of Premises and Leased Premises
APPENDIX B	Sales Tax Exemption Agreement

THIS EQUIPMENT LEASE AGREEMENT, dated as of May 4, 2023 (the “Agreement”), is by and between the COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the “Agency”), having its principal office at 254 South Main Street, Suite 410, New City, New York 10956, and NATIXIS NORTH AMERICA LLC, a limited liability company organized and existing under and by virtue of the laws of the State of Delaware (the “Lessee”), having its principal office at 1251 Avenue of the Americas, New York, New York 10020.

WITNESSETH:

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

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

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee for a “project” within the meaning of the Act (the “Project”) within the territorial boundaries of the County of Rockland and located in part of a facility commonly known as the ColoHouse Data Center located on that certain lot, piece or parcel of land generally known as and by the street address 1 Ramland Road, Orangeburg, New York 10962 (the “Premises”) and otherwise described in Appendix A attached hereto and made a part hereof; and

WHEREAS, the Lessee has leased a portion of the Premises (the “Leased Premises”) from the titled owner of the Premises at which the Lessee will construct, install and operate the Project; and

WHEREAS, the Project will consist of the interior reconstruction and renovation of a portion of the existing facility and the acquisition of hardware, software, furnishings, machinery and equipment to be installed therein; and

WHEREAS, as the total amount of Agency benefits will be less than \$100,000, no public hearing is required for the Project; and

WHEREAS, the acquisition of Exempt Property is a Type II Project requiring no further action under the State Environmental Quality Review Act; and

WHEREAS, to facilitate the Project, the Agency and the Lessee have agreed to consider entering into a “straight-lease transaction” within the meaning of the Act pursuant to which the Agency will appoint the Lessee as agent for the Agency for purposes of developing the Project and acquiring the Exempt Property, and the Agency, as lessor, will lease the Exempt Property to the Lessee, as lessee, and, in furtherance of such purposes, on March 9, 2023 the Agency adopted a resolution (the “Inducement and Authorizing Resolution”) authorizing the undertaking of the Project, the acquisition of a leasehold estate in the Exempt Property by the Agency and the lease of the Exempt Property by the Agency to the Lessee; and

WHEREAS, concurrently with the execution of this Agreement, the Agency and the Lessee will enter into a Sales Tax Exemption Agreement (the “Sales Tax Exemption Agreement”) pursuant to which the Agency authorizes the Lessee to act as its agent in accordance with the terms thereof in acquiring or using the Exempt Property; and

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

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

## ARTICLE I

### DEFINITIONS AND REPRESENTATIONS

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

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

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

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

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

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

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

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

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

“County” shall mean the County of Rockland.

“Commencement Date” shall mean the date of execution and delivery of the Agreement.

“Environmental Indemnity Agreement” shall mean the Environmental Indemnity Agreement, dated as of May 4, 2023, from the Lessee to the Agency, a copy of which is attached hereto as Appendix B.

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

“Exempt Property” shall mean only machinery, equipment, appliances, furnishing, fixtures, materials and other tangible personal property conveyed to or acquired by the Lessee as agent of the Agency in connection with the Project on or before the date of completion of the Project for incorporation in the Project or for use in connection with the Project pursuant to the Sales Tax Exemption Agreement. Exempt Property shall be limited to those items of equipment for which sales tax exemptions are claimed pursuant to the Sales Tax Exemption Agreement.

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

“Inducement and Authorizing Resolution” shall mean the resolution of the Agency adopted on March 9, 2023 authorizing Project and the Straight-Lease Transaction.

“Leased Premises” shall mean that portion of the Premises at which the Lessee will construct, install and operate the Project, as more particularly described in the Appendix A to this Agreement - “Description of the Leased Premises” hereto, which is made a part hereof.

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

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

“Permitted Encumbrances” shall mean:

- (i) this Agreement, the Sales Tax Exemption Agreement and any regulatory agreement, declaration of restrictive covenants, and any renewal, replacement or refinancing of any of the foregoing; and



(ii) any lien, security interest, encumbrance or charge, or any conditional sale or other title retention agreement, that any vendor of Exempt Property or lender may place on or with respect to the Exempt Property or any part thereof.

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

“Premises” shall mean a portion of a facility commonly known as the ColoHouse Data Center located on that certain lot, piece or parcel of land generally known as and by the street address 1 Ramland Road, Orangeburg, New York 10962, all as more particularly described in the Appendices to this Agreement - “Description of the Premises” hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4.

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

“Project” shall mean the interior reconstruction and renovation of a portion of an existing facility commonly known as the ColoHouse Data Center and the acquisition of hardware, software, furnishings, machinery and equipment to be installed therein.

“Project Documents” shall mean this Agreement, the Sales Tax Exemption Agreement and the Environmental Indemnity Agreement.

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

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

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

“Sales Tax Exemption Agreement” shall mean the Sales Tax Exemption Agreement, dated as of May 4, 2023, between the Agency and the Lessee.

“State” shall mean the State of New York.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Lessee is a limited liability company duly organized, validly existing under the laws of the State of Delaware, is qualified to do business and is in good standing under the laws of the State of New York, is not in violation of any provision of its certificate of formation or operating agreement, and has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement and each other Project Document. The Lessee is duly qualified to do business in every jurisdiction in which qualification is necessary.

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

(c) There is no action or proceeding pending or, to the Lessee's best knowledge, threatened against the Lessee by or before any court or administrative agency that is likely to adversely affect the ability of the Lessee to timely and promptly perform its obligations

under this Agreement and each other Project Document and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Lessee as of the date hereof in connection with the execution and delivery of this Agreement and each other Project Document or in connection with the performance of the obligations of the Lessee hereunder and under each of the Project Documents have been obtained.

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

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

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

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

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

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

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

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

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

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

## ARTICLE II

### THE PROJECT

Section 2.1 [Reserved]

Section 2.2 Appointment of Lessee as Agent.

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

(i) acquiring the Exempt Property and installing the Exempt Property at the Leased Premises on the Premises (or using the Exempt Property in renovating or constructing the Leased Premises);

(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), and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project with the same powers and with the same validity and effect as the Agency could do if acting in its own behalf;

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

(iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project.

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

Section 2.4 Governmental Approvals. The Lessee represents, warrants, covenants and agrees that it will obtain or cause to be obtained all necessary approvals from any

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

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

- (i) the Project has been completed substantially in accordance with the plans and specifications therefor and the date of completion of the Project,
- (ii) all labor, services, machinery, equipment, materials and supplies used therefor have been paid for, or, if the Lessee is reasonably contesting payment of any of the foregoing, the Lessee provides assurance satisfactory to the Agency that such nonpayment will not result in a lien being placed on all or any portion of the Project,
- (iii) all Exempt Property (other than Exempt Property used for construction of the Project), has been installed at the Leased Premises,
- (iv) all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid,
- (v) all property constituting the Exempt Property (other than Exempt Property temporarily used during construction of the Project) is subject to this Agreement, subject only to Permitted Encumbrances, and
- (vi) in accordance with all applicable laws, regulations, ordinances and guidelines, the Project is ready for occupancy, use and operation for its intended purposes.

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

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

- (i) a temporary or permanent certificate of occupancy, if required, and any and all permissions, approvals, licenses or consents required of governmental authorities

for the occupancy, operation and use of the Project for the purposes contemplated by this Agreement,

(ii) a certificate of an Authorized Representative of the Lessee evidencing that all costs of the Project have been paid in full or arrangement for payment, reasonably satisfactory to the Agency, has been made, together with releases of mechanics' liens by the general contractor and by all contractors and materialmen who supplied work, labor, services, machinery, equipment, materials or supplies in connection with the Project, other than mechanic's liens that are being contested in good faith and, to the extent necessary, fully bonded, and

(iii) evidence satisfactory to the Agency that all real property taxes and assessments, and payments in lieu of taxes, if any, have been paid in full.

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

Section 2.7 Vesting of Exempt Property. Title to all Exempt Property (other than Exempt Property temporarily used for construction of the Project) shall vest in the Agency pursuant to this Agreement immediately upon delivery to or installation or incorporation into the Project or payment therefor, whichever shall occur first. The Lessee shall take all action necessary to protect such interest of the Agency against claims of any third parties with respect to the Exempt Property.

Section 2.8 [Reserved]

Section 2.9 [Reserved]

Section 2.10 Sales Tax Exemption. (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases or use of Eligible Items effected by the Lessee as agent for the Agency, it being the intent of the parties that no operating expenses of the Lessee and no purchases of equipment or other personal property (other than Eligible Items) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project.

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

ARTICLE III  
LEASE OF PROJECT AND RENTAL PROVISIONS

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

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

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire at midnight (New York time) on the tenth anniversary of the Commencement Date, or such earlier date as this Agreement may be terminated as hereinafter provided. The Agency hereby delivers to the Lessee and the Lessee hereby accepts sole and exclusive possession of the Exempt Property. Upon the expiration of this Agreement and the Lessee's payment of all amounts due and payable to the Agency hereunder as of the date of termination, the Agency shall convey all of its right, title and interest in and to the Project and the Exempt Property to the Lessee

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

(b) Annual Administration Fee. The Lessee shall pay as additional rent an Annual Administration in the amount of \$500.00, payable upon the Commencement Date and on each January 1 thereafter.

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



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

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

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

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

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

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

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

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

## ARTICLE IV

### COMPLETION, MAINTENANCE, TAXES AND INSURANCE

#### Section 4.1 Project Completion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Section 4.3 Removal of Property from the Project.

(a) The Lessee shall have the privilege from time to time of removing from the Project any fixture constituting part of the Project realty or any machinery, equipment or other property constituting part of the Exempt Property (the "Existing Project Property") and thereby acquiring such Existing Project Property; provided, however, such Existing Project

Property is substituted or replaced by property (i) having materially similar fair market value, operating efficiency and utility, and (ii) free of any mortgages, liens, charges, encumbrances, claims and security interests not permitted under this Agreement. No such removal shall be effected if (a) such removal would change the nature of the Project as a “Project” within the meaning of the Act, (b) such removal would materially impair the usefulness, structural integrity or operating efficiency of the Project, or (c) such removal would materially reduce the fair market value of the Project below its value immediately before such removal.

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

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

Section 4.4 [Reserved]

Section 4.5 Taxes, Assessments and Charges. The Lessee shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Project, this Agreement, any estate or interest of the Agency or the Lessee in the Project, or the rentals hereunder during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of the Project, all of which are herein called “Impositions”. The Agency shall promptly forward to the Lessee any notice, bill or other statement received by the Agency concerning any Imposition. The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

Section 4.6 Operation of Project. The Lessee shall continue to operate the Project at all times during the term of this Agreement. Such operation shall be solely for the purpose described in Section 3.1 and in accordance with the provisions of the Act. For the purpose of this Agreement, the Lessee shall be deemed to have ceased to operate the Project for the purposes described herein if it (a) materially alters the use of the Project, in the Agency’s reasonable judgment, except as permitted hereunder, (b) closes the Project other than for routine maintenance, observance of national holidays or regularly scheduled seasonal closings, or (c) reduces the operations of the Project to such an extent that, in the Agency’s reasonable judgment, the public purpose to be derived from the Project in accordance with Section 1.5 has

been substantially impaired. Any of the foregoing notwithstanding, the Lessee may use the Project for some purpose other than that described herein with the prior written consent of the Agency, which consent may be withheld in the absolute discretion of the Agency, and provided further that such proposed use constitutes a qualified "Project" in accordance with the Agency's policy and as defined under the Act.

Section 4.7 Insurance.

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

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

(ii) [Intentionally Omitted]

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

(iv) [Intentionally Omitted]

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

(vi) [Intentionally Omitted]

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

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

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

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

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

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

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

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

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

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

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

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

do any act, or suffer or permit any act to be done, whereby any insurance required by this Section would or might be suspended or impaired.

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

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

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

The Lessee may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Project or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Lessee or, the Agency being in any danger of any civil or any criminal liability other



than normal accrual of interest, for failure to comply therewith, and (iii) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency for failure to comply therewith.

ARTICLE V  
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1 Damage, Destruction and Condemnation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) The Lessee shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to improvements, machinery, equipment or other property installed on or about the Project realty but which, at the time of such damage or taking, is not part of the Project and is owned by the Lessee.

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

(g) Nothing contained in this Agreement shall be deemed to supersede or modify the obligations of the Lessee pursuant to a Mortgage with respect to condemnation or casualty proceeds, and such Mortgage shall control the use of condemnation and casualty proceeds, this Agreement being subject and subordinate to such Mortgage in all respects.

ARTICLE VI  
SPECIAL COVENANTS

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

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

Section 6.2 Indemnity.

(a) To the fullest extent permitted by law, the Lessee shall at all times protect and hold the Agency, the County and any director, member, officer, official, employee, servant or agent of either the Agency or the County and persons under the control or supervision of either the Agency or the County (collectively, the “Indemnified Parties” and each an “Indemnified Party”) harmless of, from and against any and all claims (whether in tort, contract

or otherwise), demands, expenses (including but not limited to reasonable fees and expenses of counsel) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), other than, with respect to each Indemnified Party, losses arising from the negligence, fraud or willful misconduct of such Indemnified Party, arising upon or about the Project realty or resulting from, arising out of, or in any way connected with (i) any actions of the Agency or the County pertaining to the Project on or after the date of the Inducement and Authorizing Resolution, (ii) the participation of the Agency or the County in the transactions contemplated by this Agreement and the other Project Documents, (iii) the planning, design, acquisition, site preparation, construction, renovation, equipping, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Project, (iv) any defects (whether latent or patent) in the Project, (v) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Project or any portion thereof, (vi) the exercise by the Agency of any remedy set forth in Section 7.2 or under any other provision hereof or of any other Project Document, (vii) the execution and delivery by the Indemnified Party of, or performance by the Indemnified Party of any of its obligations under, this Agreement or any other Project Document or any other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms hereof or thereof or the transactions contemplated hereby or thereby, or (viii) a default by the Lessee hereunder or under any Project Document. No Indemnified Party shall be liable for any damage or injury to the person or property of the Lessee or its directors, officers, partners, employees, agents or servants or Persons under the control or supervision of the Lessee or any tenant or subtenant of the Project, or any other Person who may be about the Project, due to any act defect in the Project, failure of service or utility thereto, any other matter arising at the Project or out of this Agreement or the Project Documents, or act or negligence of any Person other than, with respect to any Indemnified Party, the negligence or willful misconduct of such Indemnified Party.

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

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

(d) To effectuate the purposes of this Section, the Lessee will provide for and insure, in the public liability policies required in Section 4.7, not only its own liability in respect

of the matters therein mentioned but also the liability pursuant to this Section other than the liability pursuant to Section 6.2(a)(i) and (v). Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

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

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

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

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

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

#### Section 6.4 Discharge of Liens.

(a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Project or any part thereof or the interest therein of the Agency or against any of the rentals or other amounts payable under this Agreement or the interest of the Lessee under this Agreement other than Liens for Impositions (as defined in Section 4.5) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.4(b), the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such

notice) shall give written notice thereof to the Agency and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Project.

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

Section 6.5 Agency's Authority. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term hereof, including the right to grant the options to purchase herein contained.

Section 6.6 No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE PROJECT, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE PROJECT, OR THE SUITABILITY OF THE PROJECT FOR THE PURPOSES OR NEEDS OF THE LESSEE. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EXEMPT PROPERTY NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE IS SATISFIED THAT THE PROJECT IS SUITABLE AND FIT FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE PROJECT OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.7 No-Default Certificates. The Lessee shall promptly notify the Agency of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Project Document of which the Lessee has knowledge. Any notice required to be given pursuant to this Section shall be signed by an Authorized Representative of the Lessee and set forth a description of the default and the steps, if

any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact in the notice.

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

Section 6.9 [Reserved]

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

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

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

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

(d) The Lessee (on behalf of itself) hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor (“DOL”), to release to the Agency, and/or to the successors and assigns of either (collectively, the “Information Recipients”), any and all employment information under its control and pertinent to the Lessee and the employees of the Lessee to enable the Agency to comply with its reporting requirements required by any applicable laws, rules or regulations. In addition, upon the Agency’s written request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee which is pertinent to the Lessee and the employees of the Lessee to enable the Agency to comply with any reporting requirements required by



applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee, or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or the successors and assigns of either, and/or the County of Rockland, as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

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

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

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7.3 Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of

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

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

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

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

## ARTICLE VIII

### OPTIONS; OPTION TO PURCHASE AGENCY'S INTEREST IN PROJECT

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

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

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

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

Section 8.2 Termination of Agency's Interest in Project on Exercise of Option to Purchase. At the closing of any purchase of the Agency's interest in the Project pursuant to Section 8.1, the Agency shall, upon payment of the purchase price, deliver or cause to be delivered to the Lessee 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 any rights of action as against the Lessee or any rights of action for the benefit of the Agency, its members, directors, officers, agents, servants and employees and Persons under the Agency's control or supervision as against any insurer of the insurance policies under Section 4.7(a)), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards, with respect to the Project or any portion thereof.

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

Section 8.3 Reimbursement of Agency Benefits.

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

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

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

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

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

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

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

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

(vi) The Lessee shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Project, except (i) in connection with a transfer or other disposition to any corporation or other entity into or with which the Lessee may be merged or consolidated or to any corporation or other entity which shall be an affiliate, subsidiary, parent or successor of the Lessee or (ii) as permitted under Section 9.2; or

(vii) An Event of Default shall have occurred.

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

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

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

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

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

Section 8.4 [Reserved]

ARTICLE IX  
MISCELLANEOUS

Section 9.1 Force Majeure. In case by reason of force majeure either party hereto 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 or other payments required under the terms hereof, or to comply with Section 6.2), 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 settlement of existing or impending strikes, lockouts or other similar industrial disturbances shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force majeure shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though such existing or impending strikes, lockouts and other similar industrial disturbances may not be settled but could have been settled by acceding to the reasonable demands of the opposing person or persons.

Section 9.2 Assignment or Sublease. The Lessee may not at any time assign or transfer this Agreement, or sublet the whole or any part of the Project without the prior written consent of the Agency (which consent may be withheld in the absolute discretion of the Agency), except pursuant to the Permitted Encumbrances, and except the Lessee may, without the consent of the Agency, assign said leases to a lender in the ordinary course of business; provided further, that if the Agency consents to any such assignment, transfer or subletting, (1) the Lessee shall nevertheless remain liable to the Agency for the payment of all rent 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, (2) any assignee or transferee of the Lessee in whole of the Project shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee 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, (3) in the reasonable 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 rents nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Project Document to which the Lessee shall be a party, nor impair or limit in any respect the obligations of any obligor under any other Project Document, (4) any assignee, transferee or sublessee shall utilize the Project as a qualified “project” within the meaning of the Act, (5) such assignment, transfer or sublease



shall not violate any provision of this Agreement or any other Project Document, (6) such assignment, transfer or sublease shall in no way diminish or impair the Lessee's obligation to carry the insurance required under Section 4.7 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, (7) each such assignment, transfer or sublease contains such other provisions as the Agency may reasonably require, and (8) with respect to any assignment of this Agreement, there shall be paid to the Agency a fee in accordance with the Agency's policies and procedures then in effect. The Lessee shall furnish or cause to be furnished to the Agency a copy of any such assignment, transfer or sublease in substantially final form at least twenty (20) days prior to the date of execution thereof.

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 the successors or assigns of the Lessee, to obtain from the Agency consents 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.

If the Project or any part thereof shall be sublet or occupied by any Person other than the Lessee, the Agency, in the event of the Lessee's default in the payment of rent may, and is hereby empowered to, and the Lessee hereby grants the Agency an irrevocable power of attorney (coupled with an interest) to, collect rent from the under-tenant or occupant during the continuance of any such default. In either of such events, the Agency may apply the net amount received by it to the rent 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 under-tenant or occupant as tenant, or a release of the Lessee from the further performance of the covenants herein contained on the part of the Lessee.

Section 9.3 Amendments. This Agreement may be amended only in writing by the parties hereto.

Section 9.4 Notices. All notices, certificates or other communications hereunder shall be sufficient if sent by registered or certified United States mail, postage prepaid, addressed as follows:

(a) if to the Agency, to the Executive Director, County of Rockland Industrial Development Agency, 254 South Main Street, Suite 410, New City, New York 10956, with a copy to the General Counsel of the Agency at the same address, and a copy to Hawkins Delafield & Wood LLP, 7 World Trade Center, 250 Greenwich Street, New York, New York 10007; Attention: Daniel G. Birmingham.

(b) if to the Lessee, to Natixis North America LLC, 1251 Avenue of the Americas, New York, New York 10020, Attention: Kate Wenger, with a copy to Adeola Adegbrite.

Any notice, certificate or other communication hereunder shall, except as may expressly be provided herein, be deemed to have been delivered or given as of the date it shall have been mailed.

Any of the persons mentioned above to whom notice may be given may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 9.5 Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the Project.

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 Leased Premises. The Lessee will permit the Agency, or its duly authorized agent, at all reasonable times upon reasonable prior notice to enter upon the Leased Premises but solely for the purpose of assuring that the Lessee is operating the Leased Premises as a qualified “project” under the Act consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and not for any purpose of assuring the proper maintenance or repair of the Leased Premises as such latter obligation is and shall remain solely the obligation of the Lessee; and further provided that any such inspection does not unreasonably interfere with the usual operations of the Lessee.

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

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

Section 9.10 Net Lease. It is the intention of the parties hereto that this Agreement be a “net lease” and that this Agreement shall be construed to effect such intent.

Section 9.11 Law Governing. This Agreement shall be governed by, and construed in accordance with, the laws of the State without giving effect to its choice of law principles.

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 Project or any matters whatsoever arising out of or in any way connected with this Agreement.

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

Section 9.13 Non-Discrimination. (a) At all times during the construction, maintenance and operation of the Project, 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 Project 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.

(a) 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; national origin, age or sex.

(b) 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.

Section 9.14 No 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 its individual capacity, and no recourse shall be had for any claim based thereon or hereunder against any member, director, officer, employee or agent of the Agency or any natural person executing this Agreement on behalf of the Agency nor to any assets of the Agency other than the Project. 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, and such obligation shall be payable solely out of amounts payable to the Agency by the Lessee hereunder.

Section 9.15 Limitation on Liability of the Agency, the State and the County. The liability of the Agency to the Lessee under this Agreement shall be enforceable only out of, and limited to, the Agency’s interest in the Project and Exempt Property. There shall be no other recourse against the Agency, its members, directors, officers, agents, servants and employees and Persons under the Agency’s control or supervision, past, present or future, or against any of the property now or hereafter owned by it or them. Any obligation the Agency may incur for the payment of money in the performance of this Agreement shall not create a debt of the State or of the County, and neither the State nor the County shall be liable on any obligation so incurred. Any such obligation shall be payable solely out of any rents or other proceeds or funds derived from this Agreement. All obligations of the Agency under this Agreement shall be deemed to be the obligations of the Agency, and not of any member, director, officer, servant, employee or agent of the Agency or Person under the Agency’s control or supervision, past, present or future, in his individual capacity. No recourse shall be had against any such Persons, for any claim against the Agency arising under this Agreement.

Section 9.16 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.

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Executive Director and the Lessee has caused its name to be subscribed hereto by its duly authorized officers, all being done as of the year and day first above written.

COUNTY OF ROCKLAND INDUSTRIAL  
DEVELOPMENT AGENCY

By 

Name: Steven Porath

Title: Executive Director

[Signature page for Equipment Lease Agreement]

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Executive Director and the Lessee has caused its name to be subscribed hereto by its duly authorized officers, all being done as of the year and day first above written.

COUNTY OF ROCKLAND INDUSTRIAL  
DEVELOPMENT AGENCY

By \_\_\_\_\_  
Name: Steven Porath  
Title: Executive Director

NATIXIS NORTH AMERICA LLC

By: *Kate Wenger*  
Name: Kate Wenger  
Title: Executive Director

By: *Nancy Wisniewski*  
Name: Nancy Wisniewski  
Title: Chief Operating Officer

APPENDIX A

DESCRIPTION OF PREMISES

A portion of a facility commonly known as the ColoHouse Data Center located on that certain lot, piece or parcel of land generally known as and by the street address 1 Ramland Road, Orangeburg, New York 10962

DESCRIPTION OF LEASED PREMISES

Approximately 3,500 square feet located on the 1<sup>st</sup> floor of the Premises.

APPENDIX B

SALES TAX EXEMPTION AGREEMENT