

LEASE AGREEMENT

Dated as of July 1, 2022

by and between

COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY

as lessor

and

26 NORTH MYRTLE, LLC,

as lessee

RELATING TO THE FOLLOWING PROJECT

Myrtle Gardens Housing Project

IDA PROJECT NUMBER: 3901-22-07A

Affecting the Premises in the Village of Spring Valley, Town of Ramapo, County of Rockland, State of New York as more particularly described in Appendix A to this Lease Agreement and located at 22, 24 and 26 North Myrtle Avenue, Spring Valley, NY 10977

Tax Description

Section 57.30; Block 2; Lot 12

Section 57.30; Block 2; Lot 13

Section 57.30; Block 2; Lot 14

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**THIS LEASE AGREEMENT**, dated as of July 1, 2022, is by and between the **COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the “Agency”), having its principal office at 254 South Main Street, Suite 410, Spring Valley, New York 10977, and **26 NORTH MYRTLE, LLC**, a limited liability company organized and existing under and by virtue of the laws of the State of New York (the “Lessee”), having its principal office at 13 Vincent Road, Spring Valley, New York 10977 (the “Agreement”).

WITNESSETH:

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

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

WHEREAS, to accomplish the purposes of the Act, the Agency has entered into negotiations with the Lessee for a “project” within the meaning of the Act within the territorial boundaries of the County of Rockland and located on that certain lot, piece or parcel of land generally known as and by the street address 22, 24 and 26 North Myrtle Avenue, Spring Valley, NY 10977 (the “Premises”) and otherwise described in Appendix A attached hereto and made a part hereof; and

WHEREAS, the Project will consist of the acquisition and development of land of approximately 1.76 acres located at 22, 24 and 26 North Myrtle Avenue in the Village of Spring Valley, New York currently consisting of three family residences and a truck parking lot, and the construction thereon of three detached four-story buildings comprising 20 two-bedroom, 30 three-bedroom and 30 four-bedroom apartments, of which approximately 15% of the apartments will be affordable housing, and acquiring equipment and furnishings to be installed therein (the “Project”); and

WHEREAS, to facilitate the Project, the Agency and the Lessee have agreed to consider entering into a “straight-lease transaction” within the meaning of the Act pursuant to which the Lessee, as lessor, will lease the Premises to the Agency, as lessee, and the Agency will appoint the Lessee as agent for the Agency for purposes of developing the Project, and the Agency, as lessor, will sublease the Premises back to the Lessee, as lessee, and, in furtherance of such

purposes, on April 26, 2022, the Agency adopted a resolution (the “Inducement Resolution”) authorizing the Lessee to proceed with the Project; and

WHEREAS, on May 6, 2022, the Agency published a notice of public hearing for the Project in *The Journal News*, and held such public hearing on May 17, 2022 at the Town of Ramapo Town Hall; and

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

WHEREAS, on May 19, 2022, the Agency adopted a resolution (the “Authorizing Resolution”) authorizing the undertaking of the Project, the acquisition of a leasehold estate in the Premises by the Agency and the lease of the Premises by the Agency to the Lessee; and

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

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

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

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

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

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

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not create a debt of the State of New York or of the County of Rockland, and neither the State of New York nor the County of Rockland shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals,

revenues and receipts derived from or in connection with the Project, including moneys received under this Agreement):

## ARTICLE I

### DEFINITIONS AND REPRESENTATIONS

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

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

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

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

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

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

“Annual Administrative Fee” shall mean that annual administrative fee set forth in Section 3.3(b) of this Agreement and such replacement administrative fee as may be established from time to time by the Agency as generally applicable to entities receiving or that have received Financial Assistance.

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

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



“Authorizing Resolution” shall mean the resolution of the Agency adopted on May 19, 2022 authorizing Project and the Straight-Lease Transaction.

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

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

“County” shall mean the County of Rockland.

“Commencement Date” shall mean July 28, 2022, on which date the leasehold title to the Premises was transferred to the Agency pursuant to the Company Lease and subleased to the Lessee pursuant to this Agreement.

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

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

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

“Covered Project” shall have the meaning set forth in Appendix G-2.

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

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

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

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

“Guaranty Agreement” shall mean the Guaranty Agreement, dated as of July 1, 2022, from Samuel Wettenstein to the Agency, a copy of which is attached hereto as Appendix F.

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

“Inducement Resolution” shall mean the resolution of the Agency adopted on April 28, 2022 authorizing the Lessee to proceed with the Project.

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

“Local Construction Labor Policy” shall mean the Agency’s Local Construction Labor Policy set forth in Appendix G-1.

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

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

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

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

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

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

“Permitted Encumbrances” shall mean:

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

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

(iii) any mechanic’s, workmen’s, repairmen’s, materialmen’s, contractors’, carriers’, suppliers’ or vendors’ Lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.4;

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

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

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

(vii) those exceptions to title to the Project enumerated in the title policy derived pursuant to Section 2.9.

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

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

“Premises” shall mean that certain lot, piece or parcel of land generally known by the street address 22, 24 and 26 North Myrtle Avenue, Spring Valley, New York 10977, all as more particularly described in the Appendices to this Agreement - “Description of the Project Realty” hereto, which is made a part hereof, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; but excluding, however, any real property or interest therein released pursuant to Section 6.4.

“Prevailing Wage Policy” shall mean the Agency’s Construction Period Prevailing Wage Policy set forth in Appendix G-2.

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

“Project” shall mean the acquisition and development of land of approximately 1.76 acres located at 22, 24 and 26 North Myrtle Avenue in the Village of Spring Valley, New York currently consisting of three family residences and a truck parking lot, and the construction thereon of three detached four-story buildings comprising 20 two-bedroom, 30 three-bedroom and 30 four-

bedroom apartments, of which approximately 15% of the apartments will be affordable housing, and acquiring equipment and furnishings to be installed therein.

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

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

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

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

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

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

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

“State” shall mean the State of New York.

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

“Village” shall mean the Village of Spring Valley, New York.

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

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

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

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

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

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

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

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

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

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

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

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

(d) undertaking the Project will serve the public purposes of the Act by promoting a higher quality of housing in the Village and promoting additional commerce in the neighborhood of the Project and promoting and maintaining the commercial health, general prosperity and economic welfare of the citizens of the County of Rockland and the State of New York and improving their standard of living, as well as preventing economic deterioration; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE II

### THE PROJECT

#### Section 2.1. The Company Lease.

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

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

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

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

#### Section 2.2 Appointment of Lessee as Agent.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III  
LEASE OF PROJECT AND RENTAL PROVISIONS

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

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

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

Section 3.2 Duration of Term. The term of this Agreement shall commence on the Commencement Date and shall expire at midnight (New York time) on the earliest to occur of the July 1, 2042 or the date the on which the benefits granted by the PILOT Agreement terminates or such earlier date as this Agreement may be terminated as hereinafter provided. The Agency hereby delivers to the Lessee and the Lessee hereby accepts sole and exclusive possession of the Project.

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

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

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

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

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

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

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

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

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

Section 3.7 Environmental Indemnity. Concurrently with the Execution of this Agreement the Lessee and Samuel Wettstein shall enter into the Environmental Indemnity

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

Section 3.8 RESERVED

ARTICLE IV  
COMPLETION, MAINTENANCE, TAXES AND INSURANCE

Section 4.1 Project Completion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

Section 4.7 Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V  
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1 Damage, Destruction and Condemnation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Section 6.4 Discharge of Liens.

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

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

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

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

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

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

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

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

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

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

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

(c) Additional employment related representations and covenants are set forth in Sections 6.11, 6.12 and 6.13 and in Appendix G.

(d) 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.

(e) The Lessee (on behalf of itself) hereby authorizes any private or governmental entity, including but not limited to The New York State Department of Labor (“DOL”), to release to the Agency and/or the County of Rockland Economic Development Corporation (“EDC”), and/or to the successors and assigns of either (collectively, the “Information Recipients”), any and all employment information under its control and pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with its reporting requirements required by any applicable laws, rules or regulations. In addition, upon the Agency’s written request, the Lessee shall provide to the Agency any employment information in the possession of the Lessee which is pertinent to the Lessee and the employees of the Lessee to enable the Agency and/or EDC to comply with any reporting requirements required by applicable laws, rules or regulations. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Lessee, or any information previously released as provided by all or any of the foregoing parties (collectively, “Employment Information”) may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, and/or EDC, and/or the successors and assigns of either, and/or the County of Rockland, as may be necessary to comply with law; and, without limiting the foregoing, the Employment Information may be included in (x) reports prepared by the Information Recipients, (y) other reports required of the Agency, and (z) any other reports required by law. This authorization shall remain in effect throughout the term of this Agreement.

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

Section 6.11 Local Construction Labor Policy. The Lessee shall be obligated to comply with the Agency’s Local Construction Labor Policy, which is attached hereto as Appendix G-1.

Section 6.12 Prevailing Wage Policy. The Lessee shall comply with the Agency’s Prevailing Wage Policy which is attached hereto as Appendix G-2. Concurrently with the execution of this Agreement, the Lessee shall submit a completed Availability Of Public Funds Worksheet as set forth in Appendix G-2. The Lessee represents on behalf of itself that the Project [is][is not] a Covered Project. The Lessee has delivered to the Agency the materials and documentation required in Appendix G-2 if the project is determined to not be a Covered Project. If future events cause the conclusion to no longer be valid, the Lessee agrees that it will not accept any public funds benefits that would result in the public funds benefits received equaling or exceeding 30% of the Project Construction Costs. If such threshold is exceeded, Lessee shall return to the Agency for reimbursement to the affected taxing jurisdictions such amounts as the Agency in its sole determination determines to be sufficient compensate the affected taxing jurisdictions for lost revenues, plus interest at rates equaling rates for overdue real property taxes, plus Agency and taxing jurisdictions costs of collection and enforcement, including counsel fees.

Section 6.13 Administration of Compliance With Labor Requirements. The Agency retains a third party consultant (the “Labor Compliance Monitor”) to represent the Agency in monitoring Lessee compliance with provisions of applicable labor policies required by this Agreement. The Lessee agrees to allow the Labor Compliance Monitor access to inspect labor staffing at the project site during business hours, without prior notice. The Lessee further agrees to make such construction labor employment records available to the Labor Compliance Monitor

in such format as the Labor Compliance Monitor reasonably requests. The fees and expenses of the Labor Compliance Monitor for performing these services shall be payable by the Lessee directly to the Labor Compliance Monitor.

Section 6.14 Additional Representations, Certification and Indemnification. The Lessee has agreed to certain representations, certification and indemnification in its application as submitted to the Agency, as amended. Such representations, certification and indemnification are set forth in Appendix H and made a part of this Agreement.

Section 6.15 Cooperation With State Reporting Requirement. The Agency is subject to periodic reporting requirements with applicable State agencies and officials. Such requirements may include, among other things, information concerning the Lessee or the Project, including, without limitation, information on tax benefits claimed and job creation. The Lessee agrees to promptly comply with all requests made by the Agency for purposes of complying with such reporting and information requirements. Each of the Lessee shall submit annually, no later than a date to be designated by the Agency, a completed Form of Employment Report, the form of which is included in Appendix H.

Section 6.16 Operation and Maintenance of the Project. The Lessee shall operate and maintain the Project as a residential housing project.

Section 6.17 Compliance With Agency Policies. The Lessee has reviewed the duly adopted policies of the Agency as now in effect, and agrees that during the course of this Agreement shall at all times be in compliance with such policies.

## 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 such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing against the Lessee shall be entered and continue unstayed and in effect, for a period of ninety (90) days or (iv) the Lessee shall fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such Bankruptcy Code or any order for relief against the Lessee shall be entered in an involuntary case

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

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

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

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

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

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

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

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

(a) The Agency may send to the Lessee a notice stating that this Agreement shall terminate on a date certain, which date shall not be less than ten (10) days after the date of such notice, in which event this Agreement shall expire and terminate on the date set forth in such notice as if such date were the herein stated expiration date of this Agreement, provided that the Agency shall, on or about the date on which this Agreement terminates, convey all of the Agency’s right, title and interest in the Project to the Lessee, which the Agency may accomplish by delivering notice of termination of the Company Lease, and the Lessee hereby waives delivery and acceptance of such notice of termination as a condition to its validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such termination of Company Lease; provided further, however, that the Agency is only required to make such conveyance if the Lessee has paid all amounts payable to the Agency hereunder as of the date of termination;

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



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

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

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

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

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

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

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

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

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

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

## ARTICLE VIII

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

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

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

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

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

Section 8.2 Termination of Company Lease on Exercise of Option to Purchase.  
At the closing of any purchase of the Agency's interest in the Project pursuant to Section 8.1, the Agency shall, upon payment of the purchase price, deliver or cause to be delivered to the Lessee (i) an acknowledgment of termination of the Company Lease and all other necessary documents conveying to the Lessee all of the Agency's right, title and interest in and to the Project and terminating this Agreement, and (ii) all necessary documents releasing and conveying to the Lessee all of the Agency's rights and interests in and to any rights of action (other than as against the Lessee or any insurer of the insurance policies under Section 4.7(a)), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation awards, with respect to the Project or any portion thereof.

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

Section 8.3 Reimbursement of Agency Benefits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) An Event of Default shall have occurred.

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

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

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

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

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

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

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 Sections 4.6 or 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 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 industrial disturbances may not be settled but could have been settled by acceding to the 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, except pursuant to the Permitted Encumbrances (which consent may be withheld in the absolute discretion of the Agency); 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 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 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:

County of Rockland Industrial Development Agency  
254 South Main Street, Suite 410  
New City, New York 10956

Attn: Executive Director

with a copy to general counsel at:

Bleakley Platt & Schmidt, LLP  
Brian Quinn, Esq.  
One Blue Hill Plaza, 3rd Floor  
Pearl River, New York 10965

(b) if to the Lessee:

26 North Myrtle, LLC  
13 Vincent Road  
Spring Valley, New York 10977

Attn: Samuel Wettstein

with a copy to counsel at:

Michael L. Klein  
Hartmann Doherty Rosa Berman  
& Bulbulia LLC  
2 Executive Blvd. - Suite 300  
Suffern, New York 10901

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 Premises. The Lessee will permit the Agency, or its duly authorized agent, at all reasonable times upon reasonable prior notice to enter upon the Premises but solely for the purpose of assuring that the Lessee is operating the 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 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 the payment of the principal of, or redemption premium, if any, or interest on the Bonds or 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.

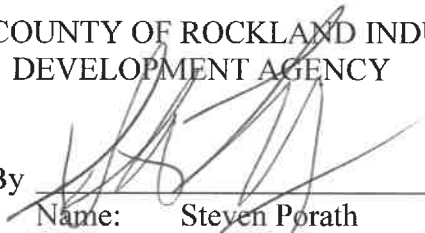
Section 9.15 Limitation on Liability of the Agency, the State and the County. The liability of the Agency to the Lessee under this Agreement shall be enforceable only out of, and

limited to, the Agency's interest in the Project. 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

26 NORTH MYRTLE, LLC

By: \_\_\_\_\_  
Name: Samuel Wettenstein  
Title: Managing Member

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

On the 26<sup>th</sup> day of July, in the year two thousand and twenty-two before me, the undersigned, a Notary Public in and from said State, personally appeared STEVEN PORATH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon the behalf of whom the individual acted, executed the instrument.

**SHERIE I. SHAW**  
Notary Public, State of New York  
No. 01SH6364837  
Qualified in Rockland County  
Commission Expires 09/25/2025

  
\_\_\_\_\_  
Notary Public

**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

26 NORTH MYRTLE, LLC

By:  \_\_\_\_\_  
Name: Samuel Wettstein  
Title: Managing Member

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

On the 27 day of July, in the year two thousand and twenty-two before me, the undersigned, a Notary Public in and from said State, personally appeared SAMUEL WETTENSTEIN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon the behalf of whom the individual acted, executed the instrument.



A handwritten signature in blue ink, appearing to read "Michael Leslie Klein", is written over a horizontal line.

Notary Public

MICHAEL LESLIE KLEIN  
Notary Public, State of New York  
No. 4897742  
Qualified in Rockland County  
Commission Expires May 31, 2023

## APPENDICES

APPENDIX A

DESCRIPTION OF PREMISES



Schedule A Description - continued

Title Number NYAA-15472

Page 2

TAX LOTS 57.30-2-12, 13, 14  
26 N. MYRTLE AVE

ALL That certain plot, piece or parcel of land, with the building and improvements Thereon erected, situate, lying, and being in the Town of Ramapo, County of Rockland and State of New York being a portion of the property obtained by Peral with a deed reference to the description more particularly bounded and described as follows:

BEGINNING at a point on the Easterly line of North Myrtle Avenue, said point being the Southwesterly corner of tax lot 57.30-2-11 and the Northwesterly corner of the lot herein described;

RUNNING THENCE along the Southerly line of tax lots 57.30-2-11 & 57.30-2-20 the following courses and distances:

1. S79°04'32"E, a distance of 232.50'
2. S78°34'01"E, a distance of 131.36' To the Westerly line of tax lot 57.31-1-7;

THENCE along the Westerly line of tax lots 57.31-1-7, 19, 18 & 17 the following courses and distances:

1. S20°05'05"W, a distance of 90.89'
  2. S22°08'29"W, a distance of 138.00'
- To the Northerly line of tax lot 57.31-1-16;

THENCE along the Northerly line of tax lots 57.31-1-16, 57.30-2-18 & 16 the following courses and distances:

1. N69°34'31"W, a distance of 125.03'
  2. S25°40'12"W, a distance of 18.51'
  3. N69°28'45"W, a distance of 237.42'
- To the Easterly line of North Myrtle Avenue;

THENCE along the Easterly line of North Myrtle Avenue the following courses and distances:

1. N24°16'01"E, a distance of 31.63'
2. N22°55'21 "E, a distance of 87.75'
3. N22°42'15"E, a distance of 68.78'

To the POINT OF BEGINNING containing 76,465.82 Sq. Ft. More or less;

## Schedule A Description

Title Number NYAA-15472

Page 1

### SHERWOOD STREET

ALL That certain plot, piece or parcel of land, with the building and improvements Thereon erected, situate, lying, and being in the Town of Ramapo, County of Rockland and State of New York being a portion of the property obtained by Peral with a deed reference to the description more particularly bounded and described as follows:

BEGINNING at a point on the intersection of the Easterly line of Myrtle Avenue and the Northerly line of Sherwood Street, said point being the southwesterly corner of tax lot 57.30-2-14 and the Northwesterly corner of the plot, piece or parcel of land herein described;

RUNNING THENCE along the Southerly line of tax lot 57.30-2-14 S68°08'35"E, a distance of 236.99' to the Westerly line of tax lot 57.30-2-12;

THENCE along the Westerly line of tax lots 57.30-2-12 & 57.31-1-16 the following courses and distances:

1. S19°51'16"W, a distance of 7.61'
2. S25°40'12"W, a distance of 18.51' To the Northerly line of tax lot 57.30-2-18;

THENCE along the Northerly line of tax lots 57.30-2-18 & 57.30-2-15 the following courses and distances:

1. N69°28'45"W, a distance of 119.53'
2. N69°28'45"W, a distance of 117.89' To the Easterly line of Myrtle Avenue;

THENCE along the Easterly line of Myrtle Avenue N24°16'00"E, a distance of 31.63' to the POINT OF BEGINNING containing 6,843.34 Sq. Ft. More or less;

SUBJECT TO ANY RIGHT OF WAYS OR EASEMENTS ON RECORD

APPENDIX B  
ENVIRONMENTAL INDEMNITY AGREEMENT

ENVIRONMENTAL INDEMNITY AGREEMENT

Dated as of July 1, 2022

by and among

COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY

and

26 NORTH MYRTLE, LLC

and

SAMUEL WETTENSTEIN

RELATING TO THE FOLLOWING PROJECT

Myrtle Gardens Housing Project

IDA PROJECT NUMBER: 3901-22-07A

Affecting the Premises in the Town of Ramapo, County of Rockland, State of New York as more particularly described in Exhibit A to this Environmental Indemnity Agreement and located at 22, 24 and 26 North Myrtle Avenue, Spring Valley, NY 10977

Tax Description

Section 57.30; Block 2; Lot 12

Section 57.30; Block 2; Lot 13

Section 57.30; Block 2; Lot 14

## ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (this “Agreement”), dated as of July 1, 2022 for reference purposes, is by and among the COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY, 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 of New York, having its office at 254 South Main Street, New City, New York 10956 (the “Agency”) and 26 NORTH MYRTLE, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of New York, having an office at 13 Vincent Road, Spring Valley, New York 10977 (the “Company”), and SAMUEL WETTENTSEIN, individually, having an office at 13 Vincent Road, Spring Valley, New York 10977 (“Wettenstein”) (the Company and Wettenstein each an “Indemnitor” and together the “Indemnitors”).

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, the 26 North Myrtle, LLC is the legal or record title holder of a parcel located in the Town of Ramapo, County of Rockland, New York (as described in Exhibit A attached hereto, the “Premises”), which Premises will be leased by 26 North Myrtle, LLC, as lessor, to the Agency, as lessee pursuant to a Company Lease, dated as of July 1, 2022 (the “Company Lease”), and subleased by the Agency, as lessor, to 26 North Myrtle, LLC, as lessee pursuant to a Lease Agreement, dated as of July 1, 2022 (the “Lease Agreement”); and

WHEREAS, the Indemnitor has sought assistance from the Agency regarding the development of the Project including the Premises, the improvements to be made therein, and the machinery, equipment and furnishings to be installed therein through financial assistance and a straight-lease transaction; and

WHEREAS, the Agency will not enter into the Lease Agreement with respect to the Project unless it receives this Agreement from the Indemnitor;

NOW, THEREFORE, in consideration of the above and in order to induce the Agency to enter into the Company Lease and the Lease Agreement and provide financial

assistance to assist the Indemnitor in the development and operations of the Premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Indemnitor and the Agency agree as follows:

Section 1. Definitions

For the purposes of this Agreement, the following definitions shall apply:

“Closing Date” means the date of execution and delivery of the Lease Agreement.

“Environmental Actions” means any complaint, summons, citation, notice of violation, notice of potential liability, directive, order, claim, litigation, proceeding, judgment, letter or other communication from any Governmental Agency involving Environmental Conditions, violations of Environmental Laws or Releases of Hazardous Materials at, on, into or out of the Premises.

“Environmental Conditions” means the presence on, in or under the Premises, or off-Premises in the event that the conditions originated from, on, in or under the Premises, known or unknown, contingent or otherwise (including the groundwater) of Hazardous Materials at levels of contamination that require Remediation under standards required by Environmental Laws or any Governmental Agency, irrespective of (i) whether said condition arose prior or subsequent to the Closing Date, and (ii) whether the Indemnitor was or is responsible for the Release of said Hazardous Materials.

“Environmental Laws” means all federal, state and municipal laws, statutes, ordinances, codes, rules, regulations, policies, guidelines, interpretations, decisions, orders and directives relating thereto relating to: (i) pollution or protection of the environment, (ii) the health and safety of persons, in each case governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of hazardous substances or hazardous materials as defined in the foregoing, including the Comprehensive Environmental Response Compensation and Liability Act, as amended (“CERCLA”), 42 U.S.C. 9601 et seq.; the Resource Conservation and Recovery Act, as amended (“RCRA”), 42 U.S.C. 6901 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C.1801 et seq.; the Clean Air Act, as amended (“CAA”), 42 U.S.C. 7401 et seq; the Clean Water Act, as amended (“CWA”), 33 U.S.C. 1251 et seq; New York State Bulk Storage Law, as amended, § 40-0101 et seq., New York State Navigation Law, as amended, ECL § 27-0900, et seq.

“Governmental Agency” means any governmental entity, agency, department, bureau or office, other than the Agency.

“Hazardous Materials” means any element, substance, compound or chemical that is defined, listed or otherwise classified or regulated as a pollutant, toxic pollutant, toxic or hazardous waste, special waste, or hazardous substance under Environmental Laws, including, without limitation, oil, petroleum, other petroleum substances or derivatives, or asbestos in any form.

“Non-Governmental Actions” means any complaint, summons, action, claim, litigation or other proceeding from any entity, not constituting a Governmental Agency,

department, bureau or office, involving Environmental Conditions, violations of Environmental Laws or Releases of Hazardous Materials at, on, into or from the Premises.

“Release” means any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing (including the abandonment or discarding of barrels, containers or other closed receptacles containing Hazardous Materials) of Hazardous Materials on, into or out of the Premises.

“Remediation” or “Remediate” means all the work performed or to be performed to investigate, characterize and remove, contain, dispose of, treat, or otherwise deal with Environmental Conditions, Releases or Threats of Release in order to cause the Environmental Actions or Non-Governmental Actions to be dismissed or settled, as the case may be, and render the Premises in compliance with applicable Environmental Laws. For purposes of this definition, Remediation shall be complete when, (i) if no Governmental Agency is involved, the Non-Governmental Action is settled or dismissed, and the Indemnitor and the Agency have been advised by a mutually agreed upon independent environmental consultant that all requirements of Environmental Laws have been satisfied, or (ii) in the case of any Environmental Action, the appropriate Governmental Agency determines that no further action is required.

“Threat of Release” means a substantial likelihood of a Release, which requires action to prevent or mitigate damage to the environment that may result from such Release.

## Section 2. Environmental Indemnity

(A) Indemnification. The Indemnitor hereby indemnifies, holds harmless and agrees to defend by legal counsel of its choice, acceptable to the Agency (which acceptance shall not be unreasonably withheld or delayed), and hold the Agency (including all former, present and future members, directors, officers, employees, agents or servants, with the Agency) harmless from and against any claims, demands, penalties, fees, liabilities, damages, costs, losses, liens, encumbrances or other expenses of any kind including, without limitation, legal expenses and consulting fees arising out of or related to (a) Environmental Action(s) relating to Environmental Conditions; or (b) personal injury (including wrongful death) or property damage (real or personal) or Non-Governmental Actions arising out of or related to Hazardous Materials located on, at or under or emanating from the Premises or used, handled, generated, transported or disposed of at the Premises or used, handled or generated at the Premises and disposed of elsewhere.

(B) Survival. The provisions of this Section 2 shall survive the termination of this Agreement, the Lease Agreement and any assignment of the Lease Agreement by the Agency.

## Section 3. Notice and Control of Environmental Actions/Remediation

(A) Notice. If the Agency shall receive written notice that an Environmental Action or Non-Governmental Action has been commenced against the Agency after the Closing for which the Indemnitor is required to indemnify as provided above, the Agency shall promptly provide the Indemnitor with written notice of the service of a summons and/or complaint or other

written notice, demand or letter regarding the Environmental Action or Non-Governmental Action and related Remediation requirements, if any; provided, however, that the failure of the Agency to promptly provide the Indemnitor with such notice shall not constitute a defense of the Indemnitor hereunder nor in any way impair the obligations of the Indemnitor under this Agreement, except to the extent (and only to the extent) that the Indemnitor is prejudiced thereby. The Indemnitor shall have the right (i) to respond to any Environmental Action or Non-Governmental Action by performing any Remediation as reasonably deemed by the Indemnitor necessary to comply with applicable Environmental Laws, and to satisfy the requirements of such Environmental Action or Non-Governmental Action, and (ii) to contest and defend against any such Environmental Action or Non-Governmental Action or to contest any Remediation that the Indemnitor reasonably deems to be unnecessary or unreasonable pursuant to administrative or judicial remedies provided under applicable Environmental Laws. The Indemnitor shall perform the Remediation in accordance with the applicable Environmental Laws. The Indemnitor shall also provide the Agency with (i) prompt written notice that an Environmental Action or Non-Governmental Action has been commenced against the Indemnitor or a Release or Threat of Release has occurred and (ii) in a timely manner, copies of all correspondence and documentation in connection with any Environmental Condition related to the Premises.

(B) No Reduction of Obligation; Survival. Nothing contained in this Section 3 is intended to reduce, restrict or eliminate the Indemnitor's obligations under Section 2 of this Agreement. The provisions of this Section 3 shall survive the Closing and the termination of this Agreement, the Lease Agreement and any assignment of the Lease Agreement by the Agency.

#### Section 4. General Terms

(A) Governing Law. This Agreement shall be governed by, construed in accordance with and enforceable under the laws of the State of New York, without regard or reference to its conflict of laws and principles.

(B) Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, or by Federal Express, addressed as follows or to such other address as either party may specify in writing to the other.

To the Agency:

County of Rockland Industrial Development Agency  
254 South Main Street, Suite 410  
New City, New York 10956

Attn: Executive Director

Tel: (845) 977-3900  
E-mail: sporath@rocklandida.com



To the Indemnitors:

26 North Myrtle, LLC  
13 Vincent Road  
Spring Valley, New York 10977

Attn: Samuel Wettenstein  
Tel: 646-210-2167  
e-mail: sam@monseybuilders.com

with a copy to counsel at:

Michael L. Klein  
Hartmann Doherty Rosa Berman  
& Bulbulia LLC  
2 Executive Blvd. - Suite 300  
Suffern, New York 10901

Samuel Wettenstein  
26 North Myrtle, LLC  
13 Vincent Road  
Spring Valley, New York 10977  
Tel: 646-210-2167  
e-mail: sam@monseybuilders.com

Such notices shall be deemed to have been given upon receipt or refusal of the party being notified to accept delivery of such notice.

(C) Successors and Assigns; Benefit. This Agreement shall inure to the benefit of and shall be binding upon the Indemnitor and its successors and shall inure to the benefit of and shall be binding upon the Agency and its successors and is not intended to create rights in favor of or liabilities to any third parties.

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

(E) Entire Agreement. This Agreement and the related Project Documents (as identified in Exhibit B hereto) contains the entire agreement between the parties hereto with respect to the subject matter hereof and all prior negotiations and agreements are merged in this Agreement. This Agreement may not be changed, modified or discharged in whole or in part and no oral or executory agreement shall be effective to change, modify or discharge in whole or in part this Agreement or any obligations under this Agreement, unless such agreement is set forth in a written instrument executed by the Indemnitor and the Agency. No consent or approval of the Indemnitor shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Indemnitor. No consent or approval of the Agency shall be deemed to have been given or to be

effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Agency.

(F) Project Agreement. This Agreement, together with the other Project Documents, comprise the “uniform agency project agreement” required by Paragraph 6 of Section 369-a of the Act.

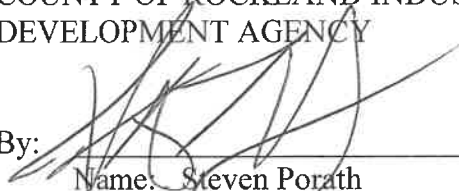
(G) Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

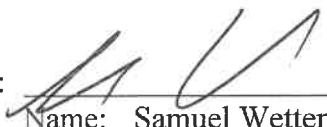
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.


COUNTY OF ROCKLAND INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: Steven Porath  
Title: Executive Director

26 NORTH MYRTLE, LLC

By:   
Name: Samuel Wettenstein  
Title: Managing Member

SAMUEL WETTENSTEIN

By:   
Name: Samuel Wettenstein, Individually

[Signature Page to Environmental Indemnity Agreement]

**EXHIBIT A**  
THE PREMISES

Schedule A Description - continued

Title Number NYAA-15472

Page 2

TAX LOTS 57.30-2-12, 13, 14  
26 N. MYRTLE AVE

ALL That certain plot, piece or parcel of land, with the building and improvements Thereon erected, situate, lying, and being in the Town of Ramapo, County of Rockland and State of New York being a portion of the property obtained by Peral with a deed reference to the description more particularly bounded and described as follows:

BEGINNING at a point on the Easterly line of North Myrtle Avenue, said point being the Southwesterly corner of tax lot 57.30-2-11 and the Northwesterly corner of the lot herein described;

RUNNING THENCE along the Southerly line of tax lots 57.30-2-11 & 57.30-2-20 the following courses and distances:

1. S79°04'32"E, a distance of 232.50'
2. S78°34'01"E, a distance of 131.36' To the Westerly line of tax lot 57.31-1-7;

THENCE along the Westerly line of tax lots 57.31-1-7, 19, 18 & 17 the following courses and distances:

1. S20°05'05"W, a distance of 90.89'
  2. S22°08'29"W, a distance of 138.00'
- To the Northerly line of tax lot 57.31-1-16;

THENCE along the Northerly line of tax lots 57.31-1-16, 57.30-2-18 & 16 the following courses and distances:

1. N69°34'31"W, a distance of 125.03'
2. S25°40'12"W, a distance of 18.51'
3. N69°28'45"W, a distance of 237.42'

To the Easterly line of North Myrtle Avenue;

THENCE along the Easterly line of North Myrtle Avenue the following courses and distances:

1. N24°16'01"E, a distance of 31.63'
2. N22°55'21 "E, a distance of 87.75'
3. N22°42'15"E, a distance of 68.78'

To the POINT OF BEGINNING containing 76,465.82 Sq. Ft. More or less;

## Schedule A Description

Title Number NYAA-15472

Page 1

### SHERWOOD STREET

ALL That certain plot, piece or parcel of land, with the building and improvements Thereon erected, situate, lying, and being in the Town of Ramapo, County of Rockland and State of New York being a portion of the property obtained by Peral with a deed reference to the description more particularly bounded and described as follows:

BEGINNING at a point on the intersection of the Easterly line of Myrtle Avenue and the Northerly line of Sherwood Street, said point being the southwesterly corner of tax lot 57.30-2-14 and the Northwesterly corner of the plot, piece or parcel of land herein described;

RUNNING THENCE along the Southerly line of tax lot 57.30-2-14 S68°08'35"E, a distance of 236.99' to the Westerly line of tax lot 57.30-2-12;

THENCE along the Westerly line of tax lots 57.30-2-12 & 57.31-1-16 the following courses and distances:

1. S19°51'16"W, a distance of 7.61'
2. S25°40'12"W, a distance of 18.51' To the Northerly line of tax lot 57.30-2-18;

THENCE along the Northerly line of tax lots 57.30-2-18 & 57.30-2-15 the following courses and distances:

1. N69°28'45"W, a distance of 119.53'
2. N69°28'45"W, a distance of 117.89' To the Easterly line of Myrtle Avenue;

THENCE along the Easterly line of Myrtle Avenue N24°16'00"E, a distance of 31.63' to the POINT OF BEGINNING containing 6,843.34 Sq. Ft. More or less;

SUBJECT TO ANY-RIGHT OF WAYS OR EASEMENTS ON RECORD

EXHIBIT B  
PROJECT DOCUMENTS

Company Lease Agreement  
Lease Agreement  
Sales Tax Exemption Agreement  
PILOT Agreement  
PILOT Mortgage  
Environmental Indemnity Agreement  
Guaranty

APPENDIX C

PILOT AGREEMENT

[to be attached when available]



APPENDIX D

SALES TAX EXEMPTION AGREEMENT

SALES TAX EXEMPTION AGREEMENT

Dated as of July 1, 2022

by and between

COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY

AND

26 NORTH MYRTLE, LLC

RELATING TO THE FOLLOWING PROJECT:

Myrtle Gardens Housing Project

IDA PROJECT NUMBER: 3901-22-07A

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**Error! Bookmark not defined.**

SALES TAX EXEMPTION AGREEMENT

Dated as of July 1, 2022

by and between

COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY

AND

26 NORTH MYRTLE, LLC

THIS SALES TAX EXEMPTION AGREEMENT (the “Sales Tax Exemption Agreement”) made as of July 1, 2022, 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 duly organized and existing under the laws of the State of New York, having its office at 254 South Main Street, Suite 410, New City, New York 10956 (the “Agency”) and 26 NORTH MYRTLE, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of New York (the “Company”), having an office at 13 Vincent Road, Spring Valley, New York 10977.

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 Company for a “project” within the meaning of the Act (the “Project”) within the territorial boundaries of the County of Rockland and located on that certain lot, piece or parcel of land generally known as and by the street address 22, 24 and 26 North Myrtle Avenue, Spring Valley, New York 10977 (the “Premises”) and otherwise described in Appendix A attached hereto and made a part hereof; and

WHEREAS, the Project will consist of the acquisition and development of land of approximately 1.76 acres located at 22, 24 and 26 North Myrtle Avenue in the Village of Spring Valley, New York (collectively, the “Premises”) currently consisting of three family residences and a truck parking lot, and the construction thereon of three detached four-story buildings comprising 20 two-bedroom, 30 three-bedroom and 30 four-bedroom apartments, of which approximately 15% of the apartments will be affordable housing, and acquiring equipment and furnishings to be installed therein (the “Project”); and

WHEREAS, to facilitate the Project, the Agency and the Company have agreed to consider entering into a “straight-lease transaction” within the meaning of the Act pursuant to which the Company, as lessor, will lease the Premises to the Agency, as lessee, and the Agency will appoint the Company as agent for the Agency for purposes of developing the Project, and the Agency, as lessor, will sublease the Premises back to the Company, as lessee, and, in furtherance of such purposes, on April 26, 2022, the Agency adopted a resolution (the “Inducement Resolution”) authorizing the Company to proceed with the Project; and

WHEREAS, on May 6, 2022, the Agency published a notice of public hearing for the Project in *The Journal News*, and held such public hearing on May 17, 2022 at the Town of Ramapo Town Hall; and

WHEREAS, on May 19, 2022, the Agency adopted a resolution (the “Authorizing Resolution”) authorizing the undertaking of the Project, the acquisition of a leasehold estate in the Premises by the Agency and the lease of the Premises by the Agency to the Company; and

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

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

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

WHEREAS, the Agency constitutes a corporate governmental agency constituting a body corporate and politic and a public benefit corporation under the laws of the State of New York, and, therefore, in the exercise of its governmental functions, including the issuance of its bonds or notes, it is exempt from the imposition of any sales and use tax. As an exempt governmental entity, the Agency has not been issued an exempt organization identification number nor is one required.

WHEREAS, the Agency is willing to confer the benefits of the Sales Tax Exemption on the Company only in accordance with the terms and provisions of this Sales Tax Exemption Agreement.

NOW, THEREFORE, in consideration of the foregoing, and the actions to be taken by the Agency and the Company with respect to the Project, the Agency and the Company agree as follows:

ARTICLE I  
DEFINITIONS

“Additional Agent” means any Agent other than the Company.

“Agent” means the Company and any Additional Agent appointed pursuant to and in accordance with Section 2.2 of this Sales Tax Exemption Agreement.

“Agent Termination Date” has the meaning set forth in Section 5.1.

“Approved Sublease or Operating Agreement” means any lease or operating agreement entered into between the Company and another related or unrelated entity making all or a portion of the Project Premises available to such entity for purposes for which the Project was approved, provided such lease or operating agreement has been approved by the Agency.

“Eligible Items” means the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Company and any Additional Agent shall be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Project;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more and to be installed in or exclusively used in the Project;
- (iii) with respect to the eligible items identified in clause (ii) of this definition: purchases of freight, installation, maintenance, and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Project (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed);
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Project;
- (vi) certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam); and
- (vii) motor vehicle or tangible personal property installed in a qualifying motor vehicle, provided that such motor vehicle is garaged at the Project and is used



exclusively for delivery of materials or products to and from the Project and has been identified by the Company in the application for financial assistance and related materials and approved by the Agency.

“Expiration Date” means March 31, 2024 or the date of issuance of a temporary certificate of occupancy for the Project, if earlier.

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

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

“Form ST-340” means NYSDTF Form ST-340 ‘Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority’ or such additional or substitute form as is adopted by NYSDTF to report Sales Tax Savings with respect to industrial development agency transactions.

“Ineligible Items” means the following items of personal property and services with respect to which the Company and any Additional Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) motor vehicles or tangible personal property installed in qualifying motor vehicles, other than those permitted by clause (vii) of the definition of ‘Eligible Items’;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed;
- (ix) replacement of parts that contain materials or substances that are consumed in the operation of such property where such parts must be replaced whenever the substance is consumed; and
- (x) inventory or items used in the trade or business.

“Lease Agreement” means the Lease Agreement, dated as of July 1, 2022, between the Agency as lessor and the Company as lessee, relating to the lease of the Premises.

“Maximum Sales Tax Savings Amount” means the aggregate maximum dollar amount of Sales Tax Savings that the Company and all Agents acting on behalf the Company are permitted to receive under this Agreement, which shall equal \$921,250.

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

“Operator” means any entity other than the Company that is leasing or operating all or any portion of the Premises in accordance with an Approved Sublease or Operating Agreement.

“Sales and Use Taxes” means County and State sales and compensating use taxes and fees imposed pursuant to Article 28 or 28-A of the New York State Tax Law, as the same may be amended from time to time.

“Sales Tax Agent Authorization Letter” is any letter executed by the Agency to appoint an agent (a form of which is attached as Exhibit A) pursuant to this Sales Tax Exemption Agreement.

“Sales Tax Exemption” means an exemption from Sales and Use Taxes resulting from the Agency’s participation in the Project.

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

ARTICLE II  
AGENTS OF THE AGENCY

Section 2.1 Authorization of Company as Agent of the Agency. The Agency hereby authorizes the Company to act as its agent in connection with the completion of the Project. Such appointment of the Company as agent is intended to qualify the Company as agent of the Agency within the meaning of the Act solely for purposes of qualifying for available sales and compensating use tax exemptions for purchases of leases of Eligible Items to be used in completing the Project. In connection with such authorization, the Agency agrees to file a completed Form ST- 60 with the New York State Tax Department identifying the Company as an agent of the IDA with respect to the Project. The Company and any Additional Agent appointed pursuant to this Sales Tax Exemption Agreement are referred to herein as Agents.

Section 2.2 Procedure for Appointing Additional Agents.

(A) Company Request for Appointment of Additional Agents. The Company may request the Agency to designate an Operator, a sublessee, a contractor, a subcontractor or other entity purchasing or leasing Eligible Items to be used in completing the Project as an additional agent of the Agency in connection with the completion of the Project. Any such request shall be made in writing by the Company to the Agency, and such writing must identify: (i) the name of the entity proposed to be designated an additional agent, (ii) the scope of work that such entity will be performing with respect to the Project, (iii) the nature of the items for which such entity will be responsible for acquiring and claiming Tax Exemptions and (iv) the maximum amount of Sales Tax Exemptions that may be claimed by such entity.

(B) Right of Agency to Appoint Additional Agents. The Agency shall have the right but not the obligation to appoint such entities as may be requested by the Company to be so appointed pursuant to Section 2.2(A) as an agent of the Agency with respect to the Project. Prior to any such appointment by the Agency, the Company shall submit a completed Form ST-60 to the Agency, together with a completed Sales Tax Agent Authorization Letter executed by the entity being proposed for agency status.

(C) Agency Approval. If the Agency approves the entity as an agent, the Agency will send a copy of the fully executed Form ST-60 and Sales Tax Agent Authorization Letter to the Company. The Company shall promptly deliver copies of such executed items to the entity that has been approved by the Agency as an agent pursuant to this Section. The Agency will undertake to file the completed Form ST-60 with the New York State Tax Department and notify the Company of such filing. Upon completion of the events described in Sections 2.2(A)-(C) with respect to an entity, such entity shall become an Additional Agent.

(D) Company Responsibility of Additional Agent Compliance. The Company shall ensure that each entity appointed as an Additional Agent complies with the terms and conditions of the Sales Tax Agent Authorization Letter and this Sales Tax Exemption Agreement. Upon the termination, expiration or cancellation of each Sales Tax Agent Authorization Letter, the Company shall retrieve and promptly surrender the same to the Agency.

ARTICLE III  
SALES TAX EXEMPTION

Section 3.1 Form ST-123.

(A) Company Responsibility. When acting as an agent of the Agency to purchase or lease Eligible Items, the Company will, and will cause each Additional Agent to, present a completed and signed Form ST-123 to each seller, vendor or lessor for each contract, agreement, lease, invoice, bill or purchase order entered into by the Company or by any Additional Agent entered into with respect to the completion of the Project.

(B) Instructions for Filling out Form ST-123. The Form ST-123 shall be completed in accordance with the instructions included with such form, and in a manner consistent with the information set forth on Form ST-60. Each seller or vendor accepting Form ST-123 must identify the Project on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency, the Company as agent of the Agency, or the Additional Agent as agent of the Agency, as applicable, was the purchaser.

Section 3.2 Limits of Use.

The Company and each Additional Agent's right to purchase and lease Eligible Items shall be subject to the following:

1. The Sales Tax Exemption shall only be utilized for Eligible Items which are purchased, leased, incorporated, completed, installed or used only by the Company at the Project Premises in connection with completion of the Project (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item to any other person or entity).
2. The Sales Tax Exemption shall not be used to benefit any person, entity or location (including any tenant or subtenant located at the Project) other than the Company without the prior written consent of the Agency.
3. The Sales Tax Exemption shall not be used for any Ineligible Item.
4. The Sales Tax Exemption obtained for any material or personalty that is acquired for and incorporated as part of the Project must be property whose title rests in the Agency and is included in the Project Premises (including improvement, furnishings and equipment) subject to the Lease Agreement.
5. The provisions set forth in Article V.

ARTICLE IV  
QUARTERLY AND ANNUAL REPORTING

Section 4.1 Reports to the Agency.

(A) Quarterly Sales Tax Exemption Report to the Agency. No later than January 15, April 15, July 15, October 15 of each year, the Company shall: (1) file with the Agency a completed quarterly sales tax registry, in the form attached hereto as Exhibit B, which accounts for all Sales Tax Savings realized by the Company and each Additional Agent during the prior quarter; and (2) deliver to the Agency either (i) a copy of any NYS Form ST-123 (or any successor form) that was filed during the previous quarter with any purchase for which a Sales Tax Exemption is claimed by any Agent, or (ii) a certificate stating that no purchases were made during the previous quarter for which Sales Tax Exemptions were claimed.

(B) Annual Sales Tax Exemption Report to the Agency. No later than January 15<sup>th</sup> of each year, the Company shall file with the Agency a completed annual sales tax registry, in the form attached hereto as Exhibit C, which accounts for all Sales Tax Savings realized by the Company and each Agent during the prior calendar year. Within ten (10) days after the Termination Date, the Company shall file with the Agency a completed annual sales tax registry which accounts for all Sales Tax Savings realized by the Company and each Agent during the period from the preceding January 1<sup>st</sup> to the Termination Date.

(C) Independent Accountant Opinion. The Agency may at its sole discretion require the Company to provide an opinion of an independent accountant to the effect that such independent accountant has audited the use by the Company and any Additional Agent of the Sales Tax Exemption for the period covered by this Sales Tax Exemption Agreement, and has audited the terms and provisions of this Sales Tax Exemption Agreement, and has further audited the certificate of the Company provided in subsection (A) of this Section and such certificate was properly prepared and accurately reflects the matters certified therein.

Section 4.2 Form ST-340 Filing Requirement. No later than February 28 of each year (or such other date as may be required by the NYSDTF), the Company shall file (in a manner consistent with regulations promulgated by the NYSDTF) a completed Form ST-340 with NYSDTF detailing the value of all the Sales Tax Savings claimed by the Company and each Additional Agent in connection with the Project. When filing a Form ST-340 pursuant to this Section, the Company shall simultaneously deliver a copy of such Form ST-340 to the Agency.

ARTICLE V  
SUSPENSION, EXPIRATION OR TERMINATION OF SALES TAX EXEMPTION;  
REIMBURSEMENT OF BENEFITS

Section 5.1 Termination of Agent Status. The appointment of the Company and any other entity as Agent under this Sales Tax Exemption Agreement and the related entitlement to Sales Tax Exemptions provided for in this Sales Tax Exemption Agreement shall cease and terminate upon the earliest of: (i) completion of the acquisition, equipping and installation of the Project; (ii) the Expiration Date; (iii) receipt by the Company of the Maximum Sales Tax Savings Amount; and (iv) the occurrence of a default by the Company of any of its obligations hereunder or under the Lease Agreement which remains uncured for thirty (30) days after written notice by the Agency of such non-performance or, if such default is not susceptible of a cure within thirty (30) days, if the Company is not proceeding with due diligence to cure such default (the "Agent Termination Date").

Section 5.2 Suspension of Benefits. The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that: (i) the Company is in default under the Lease Agreement until such default is cured in accordance with the Lease Agreement; or (ii) the Company is in default under this Sales Tax Exemption Agreement, in either case until such default is cured to the satisfaction of the Agency. The Company shall be responsible for notifying each Additional Agent of any suspension of Sales Tax Exemption authorization that may be in effect pursuant to this Section.

Section 5.3 Reimbursement of Benefits to Agency.

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

1. one hundred percent (100%) of the Sales Tax Savings if the Reimbursement Event occurs within the first four (4) years after the Commencement Date;
2. eighty percent (80%) of the Sales Tax Savings if the Reimbursement Event occurs during the 5<sup>th</sup> or 6<sup>th</sup> year after the Commencement Date;
3. sixty percent (60%) of the Sales Tax Savings if the Reimbursement Event occurs during the 7<sup>th</sup> or 8<sup>th</sup> year after the Commencement Date;
4. forty percent (40%) of the Sales Tax Savings if the Reimbursement Event occurs during the 9<sup>th</sup> year after the Commencement Date; and

5. zero percent (0%) of the Sales Tax Savings if the Reimbursement Event occurs during the 10th year or thereafter after the Commencement Date.

(B) Definition of 'Reimbursement Event'. "Reimbursement Event" shall mean any of the following events:

1. The Company 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);

2. The Company 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);

3. The Company shall have transferred all or substantially all of its employees to a location outside of the County;

4. The Company 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;

5. The Company shall have subleased all or any portion of the Project in violation of the limitations imposed by Section 9.2 of the Lease Agreement, without the prior written consent of the Agency;

6. The Company 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 Company may be merged or consolidated or to any corporation or other entity which shall be an affiliate, subsidiary, parent or successor of the Company or (ii) as permitted under Section 9.2 of the Lease Agreement; or

7. An Event of Default as defined in the Lease Agreement 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 Company 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 Company or any Affiliate.

(C) Company Notice Requirements.

1. The Company 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.

2. The Company 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.

(D) Agency Right to Waive Payments Owed by Company. The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Company under this Section.

(E) Agency Termination Fee. If a Reimbursement Event occurs, the Company shall pay to the Agency a sum equal to one percent (1%) of the Sales Tax Savings reimbursed pursuant to this Section.

(F) Requirement of Certification of Sales Tax Exemptions. Upon the occurrence of an Reimbursement Event, the Company shall deliver to the Agency, within 15 days following the date of the Reimbursement Event, a certificate of an authorized officer of the Company identifying the aggregate amount of all Sales Tax Savings received pursuant to this Sales Tax Exemption Agreement and the dates on which such Sales Tax Savings were received. If the Company fails to properly and timely deliver the certificate required by this Section, the Agency shall deem all Sales Tax Savings authorized pursuant to this Sales Tax Exemption Agreement to have been received on the date of issuance of this Sales Tax Exemption Agreement.

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

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

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



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

3. Agency Requirements. The Company is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Company or any other party) that the Agency is subject to certain requirements under the General Municipal Law, including the following:

(a) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of State Sales Tax Savings from the Company, any agent or other person or entity, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, State Sales Tax Savings from any agent, the Company or other person or entity.

(b) In accordance with General Municipal Law Section 875(3)(d), the Agency shall prepare an annual compliance report detailing its terms and conditions described in General Municipal Law Section 875(3)(a) and its activities and efforts to recover, recapture, receive, or otherwise obtain State Sales Tax Savings described in General Municipal Law Section 875(3)(b), together with such other information as the Commissioner and the New York State Commissioner of Economic Development may require. The report shall be filed with the Commissioner, the Director of the Division of the Budget of the State of New York, the New York State Commissioner of Economic Development, the New York State Comptroller, the County Legislature of the County of Rockland, and may be included with the annual financial statement required by General Municipal Law Section 859(1)(b). Such report required by this subdivision shall be filed regardless of whether the Agency is required to file such financial statement described by General Municipal Law Section 859(1)(b). The failure to file or substantially complete the report required by General Municipal Law Section 875(3)(b) shall be deemed to be the failure to file or substantially complete the statement required by such General Municipal Law Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(e).

(c) Requirements in Subsection Apply to Any State Sales Tax Recovered. The requirements set forth in this subsection shall apply to any amounts of State Sales Tax Savings that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency or the Company, any agent or other person or entity acting on behalf of the Company characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty

or liquidated or contract damages or otherwise. The requirements set forth in this subsection shall also apply to any interest or penalty that the Agency imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be State Sales and Use Taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the State.

ARTICLE VI  
INDEMNIFICATION

Section 6.1 Indemnification.

(A) General. The Company shall at all times protect and hold the Agency harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, expenses and liabilities of every kind and nature and however caused, and taxes of any kind and by whomsoever imposed, arising out of, resulting from, or in any way connected with the issuance or use of this Sales Tax Exemption Agreement or any other document or instrument delivered in connection therewith or the enforcement of any of the terms or provisions thereof or the transactions contemplated thereby; provided, however, that the indemnification set forth above shall not extend to the Agency if gross negligence or willful misconduct on the part of the Agency was the direct cause of loss, damage, injury or liability. The indemnifications set forth in this Section shall be extended, with respect to the Agency, to its members, directors, officers, employees, agents and servants and persons under its control or supervision. The indemnification set forth above shall be binding upon the Company for any and all claims, demands, expenses, liabilities and taxes set forth herein and shall survive the termination of this Sales Tax Exemption Agreement.

(B) Company Release of Agency. The Company releases the Agency from, and agrees that the Agency shall not be liable for and agrees to indemnify and hold the Agency harmless against, any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by the Agency with respect to any of the matters set forth above or at the direction of the Company with respect to any of such matters above referred to.

(C) Agent Only For Purposes of Sales Tax Exemption. The Company, any Additional Agent, and any of their affiliates are only agents of the Agency to the extent required to receive Sales Tax Exemptions. In every other manner, the Company, any Additional Agent, and any of their affiliates shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

ARTICLE VII  
MISCELLANEOUS

Section 7.1 No Agency Liability. Any lease, sublease, license, sublicense, contract, invoice, bill or purchase order entered into by the Company or Additional Agent hereunder shall be solely an obligation of the Company and not of the Agency, and the Agency shall have no liability or payment or performance obligations under any such lease, sublease, license, sublicense, contract, invoice or purchase order.

Section 7.2 No Agency Representation. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from sales taxes or use taxes under the laws of the State.

Section 7.3 Audit. Upon reasonable notice by the Agency, the Company shall, at times reasonable to the Agency and the independent accountant (i) make available all books and records of the Company, and (ii) require appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and the independent accountant as shall be necessary to indicate in reasonable detail those costs to which the Company shall have utilized this Sales Tax Exemption Agreement and the dates and amounts so utilized.

Section 7.4 Company Retention of Records. The Company shall retain copies of all contracts, agreements, invoices, bill and purchase orders for a period of not less than six years from the date thereof.

Section 7.5 Notices. All notices, certificates or other communications hereunder shall be sufficient if sent (i) by registered or certified mail, postage prepaid, (ii) by a nationally recognized overnight delivery service, charges prepaid or (iii) by hand delivery, addressed as follows:

(A) if to the Agency, at

County of Rockland Industrial Development Agency  
254 South Main Street, Suite 410  
New City, New York 10956  
Attn: Executive Director

with a copy to general counsel at:  
Bleakley Platt & Schmidt, LLP  
Brian Quinn, Esq.  
One Blue Hill Plaza, 3rd Floor  
Pearl River, New York 10965

(B) if to the Company, at

Samuel Wettenstein  
26 North Myrtle, LLC  
13 Vincent Road  
Spring Valley, New York 10977

with a copy to:

Michael L. Klein  
Hartmann Doherty Rosa Berman  
& Bulbulia LLC  
2 Executive Blvd. - Suite 300  
Suffern, New York 10901

Each party may, by like notice, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 7.6 Entire Agreement. Except for the related Project Documents (as identified in Exhibit D hereto), this Sales Tax Exemption Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and all prior negotiations and agreements are merged in this Sales Tax Exemption Agreement. This Sales Tax Exemption Agreement may not be changed, modified or discharged in whole or in part and no oral or executory agreement shall be effective to change, modify or discharge in whole or in part this Sales Tax Exemption Agreement or any obligations under this Sales Tax Exemption Agreement, unless such agreement is set forth in a written instrument executed by the Company and the Agency. No consent or approval of the Company shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Company. No consent or approval of the Agency shall be deemed to have been given or to be effective for any purposes unless such consent or approval is set forth in a written instrument executed by the Agency.

Section 7.7 Project Agreement. This Sales Tax Exemption Agreement, together with the other Project Documents, comprise the "project agreement" required by the Act.

Section 7.8 Term. The term of this Sales Tax Exemption Agreement shall expire concurrently with the expiration or earlier termination of the Lease Agreement.

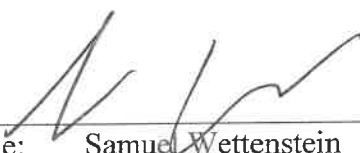
Section 7.9 Survival of Certain Provisions. Notwithstanding the expiration or earlier termination of this Sales Tax Exemption Agreement, the provisions of Article V and VI shall survive such expiration or termination until such time as all obligations of the Company thereunder have been satisfied or otherwise discharged.

The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

COUNTY OF ROCKLAND INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: Steven Porath  
Title: Executive Director

26 NORTH MYRTLE, LLC

By:   
Name: Samuel Wettenstein  
Title: Managing Member

**EXHIBIT A**

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

**SALES TAX AGENT AUTHORIZATION LETTER**

**EXPIRATION DATE:** June 30, 20\_\_\_\_ (or the date of issuance of a temporary certificate of occupancy, if earlier)

**ELIGIBLE LOCATION:**

22, 24 and 26 North Myrtle Avenue, Spring Valley, New York 10977

[date of authorization letter]

TO WHOM IT MAY CONCERN

Re: County of Rockland Industrial Development Agency  
Myrtle Gardens Housing Project  
IDA Project No. 3901-22-07A

Ladies and Gentlemen:

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

1. Pursuant to a certain Sales Tax Exemption Agreement, dated as of July 1, 2022 (the "Agreement"), between the Agency and 26 North Myrtle, LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company"), the Agency has authorized the Company to act as its agent in connection with the Project described therein located at the location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Sales Tax Exemption Agreement.

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

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Company). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the

Project and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate"** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes ("Form ST-123") for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the renovation, repair and equipping of the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Project on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or the Company, as Project operator of the Agency, was the purchaser. The Agent shall complete Form ST-123 in accordance with the instructions included with such form, and in a manner consistent with the information set forth on Form ST-60. Each seller or vendor accepting Form ST-123 must identify the Project on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agent was the purchaser.

6. The Agent agrees to comply with the terms and conditions of the Sales Tax Exemption Agreement. The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) its contract with the Company to provide services in connection with the Project, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

7. In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file on a quarterly basis with the Company (no later than January 10<sup>th</sup>, April 10<sup>th</sup>, July 10<sup>th</sup>, October 10<sup>th</sup> of each calendar year in which it has claimed sales and use tax exemptions in connection with the Project) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding quarterly period in connection with the Project and the Facility by completing and submitting to the Company the **Quarterly Sales Tax Registry** attached hereto as **Exhibit B**. If the Agent fails to comply with



the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

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

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

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

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

(c) The Agent is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Agent, the Company or any other party) that the Agency is subject to certain requirements under General Municipal Law, including the following:

(i) If the Agency recovers, recaptures, receives, or otherwise obtains, any amount of State Sales Tax Savings from the Agent, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, State Sales Tax Savings from the Agent, the Company or other person or entity.

(ii) In accordance with General Municipal Law Section 875(3)(d), the Agency shall prepare an annual compliance report detailing its terms and conditions described in General Municipal Law Section 875(3)(a) and its activities and efforts to recover, recapture, receive, or otherwise obtain State Sales Tax Savings described in General Municipal Law Section 875(3)(b), together with such other information as the Commissioner and the New York State Commissioner of Economic Development may require. The report shall be filed with the Commissioner, the Director of the Division of the Budget of The State of New York, the New York State Commissioner of Economic Development, the New York State Comptroller, the County Legislature of the County of Rockland, and may be included with the Annual financial statement required by General Municipal Law Section 859(1)(b). Such report required by this subdivision shall be filed regardless of whether the Agency is required to file such financial statement described by General Municipal Law Section 859(1)(b). The failure to file or substantially complete the report required by General Municipal Law Section 875(3)(b) shall be deemed to be the failure to file or substantially complete the statement required by such General Municipal Law Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(i).

(d) The foregoing requirements shall apply to any amounts of Sales Tax Savings that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency or the Company or other person or entity acting on behalf of the Company characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The foregoing requirements shall also apply to any interest or penalty that the Agency imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be State Sales and Use Taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the State.

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

11. Upon the occurrence of a determination by the Agency that an event described in Section 5.3(A)(1) of the Sales Tax Exemption Agreement has occurred, the Agent must promptly pay to the Agency (for forwarding to the applicable taxing jurisdictions) a return of all Sales Tax Savings taken by the Agent together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such Sales Tax Savings was availed of by the Agent.

12. Upon request by the Agency with reasonable notice to the Agent, the Agent shall make available at reasonable times to the Agency all such books, records, contracts, agreements, invoices, bills or purchase orders of the Agent, and require all appropriate officers and

employees of the Agent to respond to reasonable inquiries by the Agency as shall be necessary (y) to indicate in reasonable detail those costs for which the Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Agent under Section 10.

13. The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:

(a) 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;

(b) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(c) has been convicted of a felony in the past ten (10) years;

(d) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

(e) has received written notice of default in the payment to the County or any taxing jurisdiction within the County of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

14. Any lease, sublease, license, sublicense, contract, invoice, bill or purchase order or financing security agreement entered into using this Sales Tax Agent Authorization Letter shall be solely an obligation of the Company and not of the Agency, and the Agency shall have no liability or payment or performance obligations under any such lease, sublease, license, sublicense, contract, invoice or purchase order. The Company shall be solely liable for all obligations of the Agent, and any seller, vendor, contractor, financier or lessor shall look solely to the Company for the performance of all such obligations. The Agency, its members, officers, employees and counsel shall have no liability, including, liability relating to the payment of sales or use tax, or the payment or performance of any of the obligations under any contract, agreement, equipment lease, invoice, bill, purchase order or financing security agreement. In no event shall the Project or any contract, agreement, equipment lease, invoice, bill, purchase order or financing security agreement create any obligation or liability of the Agency beyond its interest in the Project.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

“Control” or “Controls” shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

“County” shall mean the County of Rockland.

“Entity” shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

“Governing Body” shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

“Person” shall mean an individual or any Entity.

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

16. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the “Termination Date”) that is the earlier of (i) the Expiration Date referred to above, and (ii) the expiration or termination of the Sales Tax Exemption Agreement. Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate.

The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

**COUNTY OF ROCKLAND  
INDUSTRIAL DEVELOPMENT  
AGENCY**

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

ACCEPTED AND AGREED TO BY:

\_\_\_\_\_ **[AGENT]** \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

Exhibit A

To

**SALES TAX AGENT AUTHORIZATION LETTER**

Set forth below is a description of items that are eligible for the Sales Tax Exemption

“**Eligible Items**” means the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Company and any Additional Agent shall be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Project;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more and to be installed in or exclusively used in the Project;
- (iii) with respect to the eligible items identified in clause (ii) of this definition: purchases of freight, installation, maintenance, and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Project (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed);
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Project;
- (vi) certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam); and
- (vii) motor vehicle or tangible personal property installed in a qualifying motor vehicle, provided that such motor vehicle is garaged at the Project and is used exclusively for delivery of materials or products to and from the Project and has been identified by the Company in the application for financial assistance and related materials and approved by the Agency.

“**Ineligible Items**” means the following items of personal property and services with respect to which the Company and any Additional Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Project:

- (i) motor vehicles or tangible personal property installed in qualifying motor vehicles, other than those permitted by clause (vii) of the definition of ‘Eligible Items’;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed;
- (ix) replacement of parts that contain materials or substances that are consumed in the operation of such property where such parts must be replaced whenever the substance is consumed; and
- (x) inventory or items used in the trade or business.







**EXHIBIT C**  
**Annual Sales Tax Registry**

Please Complete: **REPORTED PERIOD: ANNUAL PERIOD FROM JANUARY 1, 202\_\_ to DECEMBER 31, 202\_\_**

Description of Item (incl. Serial #, if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
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QUARTERLY PERIOD [FROM JANUARY 1, [ ] to MARCH 31, [ ]]						
TOTAL SALES TAX SAVINGS REALIZED DURING THE QUARTERLY PERIOD FROM [JANUARY 1, [ ] to MARCH 31, [ ]]:						

QUARTERLY PERIOD FROM [APRIL 1, [ ] to JUNE 30, [ ]]						
TOTAL SALES TAX SAVINGS REALIZED DURING THE QUARTERLY PERIOD FROM [APRIL 1, [ ] to JUNE 30, [ ]]:						

QUARTERLY PERIOD FROM [JULY 1, [ ] to SEPTEMBER 30, [ ]]						
TOTAL SALES TAX SAVINGS REALIZED DURING THE QUARTERLY PERIOD FROM [JULY 1, [ ] to SEPTEMBER 30, [ ]]:						

QUARTERLY PERIOD FROM [OCTOBER 1, [ ] to DECEMBER 31, [ ]]						
TOTAL SALES TAX SAVINGS REALIZED DURING THE QUARTERLY PERIOD FROM [OCTOBER 1, [ ] to DECEMBER 31, [ ]:]						

TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:	
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Certification: I, the undersigned, an authorized officer or principal owner of the Company, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the Company below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Company, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Company, by the County of Rockland Industrial Development Agency.

**Company Name:** 26 NORTH MYRTLE, LLC

**Signature By:** \_\_\_\_\_

**Name (print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

EXHIBIT D  
PROJECT DOCUMENTS

Company Lease Agreement

Lease Agreement

Sales Tax Exemption Agreement

PILOT Agreement

PILOT Escrow Agreement

PILOT Mortgage

Environmental Indemnity Agreement

Guaranty

APPENDIX E  
PROJECT AGREEMENTS

Company Lease

Lease Agreement

Sales Tax Exemption Agreement

PILOT Agreement

PILOT Mortgage

Environmental Indemnity Agreement

Operating Leases

Guaranty

**GUARANTY AGREEMENT**

From

SAMUEL WETTENSTEIN, as Guarantor

To

COUNTY OF ROCKLAND INDUSTRIAL DEVELOPMENT AGENCY

Dated as of July 1, 2022

RELATING TO THE FOLLOWING PROJECT

Myrtle Gardens Housing Project

IDA PROJECT NUMBER: 3901-22-07A

## GUARANTY AGREEMENT

This Guaranty Agreement made and entered into as of the date set forth on the cover page hereof (this “Guaranty”) (capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Lease Agreement referred to herein), from Guarantor indicated on the cover page hereof, to the County of Rockland Industrial Development Agency (the “Agency”), a public benefit corporation organized and existing under the laws of the State of New York, having its principal office at 254 South Main Street, Suite 410, New City, New York 10956.

### 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 26 North Myrtle, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of New York (the “Company”), for a “project” within the meaning of the Act within the territorial boundaries of the County of Rockland and located on that certain lot, piece or parcel of land generally known as and by the street address 22, 24 and 26 North Myrtle Avenue, Spring Valley, NY 10977 (collectively, the “Premises”) and otherwise described in Appendix A attached hereto and made a part hereof; and

WHEREAS, the Project will consist of the acquisition and development of land of approximately 1.76 acres located at 22, 24 and 26 North Myrtle Avenue in the Village of Spring Valley, New York currently consisting of three family residences and a truck parking lot, and the construction thereon of three detached four-story buildings comprising 20 two-bedroom, 30 three-bedroom and 30 four-bedroom apartments, of which approximately 15% of the apartments will be affordable housing, and acquiring equipment and furnishings to be installed therein (the “Project”); and

WHEREAS, to facilitate the Project, the Agency and the Company have agreed to consider entering into a “straight-lease transaction” within the meaning of the Act pursuant to

which the Company, as lessor, will lease the Premises to the Agency, as lessee, and the Agency will appoint the Company as agent for the Agency for purposes of developing the Project, and the Agency, as lessor, will sublease the Premises back to the Company, as lessee, and, in furtherance of such purposes, on August 26, 2022, the Agency adopted a resolution (the “Inducement Resolution”) authorizing the Company to proceed with the Project; and

WHEREAS, on May 6, 2022, the Agency published a notice of public hearing for the Project in *The Journal News*, and held such public hearing on May 17, 2022 at the Town of Ramapo Town Hall; and

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

WHEREAS, on May 19, 2022, the Agency adopted a resolution (the “Authorizing Resolution”) authorizing the undertaking of the Project, the acquisition of a leasehold estate in the Premises by the Agency and the lease of the Premises by the Agency to the Lessee; and

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

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

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

WHEREAS, the Guarantor is desirous that the Agency enter into the Lease Agreement with the Company and provide financial assistance to the Company as a “straight-lease transaction” within the meaning of the Act and is willing to enter into this Guaranty Agreement (in its capacity as Guarantor under this Guaranty Agreement, the “Guarantor”) in order to guarantee to the Agency all payments, obligations, covenants and agreements of the Company under the Project Documents as defined herein, and thereby induce the Agency to take such actions.

NOW, THEREFORE, in consideration of the premises, and for other good and valuable consideration received, the Guarantor does hereby, subject to the terms hereof, represent, warrant, covenant and agree, with the Agency, as follows:



ARTICLE I  
**DEFINITIONS AND REPRESENTATIONS AND WARRANTIES OF GUARANTOR**

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

“Environmental Indemnity Agreement” shall mean the Environmental Indemnity Agreement, of even date herewith, from the Company and the Guarantor to the Agency, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

“Event of Default” shall have the meaning assigned to that term in Section 2.4 hereof.

“Guaranty” shall mean this Guaranty Agreement from the Guarantor to the Agency, and includes any and all amendments hereof and supplements hereto.

“Lease Agreement” shall mean the Lease Agreement of even date herewith between the Agency and the Company, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

“Person” shall have the meaning assigned to that term in the Lease Agreement.

“PILOT Agreement” shall mean a Payment in Lieu of Taxes Agreement relating to the Premises, to be dated as set forth therein, among the Agency, the Company, the Town, the School District and the Assessor, as the same may be amended from time to time.

“PILOT Mortgage” shall mean the PILOT Mortgage, to be dated as set forth therein, from the Company to the Agency, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

“Prohibited Person” shall have the meaning assigned to that term in the Lease Agreement.

“Project Documents” shall mean each of the following: (i) the Lease Agreement, (ii) the PILOT Agreement, (iii) the PILOT Mortgage, (iv) the Sales Tax Exemption Agreement, and (v) the Environmental Indemnity Agreement.

“Sales Tax Agreement” shall mean the Sales Tax Exemption Agreement, of even date herewith, between the Agency and the Company, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith.

“State” shall mean the State of New York.

Section 1.2. Representations and Warranties. The Guarantor makes the following representations and warranties:

(a) The Guarantor is an individual residing at 13 Vincent Road, Spring Valley, New York 10977, has the power and authority to own its property and assets, and to execute, deliver and perform this Guaranty. The Guarantor is duly qualified to do business in every jurisdiction in which qualification is necessary.

(b) The Guarantor does hereby represent and warrant that it is subject to service of process in the State of New York, has power and capacity to enter into and perform this Guaranty and to own its property and assets, and has duly executed and delivered this Guaranty, and neither this Guaranty, the execution, delivery and performance hereof, the performance of the agreements herein contained nor the consummation of the transactions herein contemplated will violate any provision of law, any order of any court or agency of government or any agreement, indenture or other instrument to which the Guarantor is a party or by which the Guarantor 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 any other requirement of law.

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

(d) The Guarantor does hereby further represent, warrant and covenant that it is not nor will it become a Prohibited Person.

(e) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor, to the extent set forth herein, enforceable against the Guarantor in accordance with its terms, except as such enforceability may be limited by bankruptcy, moratorium or insolvency or other law affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(f) The assumption by the Guarantor of its obligations hereunder will result in a direct financial benefit to the Guarantor.

## ARTICLE II AGREEMENT TO GUARANTEE

Section 2.1. Obligations Guaranteed. The Guarantor hereby unconditionally guarantees to the Agency (A) the full and prompt payment of an amount equal to each and all of the payment obligations of the Company when and as the same shall become due, required to be paid by the Company under the terms of the Project Documents; and (B) the full and prompt performance and observance by the Company of all of the obligations, covenants and agreements required to be performed and observed by the Company under the terms of the Project Documents (collectively the "Guaranteed Obligations").

The Guarantor agrees that this Guaranty constitutes an absolute, unconditional, present and continuing guarantee of performance and payment and not of collection, and waives any right to require that any resort be had by the Agency to the Agency's rights against any other Person, or to any other right or remedy available to the Agency by contract, applicable law or otherwise. The obligations of the Guarantor under this Guaranty are direct, unconditional and completely independent of the obligations of any other Person, and a separate cause of action or separate causes of action may be brought and prosecuted against the Guarantor without the necessity of joining any other party or previously proceeding with or exhausting any other remedy against any other Person who might have become liable for the obligations guaranteed hereunder.

Section 2.2. Obligations Unconditional. The obligations of the Guarantor under this Guaranty shall be absolute and unconditional and shall remain in full force and effect until all the Guaranteed Obligations shall have been paid in full or provided for, and all costs, Agency's fees and expenses, if any, referred to in Section 2.5 hereof shall have been paid in full, and, to the extent permitted by law, such obligations shall not be affected, modified, released, or impaired by any state of facts or the happening from time to time of any event, including, without limitation, any of the following, whether or not with notice to, or the consent of, the Guarantor:

- (a) the invalidity, irregularity, illegality or unenforceability of, or any defect in, any of the Project Documents or any collateral security for any thereof;
- (b) any claim of immunity on behalf of the Agency or any other obligor or with respect to any property of the Agency or any other obligor;
- (c) the compromise, settlement, release, extension, indulgence, change, modification or termination of any or all of the obligations, covenants or agreements of any obligor under any of the Project Documents;
- (d) the failure to give notice to any obligor under any of the Project Documents of the occurrence of any default or Event of Default under the terms and provisions of any of the Project Documents (except as may be specifically provided in any such Project Document);
- (e) the actual or purported assignment, subleasing or mortgaging of all or any part of the interest of the Agency or the Guarantor in the Lease Agreement or any failure of title with respect to any of the Agency's or the Guarantor's interest in the Project or the release of the Project or any part thereof under the Lease Agreement;
- (f) the actual or purported assignment, subleasing or mortgaging of all or any part of the interest of the Guarantor in the Lease Agreement;
- (g) the actual or purported assignment of any of the obligations, covenants and agreements contained in this Guaranty Agreement or in any other Project Document;

(h) the waiver of the payment, performance or observance by the Agency or the Guarantor or any other obligor under any of the Project Documents of any of the obligations, conditions, covenants or agreements of any or all of them contained in any such Project Document;

(i) the receipt and acceptance by the Agency of notes, checks or other instruments for the payment of money made by the Guarantor or any other obligor under any of the Project Documents and any extensions and renewals thereof;

(j) the modification or amendment (whether material or otherwise) of any duty, obligation, covenant or agreement set forth in any of the Project Documents, provided the same does not materially increase the Guaranteed Obligations hereunder;

(k) the taking of or the omission to take any action referred to in any of the Project Documents;

(l) any failure, omission, delay or lack on the part of the Agency or any other Person to enforce, assert or exercise any right, power or remedy conferred on the Agency or such other Person in this Guaranty Agreement or in any of the Project Documents or any other act or acts on the part of the Agency;

(m) the voluntary or involuntary liquidation, dissolution, merger, consolidation, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Guarantor or the Agency or any other obligor under any of the Project Documents or any or all of the assets of any of them, or any allegation or contest of the validity of this Guaranty Agreement or any other Project Document in any such proceeding; it is specifically understood, consented and agreed to that this Guaranty Agreement shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if such proceedings had not been instituted; and it is the intent and purpose of this Guaranty Agreement that the Guarantor shall and does hereby waive all rights and benefits which might accrue to the Guarantor by reason of any such proceedings to the extent permitted by law;

(n) to the extent permitted by law, the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty Agreement by operation of law;

(o) the default or failure of the Guarantor fully to perform any of its obligations set forth in this Guaranty Agreement;

(p) any release or impairment of the security pledged under any other Project Document;

(q) the release, substitution or replacement in accordance with the terms of the Lease Agreement of any property subject thereto or any redelivery, repossession, surrender or destruction of any such property, in whole or in part;

(r) any limitation on the liability or obligations of the Agency or the Guarantor or any other obligor under any of the Project Documents, or any termination, cancellation, frustration, invalidity or unenforceability, in whole or in part, of the Lease Agreement or the Indenture or any other Project Document or any term thereof;

(s) any failure of the Agency to mitigate damages resulting from any default by any obligor under any of the Project Documents;

(t) the merger or consolidation of any obligor under any of the Project Documents into or with any other Person, or any sale, lease or transfer of any or all of the assets of any such obligor to any Person;

(u) any other circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or a guarantor (other than the defense of payment of the Guaranteed Obligations hereunder); or

(v) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

Section 2.3. No Waiver or Set-Off. No act of commission or omission of any kind or at any time upon the part of the Agency or its successors or assigns, in respect of any matter whatsoever shall in any way impair the rights of the Agency to enforce any right, power or benefit under this Guaranty and no set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature (other than performance by the Guarantor of its obligations hereunder), which the Guarantor or any obligor under any of the Project Documents has or may have against the Agency or any assignee or successor thereof shall be available hereunder to the Guarantor.

Section 2.4. Events of Default. An "Event of Default" shall exist if any of the following occurs and is continuing:

(a) the Guarantor defaults in the payment or performance of any Guaranteed Obligation for which the Guarantor is obligated and such default continues for more than three (3) days after written notice thereof (which shall be deemed given upon receipt of registered or certified mailing or facsimile transmission when receipt is confirmed orally or in writing) has been given to the Guarantor by the Agency;

(b) the Guarantor fails to observe and perform any covenant, condition or agreement on its part to be performed under Section 2.4(a) above of this Guaranty Agreement and such failure continues for a period of thirty (30) days after receipt by the Guarantor of written notice (which shall be deemed given upon receipt of registered or certified mailing or facsimile transmission when receipt is confirmed orally or in writing) specifying the nature of such default or failure from the Agency;

(c) the Guarantor fails to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 2.4(a) or (b) above) and (i) continuance of such failure for a period of thirty (30) days after receipt by the Guarantor of written notice (which shall be deemed given upon receipt of registered or certified mailing or facsimile transmission when receipt is confirmed orally or in writing) specifying the nature of such default or failure from the Agency, or (ii) if by reason of the nature of such default or failure the same can be remedied, but not within the said thirty (30) days, the Guarantor 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 or fails to cure the same within sixty (60) days of receipt of said notice;

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

(e) a proceeding or case shall be commenced, without the application or consent of the Guarantor 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 Guarantor or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of sixty (60) days; or any order for relief against the Guarantor shall be entered in an involuntary case under the federal Bankruptcy Code; the terms "dissolution" or "liquidation" of the Guarantor as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 of the Lease Agreement or Section 2.6 hereof;

(f) any representation or warranty made by the Guarantor (i) in the application and related materials submitted to the Agency for approval of the Project or the transactions contemplated by this Guaranty, or (ii) herein or by the Guarantor in any other Project Document, or (iii) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall prove to be false, misleading or incorrect in any material respect as of the date made; or

(g) the Guarantor shall become a Prohibited Person.

Upon an Event of Default the Agency shall have the right to proceed first and directly against the Guarantor under this Guaranty Agreement without proceeding against or exhausting any other remedies which it may have and without resorting to any security held by the Agency or by any obligor under any of the Project Documents.

The Agency shall be under no obligation to institute any suit or to take any remedial action under this Guaranty Agreement, or to enter any appearance or in any way defend in any suit in which it may be made a defendant, or to take any steps in the enforcement of any rights and powers under this Guaranty Agreement, until it shall be indemnified to its satisfaction against any and all liability (including, without limitation, reasonable compensation for services, costs and expenses, outlays, and counsel fees and other disbursements) not due to its gross negligence or willful misconduct.

Section 2.5. Waiver of Notice; Expenses. The Guarantor hereby expressly waives presentment, demand, protest and notice of non-payment and further waives notice from the Agency of its acceptance and reliance on this Guaranty or of any action taken or omitted in reliance hereon, and of any default by the Guarantor in the Guaranteed Obligations. The Guarantor further expressly waives diligence, presentment, demand for payment, protest, and requirement that any right or power be exhausted or any action be taken against the Company. The Guarantor agrees to pay all costs, fees and expenses (including all reasonable attorneys' fees and disbursements) which may be incurred by the Agency in enforcing or attempting to enforce the provisions of this Guaranty following any default on the part of the Guarantor hereunder, whether the same shall be enforced by suit or otherwise.

Section 2.6. Benefit and Enforcement. This Guaranty is entered into by the Guarantor for the benefit of the Agency, and the Agency is entitled to all rights and remedies as may exist at law or in equity or otherwise in the enforcement of this Guaranty.

Section 2.7. Survival of Guarantee Obligation. If the Agency receives any payment on account of the Guaranteed Obligations, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be transferred or repaid to a trustee, receiver, assignee for the benefit of creditors or any other party under any bankruptcy act or code, state or federal law or common law or equitable doctrine or for any other reason whatsoever, then to the extent of any sum not finally retained by the Agency, this Guaranty shall remain in full force and effect until the Guarantor shall have made payment to the Agency of such sum, which payment shall be due on demand. If the Agency chooses to contest any such matter, the Guarantor agrees to indemnify and hold harmless the Agency with respect to all costs (including court costs and reasonable attorneys' fees) of such litigation.

Section 2.8. No Subrogation. No payment hereunder by the Guarantor shall entitle the Guarantor by subrogation to the rights of the Agency to any payment by any other obligor or out of the property of any other obligor, except after payment and performance in full of the Guaranteed Obligations.

ARTICLE III  
**NOTICE OF SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS**

Section 3.1. Service of Process. The Guarantor represents that it is subject to service of process in the State of New York and covenants that it will remain so subject so long as any of the Guaranteed Obligations remain unpaid or unsatisfied.

Section 3.2. Notices. Any notice required to be sent to the Guarantor, or any notice including process, pleadings or other papers served upon any of the foregoing agents shall at the same time, be sent by registered or certified mail, postage prepaid, or overnight delivery, to the Guarantor, at the following address:

Samuel Wettstein  
13 Vincent Road  
Spring Valley, New York 10977  
Tel: (646) 210-2167

or to such other address as may be furnished by the Guarantor to the Agency in writing.

Any notice to the Agency shall be sent to the following address:

County of Rockland Industrial Development Agency  
254 South Main Street, Suite 410  
New City, New York 10956  
Attn: Executive Director  
Tel: (914) 977-3900

or to such other address as may be furnished by the Agency to the Guarantor in writing.

Notices will be deemed to have been received two (2) Business Days after the mailing thereof.

Section 3.3. Consent to Jurisdiction. The Guarantor irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Guaranty may be brought in the courts of record of the State of New York in Rockland County or the courts of the United States, Southern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as any of the Guaranteed Obligations shall be unpaid in whole, or in part, the Guarantor's agents designated in Section 3.1 hereof shall accept and acknowledge on the Guarantor's behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Guarantor agrees and consents that any such service of process upon such agents and written notice of such service to the Guarantor in the manner set forth in Section 3.2 hereof shall be taken and held to be valid personal service upon the Guarantor whether or not the Guarantor shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same force and validity as if service were made upon the Guarantor according to the laws governing the validity and requirements of such service in the State of New York, and waive all claim of error by reason of any such



service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Guarantor or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Guarantor.

Section 3.4. Waiver of Trial by Jury. The Guarantor does hereby expressly waive all rights to a trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Guaranty or any matters whatsoever arising out of or in any way connected with this Guaranty.

#### ARTICLE IV MISCELLANEOUS

Section 4.1. No Alteration Without Consent. No amendment, change, modification, alteration or termination of the provisions of the Guaranteed Obligations shall be made which would in any way increase any or all of the Guarantor's obligations under this Guaranty without obtaining the prior written consent of the Guarantor. No acts or omissions recited in Section 2.2 hereof shall constitute any such amendment, change, modification, alteration or termination within the meaning of this Section.

Section 4.2. Guaranty to Become Effective. The obligations of the Guarantor hereunder shall arise absolutely and unconditionally with respect to a Project Document when such Project Document shall have been executed and delivered by the Agency and the Company.

Section 4.3. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default, default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Guaranty, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Guaranty or otherwise required by law. In the event any provision contained in this Guaranty should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the parties thereunto duly authorized by this Guaranty.

Section 4.4. Entire Agreement; Counterparts. This Guaranty constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, other than the Lease Agreement and any other Project Document, between the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

Section 4.5. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or Sections in this Guaranty contained, shall not affect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

Section 4.6. Release. Upon the payment and satisfaction of all Guaranteed Obligations and, if applicable, upon payment of the costs, fees and expenses required by Section 2.5, the Agency shall release in writing the Guarantor from its obligations hereunder (except as provided in Section 2.8 hereof and except to the extent that any of the Guaranteed Obligations are stated to survive the termination of the Lease Agreement).

Section 4.7. Applicable Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York.


Section 4.8. Successors and Assigns. This Guaranty shall be binding upon, inure to the benefit of and be enforceable by the parties and its respective successors and assigns.

Section 4.9. Right of Set-Off. The Guarantor hereby grants to the Agency a lien and right to set-off for all of its liabilities and obligations under this Guaranty against all the deposits, credits and property of the Guarantor and any collateral of the Guarantor now or hereafter in the possession, under the control or in transit to the Agency, and agrees that the same may be applied against such liabilities and obligations then due, at any time after an Event of Default has occurred under this Guaranty.

Section 4.10. Date of Guaranty for Reference Purposes Only. The date of this Guaranty shall be for reference purposes only and shall not be construed to imply that this Guaranty was executed on the date first above written. This Guaranty was executed and delivered on the Commencement Date.


IN WITNESS WHEREOF, the Guarantor has duly authorized the execution of this Guaranty as of the date first above written.

SAMUEL WETTENSTEIN, as Guarantor

By:  \_\_\_\_\_

Accepted this 28<sup>th</sup> day of July, 2022

by the **COUNTY OF ROCKLAND**  
**INDUSTRIAL DEVELOPMENT AGENCY**

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

[Signature page of Guaranty Agreement]

APPENDIX A

Description of the Premises

Schedule A Description - continued

TAX LOTS 57.30-2-12, 13, 14  
26 N. MYRTLE AVE

ALL That certain plot, piece or parcel of land, with the building and improvements Thereon erected, situate, lying, and being in the Town of Ramapo, County of Rockland and State of New York being a portion of the property obtained by Peral with a deed reference to the description more particularly bounded and described as follows:

BEGINNING at a point on the Easterly line of North Myrtle Avenue, said point being the Southwesterly corner of tax lot 57.30-2-11 and the Northwesterly corner of the lot herein described;

RUNNING THENCE along the Southerly line of tax lots 57.30-2-11 & 57.30-2-20 the following courses and distances:

1. S79°04'32"E, a distance of 232.50'
2. S78°34'01"E, a distance of 131.36' To the Westerly line of tax lot 57.31-1-7;

THENCE along the Westerly line of tax lots 57.31-1-7, 19, 18 & 17 the following courses and distances:

1. S20°05'05"W, a distance of 90.89'
  2. S22°08'29"W, a distance of 138.00'
- To the Northerly line of tax lot 57.31-1-16;

THENCE along the Northerly line of tax lots 57.31-1-16, 57.30-2-18 & 16 the following courses and distances:

1. N69°34'31"W, a distance of 125.03'
  2. S25°40'12"W, a distance of 18.51'
  3. N69°28'45"W, a distance of 237.42'
- To the Easterly line of North Myrtle Avenue;

THENCE along the Easterly line of North Myrtle Avenue the following courses and distances:

1. N24°16'01"E, a distance of 31.63'
2. N22°55'21 "E, a distance of 87.75'
3. N22°42'15"E, a distance of 68.78'

To the POINT OF BEGINNING containing 76,465.82 Sq. Ft. More or less;

## Schedule A Description

Title Number NYAA-15472

Page 1

### SHERWOOD STREET

ALL That certain plot, piece or parcel of land, with the building and improvements Thereon erected, situate, lying, and being in the Town of Ramapo, County of Rockland and State of New York being a portion of the property obtained by Peral with a deed reference to the description more particularly bounded and described as follows:

BEGINNING at a point on the intersection of the Easterly line of Myrtle Avenue and the Northerly line of Sherwood Street, said point being the southwesterly corner of tax lot 57.30-2-14 and the Northwesterly corner of the plot, piece or parcel of land herein described;

RUNNING THENCE along the Southerly line of tax lot 57.30-2-14 S68°08'35"E, a distance of 236.99' to the Westerly line of tax lot 57.30-2-12;

THENCE along the Westerly line of tax lots 57.30-2-12 & 57.31-1-16 the following courses and distances:

1. S19°51'16"W, a distance of 7.61'
2. S25°40'12"W, a distance of 18.51' To the Northerly line of tax lot 57.30-2-18;

THENCE along the Northerly line of tax lots 57.30-2-18 & 57.30-2-15 the following courses and distances:

1. N69°28'45"W, a distance of 119.53'
2. N69°28'45"W, a distance of 117.89' To the Easterly line of Myrtle Avenue;

THENCE along the Easterly line of Myrtle Avenue N24°16'00"E, a distance of 31.63' to the POINT OF BEGINNING containing 6,843.34 Sq. Ft. More or less;

SUBJECT TO ANY RIGHT OF WAYS OR EASEMENTS ON RECORD

APPENDIX F  
GUARANTY AGREEMENT

## APPENDIX G

### LABOR POLICIES

### LABOR POLICIES

#### APPENDIX G-1

#### **Local Construction Labor Policy**

The Agency (the “Agency”) has adopted a Local Construction Labor Policy, effective April 1, 2022, as follows:

Project applicants (the “Company”), as a condition to receiving Financial Assistance (including a sales tax exemption, mortgage recording tax exemption, real property tax abatement, and/or bond proceeds) from the County of Rockland Industrial Development Agency (“Agency”), will be required to utilize qualified Local Labor, as defined below, for all projects involving the construction, expansion, equipping, demolition and/or remediation of new, existing, expanded or renovated facilities (collectively, the “Project Site”).

#### **Local Labor Defined**

Local Labor is defined as individuals residing in the following Counties: Rockland, Orange, Westchester, Putnam, Ulster, Sullivan, and Dutchess (collectively, the “Local Labor Area”).

#### **Local Labor Requirement**

At least 80% of the total number of employees working at the Project Site, excluding construction project management, of the general contractor, subcontractor, or subcontractor to a subcontractor (collectively, the “Workers”) working on the Project Site must reside within the Local Labor Area. Companies do not have to be local companies as defined herein but must employ local Workers residing within the Local Labor Area to qualify under the 80% Local Labor criteria.

It is understood that at certain times, Workers residing within the Local Labor Area may not be available with respect to a Project Site. Under this condition, the Company is required to contact the Agency to request a waiver of the Local Labor Requirement (the “Local Labor Waiver Request”) based on the following circumstances: (i) warranty issues related to installation of specialized equipment or materials whereby the manufacturer requires installation by only approved installers; (ii) specialized construction for which qualified Local Labor Area Workers are not available; (iii) documented lack of Workers meeting the Local Labor Area requirement; or (iv) cost differentials in bids whereby use of Local Labor significantly increases the construction cost of the project. Prior to the granting of said waiver, the lowest bidding contractor which bid said construction project using Local Labor would have the right of first refusal to bid and match



the lowest bid as a remedy to ensure compliance with this policy. Comprehensive documentation and justification will be required including documented evidence and verification by Agency staff or agents that the “right of first refusal” remedy has been affected unsuccessfully.

The Agency may require an outside consultant of its choosing be hired by the project to assist in reviewing any waiver requests that may be submitted. The Agency shall evaluate the Local Labor Waiver Request and make its determination related thereto based upon the supporting documentation received with such waiver request.

### **Local Labor Reporting Requirement**

Companies authorized to receive Financial Assistance from the Agency will be required to file or cause to be filed a Local Labor Utilization Report (the “Report”) on such form as made available by the Agency, and as directed by the Agency, which will identify, for each Worker, the city, town, or village and associated zip code that each such Worker is domiciled in. The Report shall be submitted to the Agency, or its designated agents as follows: (i) immediately prior to commencement of construction activities; and (ii) on or by the next following quarterly dates of January 1, April 1, July 1, and October 1 and each quarterly date thereafter through the construction completion date.

The Agency, or its designated agents, shall have the right, during normal business hours, to examine and copy the applicable books and records of the Company and to perform spot checks of all Workers at the Project Site to verify compliance with the Local Labor Requirement throughout the construction period.

### **Enforcement**

If Agency staff determines that: (i) the Local Labor Requirement is not being met; or (ii) upon use of its reasonable discretion, discovers or becomes aware of a compliance issue related to the Local Labor Requirement, then written notice delivered personally or by reliable overnight delivery service (i.e. Federal Express) of said Local Labor Requirement violation (the “Notice of Violation”) shall be provided to the Company.

The Company shall have 10 business days thereafter to either:

- (i) provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement; or
- (ii) submit the Local Labor Waiver Request as described above; or
- (iii) confirm in writing its inability to meet the Local Labor Requirement.

If the Company does not respond to the Agency’s Notice of Violation within ten (10) business days thereafter, or if the Company confirms its inability to meet the Local Labor Requirement, then the Agency shall immediately terminate any and all Financial Assistance being provided to the project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the project. If a Local Labor Waiver Request is submitted and the Agency declines to issue the requested waiver, then the Company shall have 10 business days after receipt

of the notice of the waiver request denial to provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement. If the Agency does not receive such confirmation, the Agency shall then immediately terminate any and all Financial Assistance being provided to the project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the project.

**Escrow**

The Agency, in the review or enforcement of its Labor Policy, may refer such matter to such consultants/professionals as it deems necessary to enable it to review or enforce the Labor Policy. The fees for such services shall be paid for by the Company.

At the time of submission of any application, the Agency may require the establishment of an escrow account from which withdrawals shall be made to reimburse the Agency for the costs of professional review services in connection with the Labor Policy.

The sum deposited shall be held by the Agency in a separate account for the benefit of the Company and will be disbursed by the Agency for payment of consultant/professional fees in accordance with the usual requirements of the Agency for the payment of bills.

If such account is not replenished within 30 days after the Company is notified of the requirement for such additional deposit, the Agency may take appropriate action under applicable law and exercise its remedies under the underlying Agency documents, including but not limited to recapture.

After all pertinent charges have been paid, the Agency shall refund to the Company any funds remaining on deposit.

**Miscellaneous**

***This Labor Policy shall not apply if the Project is subject to prevailing wage requirements pursuant to NYS Labor Law section 224-a, as amended.***

**This Labor Policy** may be amended by the Agency from time to time in a manner that is in accordance with applicable laws, rules and regulations, as modified or amended by local, state and/or federal law.

Consented and Agreed to by:  
[Name of Applicant]

\_\_\_\_\_  
Name:  
Title:

## APPENDIX G-2

### CONSTRUCTION PERIOD PREVAILING WAGE POLICY

#### **Construction Period Prevailing Wage Policy**

On January 1, 2022, amendments to the State Labor Law (the “State Prevailing Wage Act”) requiring certain state agencies, including the County of Rockland Industrial Development Agency (the “Agency”), to require beneficiaries of financial assistance to comply with certain prevailing wage requirements if certain threshold criteria are met (the “State Prevailing Wage Requirements”). The Agency has adopted the State Prevailing Wage Requirements as the Agency’s prevailing wage requirements for construction work on projects (and future construction modifications) receiving Agency financial assistance and rescinded any prevailing wage requirements that may previously have been in effect. The Agency policy reflected in the state Prevailing Wage Act will remain effective, regardless of whether the State defers enforcement of the applicable provisions. Statutory amendments to the State Prevailing Wage Act, as well as implementation regulations that may be adopted by the State, shall be incorporated in the Agency’s Construction Period Prevailing Wage Policy upon the applicable effective dates specified in such amendments or regulations.

The Agency requires companies receiving financial assistance from the Agency to comply with the provisions of the State Prevailing Wage Act. Following is a brief summary of the State Prevailing Wage Requirements, including thresholds below which the requirements do not apply. The full text of the State Prevailing Wage Act is included following the summary.

#### Prevailing Wage Requirement Applies Only to Covered Projects

The requirements to pay prevailing wages applies only to “Covered Projects”. A project is a Covered Project only if all of the following criteria are met:

- (a) the construction work being considered must be done under contract;
- (b) such construction work must be paid for in whole or in part out of public funds;
- (c) the amount of all such public funds, when aggregated, must be at least thirty percent of such total construction costs; and
- (d) total construction project costs must exceed \$5 million.

Certain exclusions from the term “Covered Projects” are identified in the text of the State Prevailing Wage Act attached hereto. Two notable exceptions are (1) certain types of projects, such as brownfields, affordable housing, historic preservation, small renewable energy projects

and others and (2) construction work performed under a pre-hire collective bargaining agreement between an owner or contractor and a bona fide building and construction trade labor organization that satisfies certain criteria.

The phrase “paid for in whole or in part out of public funds” means:

- (a) the payment of money, by a public entity, or a third party acting on behalf of and or the benefit of a public entity, directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment;
- (b) the savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions or tax increment financing; savings from payments in lieu of taxes; and any other savings from reduced, waived, or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of the public entity;
- (c) money loaned by the public entity that is to be repaid on a contingent basis;  
or
- (d) credits that are applied by the public entity against repayment of obligations to the public entity.

Certain exclusions from the term “public funds” are identified in the text of the State Prevailing Wage Act attached hereto.

Note that the concept of “paid for in whole or in part out of public funds” is not limited to financial assistance provided by the Agency, but aggregates funds from all public sources.

## **Additional Company Compliance Requirements**

If a Project is a Covered Project, the Company will be required to comply with the New York State Prevailing Wage Law, Labor Law, Article 8, Section 220 et. seq. as if the Project was a “public work” project as defined by the statute. Not less than the current prevailing rate of wages as determined by wage schedules provided by the Bureau of Public Work shall be paid to all laborers, workers and mechanics performing work at the Project. All contractor’s bonds, if required, shall include a provision as will guarantee the faithful performance of such prevailing wage requirement in connection with the Project.

Additional requirements shall include, but not be limited to: (a) the contractor must send a written request to the Labor Department's Bureau of Public Work for an appropriate wage schedule, (b) the contractor must attach the wage schedule to the bid specifications, (c) when awarding a contract, the contractor must attach the wage schedule to the contract, and (d) before work begins,

the contractor and subcontractor(s) must post wage schedules at the construction site so that workers know what they are entitled to.

Contractor shall ensure that all agreements with its subcontractors to perform work on or at the Project contain the following provisions:

- (a) Subcontractor shall comply with the New York State Prevailing Wage Law, Labor Law, Article 8, Section 220 et. seq. as if the Project was a “public work” project as defined by the statute for all construction, alteration, demolition, installation, repair or maintenance work over \$1,000 performed at the Project; and
- (b) Subcontractor’s obligations under prevailing wage laws include without limitation: pay at least the applicable prevailing wages as if the project was a “public work” as defined by the statute for activities performed at the Project; comply with overtime and working hour requirements; comply with apprenticeship obligations, comply with payroll recordkeeping requirements; and comply with other obligations as required by law.

Contractor shall ensure that the above requirements are included in all its contracts and any layer of subcontractors for activities for the Project.

**NOTE: The Construction Period Prevailing Wage Policy requires only Covered Projects to comply with prevailing wage requirements for construction work on the Project. In order to assess whether the Project is a Covered Project, the applicant will be required to assess whether total public funds made available equal or exceed 30% of Project Construction Costs.**

**If the Lessee reasonably expects that the Project is not a Covered Project, the Lessee must complete the form titled Availability of Public Funds Worksheet that follows.**

**The Lessee shall advise the Agency prior to execution of this Agreement as to whether the Lessee claims that the Project is not a Covered Project, and therefore will not be subject to construction contractors being paid prevailing wages.**

**If the Lessee proposes to assert that the Project is not a Covered Project and therefore does require payment of prevailing wage to construction workers, Lessee shall submit the completed following form to the Agency, together with a narrative and assumptions used in making the calculation. If total public funds are indeterminate at the present time (for example, a PILOT Agreement has not yet been negotiated), supplemental updates to the initial information must be provided by the Lessee. Should future public funds benefits calculations result in a determination that public funds will equal or exceed 30% of project construction costs, the amount of public funds benefits must either be decreased, or the Lessee will be required to refund for the benefit of the affected taxing jurisdiction, all amounts of public funds received to avoid Covered Project status, together with such**

**interest, damages and other compensation as may be required by the Agency in its sole discretion.**

**AVAILABILITY OF PUBLIC FUNDS WORKSHEET**

In order to assist the Applicant in determining the whether the Project will be a Covered Project within the meaning of the State Prevailing Wage Act, the following worksheet must be completed as part of this Application.

The projected costs of construction within the meaning of the State Prevailing Wage Act is \$ \_\_\_\_\_.

In the table below, except with respect to the public funds being provided by the Agency, please identify all other “public funds”, within the meaning of the State Prevailing Wage Act, that the Applicant has requested or reasonably expects to obtain to pay for construction costs.

Identity of Governmental Entity	Identify the Nature of the Public Funds (by reference to those categories of public funds identified in the State Prevailing Wage Act)	Projected Amount of Public Funds to be Derived from the Governmental Entity  (gross amount and projected payment date of identified amounts)	Present Value of the Public Funds to be Derived from the Governmental Entity
		<b>Total:</b>	<b>Total:</b>

With respect to Agency financial assistance being requested, the amount of public funds available for construction shall be determined as set forth below:

1. With respect to exemptions from sales or use taxes, the portion of the total sales tax benefits approved by the Agency, that is determined by the Applicant to be allocable to construction costs (i.e. not to costs of equipment). The Applicant estimates that such amount is \_\_\_\_\_.

2. With respect to mortgage recording tax exemptions, the total amount of such exemption. The Applicant estimates that such amount is \_\_\_\_\_.

3. With respect to tax-exempt bonds, if any, the present value of the differential in amount of interest projected to be paid on the tax-exempt bonds over the life of the bonds and the amount of interest projected to be paid on identical bonds if such bonds did not have the benefit of tax-exempt status. Each such cash flow stream shall be adjusted to the present value for purposes of comparison. Such amount is \$ \_\_\_\_\_,

The Applicant should provide worksheets to illustrate the calculation of the foregoing amount.

1. With respect to PILOT Agreements, the difference between the amounts of real property taxes projected to be due during the term of the PILOT Agreement benefits, as if the property did not have the benefit of the PILOT Agreement, and the amounts of PILOT Payments that would be payable during the term of the PILOT Agreement. Each such cash flow stream shall be adjusted to the present value for purposes of comparison. Such amount is \$ \_\_\_\_\_,

The Applicant should complete the following table with respect to “public funds” derived through the Agency:

<b>Total Sales Tax Exemptions</b>	<b>Amount Allocable to Construction</b>	\$ _____
<b>Mortgage Tax Exemptions</b>	<b>Total Amount of Exemptions</b>	\$ _____
<b>Tax Exempt Bond Financing</b>	<b>Net Present Value Savings Compared to a Taxable Financing</b>	\$ _____
<b>PILOT Agreement</b>	<b>Net Present Value Savings Compared to No PILOT Agreement</b>	\$ _____
<b>Total Public Funds Derived Through the Agency</b>		\$ _____



<b>Total Other Public Funds From Table Above</b>		\$ _____
<b>Total of Agency and Other Public Funds</b>		\$ _____
<b>Projected Construction Costs</b>		\$ _____
<b>Total Public Funds as a Percentage of Projected Construction Costs</b>		_____ %

The undersigned, on behalf of the Lessee, represents that the foregoing projections are based on reasonable estimates made by [the chief financial officer] of the Lessee. The undersigned agrees to provide updated information based on the best of his or her knowledge as of the date of the execution and delivery of the Project Agreements. The undersigned understands and acknowledges that the Agency assumes no responsibility for the foregoing projections or any consequences that may result from any inaccuracy in such information.

[Name of Lessee]

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**Name:**

**Title:**

## Text of State Prevailing Wage Act

**[Note: Below is the original language of the Prevailing Wage Act as initially adopted for applicants' convenience; The Agency does not undertake to report amendments or rules or regulations as they may be proposed or adopted. Please consult your counsel as to future developments.]**

### PART FFF

Section 1. The labor law is amended by adding a new section 224-a to read as follows:

§ 224-a. Prevailing wage requirements applicable to construction projects performed under private contract.

1. Subject to the provisions of this section, each "covered project" as defined in this section shall be subject to prevailing wage requirements in accordance with section two hundred twenty and two hundred twenty-b of this article. A "covered project" shall mean construction work done under contract which is paid for in whole or in part out of public funds as such term is defined in this section where the amount of all such public funds, when aggregated, is at least thirty percent of the total construction project costs and where such project costs are over five million dollars except as provided for by section two hundred twenty-four-c of this article.
2. For purposes of this section, "paid for in whole or in part out of public funds" shall mean any of the following:
  - a. The payment of money, by a public entity, or a third party acting on behalf of and or the benefit of a public entity, directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment;
  - b. The savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions or tax increment financing; savings from payments in lieu of taxes; and any other savings from reduced, waived, or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of the public entity;
  - c. Money loaned by the public entity that is to be repaid on a contingent basis; or
  - d. Credits that are applied by the public entity against repayment of obligations to the public entity.

3. For purposes of this section, "paid for in whole or in part out of public funds" shall not include:
  - a. Benefits under section four hundred twenty-one-a of the real property tax law;
  - b. Funds that are not provided primarily to promote, incentivize, or ensure that construction work is performed, which would otherwise be captured in subdivision two of this section;
  - c. Funds used to incentivize or ensure the development of a comprehensive sewage system, including connection to existing sewer lines or creation of new sewage lines or sewer capacity, provided, however, that such work shall be deemed to be a public work covered under the provisions of this article;
  - d. tax benefits provided for projects the length or value of which are not able to be calculated at the time the work is to be performed;
  - e. tax benefits related to brownfield remediation or brownfield redevelopment pursuant to section twenty-one, twenty-two, one hundred eighty-seven-g or one hundred eighty-seven-h of the tax law, subdivision seventeen or eighteen of section two hundred ten-B of the tax law, subsection (dd) or (ee) of section six hundred six of the tax law, or subdivision (u) or (v) of section fifteen hundred eleven of the tax law;
  - f. funds provided pursuant to subdivision three of section twenty- eight hundred fifty-three of the education law; and
  - g. any other public monies, credits, savings or loans, determined by the public subsidy board created in section two hundred twenty-four-c of this article as exempt from this definition.
  
4. For purposes of this section "covered project" shall not include any of the following:
  - a. Construction work on one or two family dwellings where the property is the owner's primary residence, or construction work performed on property where the owner of the property owns no more than four dwelling units;
  - b. Construction work performed under a contract with a not-for-profit corporation as defined in section one hundred two of the not-for-profit corporation law, other than a not-for-profit corporation formed exclusively for the purpose of holding title to property and collecting income thereof or any public entity as defined in this section where the not-for-profit corporation has gross annual revenue and support less than five million dollars;
  - c. Construction work performed on a multiple residence and/or ancillary amenities or installations that is wholly privately owned in any of the following

circumstances except as provided for by section two hundred twenty-four-c of this article:

- (i) where no less than twenty-five percent of the residential units are affordable and shall be retained subject to an anticipated regulatory agreement with a local, state, or federal governmental entity, or a not-for-profit entity with an anticipated formal agreement with a local, state, or federal governmental entity for purposes of providing affordable housing in a given locality or region provided that the period of affordability for a residential unit deemed affordable under the provisions of this paragraph shall be for no less than fifteen years from the date of construction; or
  - (ii) where no less than thirty-five percent of the residential units involves the provision of supportive housing services for vulnerable populations provided that such units are subject to an anticipated regulatory agreement with a local, state, or federal governmental entity; or
  - (iii) any newly created programs for affordable or subsidized housing as determined by the public subsidy board established by section two hundred twenty-four-c of this article.
- d. Construction work performed on a manufactured home park as defined in paragraph three of subdivision a of section two hundred thirty-three of the real property law where the manufactured home park is subject to a regulatory agreement with a local, state, or federal governmental entity for no less than fifteen years;
  - e. Construction work performed under a pre-hire collective bargaining agreement between an owner or contractor and a bona fide building and construction trade labor organization which has established itself as the collective bargaining representative for all persons who will perform work on such a project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform work on such a project, or construction work performed under a labor peace agreement, project labor agreement, or any other construction work performed under an enforceable agreement between an owner or contractor and a bona fide building and construction trade labor organization;
  - f. Construction work performed on projects funded by section sixteen-n of the urban development corporation act or the downtown revitalization initiative;
  - g. Construction work and engineering and consulting services performed in connection with the installation of a renewable energy system, renewable

heating or cooling system, or energy storage system, with a capacity equal to or under five megawatts alternating current;

- h. Construction work performed on supermarket retail space built or renovated with tax incentives provided under the food retail expansion to support health (FRESH) program through the New York city industrial development agency;
  - i. Construction work performed for interior fit-outs and improvements under ten thousand square feet through small business incubation programs operated by the New York city economic development corporation;
  - j. Construction work on space to be used as a school under sixty thousand square feet, pursuant to a lease from a private owner to the New York city department of education and the school construction authority; or
  - k. Construction work performed on projects that received tax benefits related to historic rehabilitation pursuant to subdivision twenty-six of section two hundred ten-B of the tax law, subsection (oo) or (pp) of section six hundred six of the tax law, or subdivision (y) of section fifteen hundred eleven of the tax law.
5. For purposes of this section, "public entity" shall include, but shall not be limited to, the state, a local development corporation as defined in subdivision eight of section eighteen hundred one of the public authorities law or section fourteen hundred eleven of the not-for-profit corporation law, a municipal corporation as defined in section one hundred nineteen-n of the general municipal law, an industrial development agency formed pursuant to article eighteen-A of the general municipal law or industrial development authorities formed pursuant to article eight of the public authorities law, and any state, local or interstate or international authorities as defined in section two of the public authorities law; and shall include any trust created by any such entities.
6. For purposes of this section, "construction" means work which shall be as defined by the public subsidy board to require payment of prevailing wage, and which may involve the employment of laborers, workers, or mechanics.
7. For purposes of this section and section two hundred twenty-four-b of this article, the "fiscal officer" shall be deemed to be the commissioner.
8. The enforcement of any construction work deemed to be a covered project pursuant to this section, and any additional requirements, shall be subject, in addition to this section, only to the requirements of sections two hundred twenty, two hundred twenty-four-b, two hundred twenty-four-c, and two hundred twenty-b of this article and within the jurisdiction of the fiscal officer; provided, however, nothing contained in this section shall be deemed to construe any covered project as otherwise being considered public work pursuant to this article; and further provided:

- a. The owner or developer of such covered project shall certify under penalty of perjury within five days of commencement of construction work whether the project at issue is subject to the provisions of this section through the use of a standard form developed by the fiscal officer.
  - b. The owners or developers of a property who are undertaking a project under private contract, may seek guidance from the public subsidy board contained in section two hundred twenty-four-c of this article, and such board may render an opinion as to whether or not the project is a covered project within the meaning of this article. Any such determination shall not be reviewable by the fiscal officer, nor shall it be reviewable by the department pursuant to section two hundred twenty of this article.
  - c. The owner or developer of a covered project shall be responsible for retaining original payroll records in accordance with section two hundred twenty of this article for a period of six years from the conclusion of such work. All payroll records maintained by an owner or developer pursuant to this section shall be subject to inspection on request of the fiscal officer. Such owner or developer may authorize the prime contractor of the construction project to take responsibility for retaining and maintaining payroll records, but will be held jointly and severally liable for any violations of such contractor. All records obtained by the fiscal officer shall be subject to the Freedom of Information Law.
  - d. Each public entity providing any of the public funds listed in subdivision two of this section to an owner, developer, contractor or subcontractor of a project shall identify the nature and dollar value of such funds and whether any such funds are excluded under subdivision three of this section and shall so notify the recipient of such funds of such determination and of their obligations under paragraph a of this subdivision.
  - e. The fiscal officer may issue rules and regulations governing the provisions of this section. Violations of this section shall be grounds for determinations and orders pursuant to section two hundred twenty-b of this article.
9. Each owner and developer subject to the requirements of this section shall comply with the objectives and goals of minority and women-owned business enterprises pursuant to article fifteen-A of the executive law and service-disabled veteran-owned businesses pursuant to article seventeen-B of the executive law. The department in consultation with the directors of the division of minority and women's business development and of the division of service-disabled veterans' business development shall make training and resources available to assist minority and women-owned business enterprises and service-disabled veteran-owned business enterprises on covered projects achieve and maintain compliance with prevailing wage requirements. The department shall make such training and resources available online and shall afford minority and women-owned business enterprises and

service-disabled veteran-owned business enterprises an opportunity to submit comments on such training.

10.

- a. The fiscal officer shall report to the governor, the temporary president of the senate, and the speaker of the assembly by July first, two thousand twenty-two, and annually thereafter, on the participation of minority and women-owned business enterprises in relation to covered projects and contracts for public work subject to the provisions of this 2 section and section two hundred twenty of this article respectively as 3 well as the diversity practices of contractors and subcontractors employing laborers, workers, and mechanics on such projects.
- b. Such reports shall include aggregated data on the utilization and participation of minority and women-owned business enterprises, the employment of minorities and women in construction-related jobs on such projects, and the commitment of contractors and subcontractors on such projects to adopting practices and policies that promote diversity within the workforce. The reports shall also examine the compliance of contractors and subcontractors with other equal employment opportunity requirements and anti-discrimination laws, in addition to any other employment practices deemed pertinent by the commissioner.
- c. The fiscal officer may require any owner or developer to disclose information on the participation of minority and women-owned business enterprises and the diversity practices of contractors and subcontractors involved in the performance of any covered project. It shall be the duty of the fiscal officer to consult and to share such information in order to effectuate the requirements of this section.

11. If construction work is not deemed to be a covered project, whether by virtue of an exclusion of such project under subdivision four of this section, or by virtue of not receiving sufficient public money to be deemed "paid for in whole or in part out of public funds", such project shall not be subject to the requirements of sections two hundred twenty and two hundred twenty-b of this article.

Section 2. The labor law is amended by adding a new section 224-b to read as follows:

§ 224-b. Stop-work orders.

Where a complaint is received pursuant to this article, or where the fiscal officer upon his or her own investigation, finds cause to believe that any person, in connection with the performance of any contract for public work pursuant to section two hundred twenty of this article or any covered project pursuant to section two hundred twenty-four-a of this article, has substantially and materially failed to comply with or intentionally evaded the provisions of this article, the fiscal officer may notify such person in writing of his or her intention to issue a stop-work order. Such

notice shall (i) be served in a manner consistent with section three hundred eight of the civil practice law and rules; (ii) notify such person of his or her right to a hearing; and (iii) state the factual basis upon which the fiscal officer has based his or her decision to issue a stop-work order. Any documents, reports, or information that form a basis for such decision shall be provided to such person within a reasonable time before the hearing. Such hearing shall be expeditiously conducted. Following the hearing, if the fiscal officer issues a stop-work order, it shall be served by regular mail, and a second copy may be served by telefacsimile or by electronic mail, with service effective upon receipt of any such order. Such stop-work order shall also be served with regard to a worksite by posting a copy of such order in a conspicuous location at the worksite. The order shall remain in effect until the fiscal officer directs that the stop-work order be removed, upon a final determination on the complaint or where such failure to comply or evade has been deemed corrected. If the person against whom such order is issued shall within thirty days after issuance of the stop-work order makes an application in affidavit form for a redetermination review of such order the fiscal officer shall make a decision in writing on the issues raised in such application. The fiscal officer may direct a conditional release from a stop-work order upon a finding that such person has taken meaningful and good faith steps to comply with the provisions of this article.

Section 3. The labor law is amended by adding a new section 224-c to read as follows:

§ 224-c. Public subsidy board.

1. A board on public subsidies, hereinafter "the board", is hereby created, to consist of thirteen members. The thirteen members shall be appointed by the governor as follows: one member upon the recommendation of the temporary president of the senate, one member upon the recommendation of the speaker of the assembly, the commissioner, the president of the empire state development corporation, the director of the division of the budget, two members representing employees in the construction industry, of whom one shall be a representative of the largest statewide trade labor association representing building and construction workers, and one shall be a representative of the largest trade labor association representing building and construction workers with membership in New York City, and two members representing employers in the construction industry, of whom one shall be a representative of the largest statewide organization representing building owners and developers, either for-profit or not-for-profit, and one shall be a representative of a statewide organization representing building owners and developers, either for-profit or not-for-profit, representing a region different than the region primarily represented by the initial employer representative. The commissioner shall act as the chair. The members shall serve at the pleasure of the authority recommending, designating, or otherwise appointing such member and shall serve without salary or compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

2. The board shall meet on an as needed basis and shall have the power to conduct public hearings. The board may also consult with employers and employees, and their respective representatives, in the construction industry and with such other persons, including the commissioner, as it shall determine. No public officer or employee appointed to the board shall forfeit any position or office



by virtue of appointment to such board. Any proceedings of the board which relate to a particular individual or project shall be confidential.

3. The board may examine and make recommendations regarding the following:

(a) the minimum threshold percentage of public funds set forth in subdivision one of section two hundred twenty-four-a of this article, but no lower than that which is set forth in such subdivision;

(b) the minimum dollar threshold of projects set forth in subdivision one of section two hundred twenty-four-a of this article, but no lower than that which is set forth in such subdivision;

(c) construction work excluded as a covered project, as set forth in subparagraphs (i), (ii) and (iii) of paragraph c of subdivision four of section two hundred twenty-four-a of this article;

(d) the definition of construction for purposes of section two hundred twenty-four-a of this article;  
or

(e) particular instances of benefits, monies or credits as to whether or not they should constitute public funds.

4. Prior to making any recommendation intended to apply to all projects, the board shall hold a public hearing. The board shall announce each public hearing at least fifteen days in advance. The announcement shall contain an agenda of the topics the board will discuss. At each hearing, the board may hear testimony and/or review written documents from any interested stakeholders related to the planned agenda of the meeting. The board shall make any such recommendations in writing. In making its recommendations, the board shall examine the impact of such thresholds and circumstances on private development in light of available public subsidies, existing labor market conditions, prevailing wage and supplement practices, and shall consider the extent to which adjustments to such thresholds and circumstances could ameliorate adverse impacts, if any, or expand opportunities for prevailing wage and supplement standards on publicly subsidized private construction projects in any region or regions of the state.

5. The board shall be empowered to issue binding determinations to any public entity, or any private or not-for-profit owner or developer as to any particular matter related to an existing or potential covered project. In such instances the board shall make a determination based upon documents, or testimony, or both in its sole discretion. Any such proceedings shall be confidential, except that publication of such decisions shall be made available on the department's website, subject to redaction or confidentiality as the board shall deem warranted in accordance with any applicable federal or state statutory or regulatory requirement governing confidentiality and personal privacy.

6. Any recommendation rendered by the board pursuant to this section shall be subject to the provisions of article seventy-eight of the civil practice law and rules.

7. In the event that the board finds that there is or likely would be a significant negative economic impact of implementing the prevailing wage requirements provided for in section two hundred twenty-four-a of this article, the board may temporarily delay the implementation of such requirements beyond January first, two thousand twenty-two. Such a delay may be effective statewide or effective only in a region of the state as defined by the regional economic development councils. In making such a determination to delay, the board shall consult the department, the department's division of research and statistics, the United States department of labor, the federal reserve bank of New York and other economic experts. The board will reference well-established economic indexes and accepted economic factors tied to the construction industry, including but not limited to construction industry employment, wages, and overall construction activity.

Section 4. The labor law is amended by adding a new section 813-a to read as follows:

§ 813-a. Annual reports by apprenticeship programs.

1. On an annual basis, all apprenticeship programs covered under the provisions of this article shall report to the department on the participation of apprentices currently enrolled in such apprenticeship program. The data to be included in such report shall include, at a minimum: (a) the total number of apprentices in such apprenticeship program; (b) the demographic information of such apprentices to the extent such data is available, including, but not limited to, the age, gender, race, ethnicity, and national origin of such apprentices; (c) the rate of advancement and graduation of such apprentices; and (d) the rate of placement of such apprentices onto job sites as well as the demographic information of such apprentices to the extent such data is available, including, but not limited to the age, gender, race, ethnicity, and national origin of such apprentices.
2. The department shall make such data publicly available on its website by July first, two thousand twenty-two and on an annual basis, but no later than December thirty-first of each following year.
3. The commissioner may promulgate rules and regulations necessary for the implementation of this section.

Section 5. Severability clause.

If any clause, sentence, paragraph, subdivision, or section of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or section thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

Section 6.

This act shall take effect on January 1, 2022 and shall apply to contracts for construction executed, incentive agreements executed, procurements or solicitations issued, or applications for building permits on or after such date; provided however that section three of this act shall take effect on April 1, 2021, and provided further that this act shall not pre-exempt any existing contracts, nor apply to any appropriations of public funds made prior to the day on which this act shall have become a law, or to re-appropriations of such funds first appropriated prior to the day on which this act shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.

## APPENDIX H

### ADDITIONAL REPRESENTATIONS, CERTIFICATION AND INDEMNIFICATION

#### **Additional Representations, Certifications and Indemnification**

- A. Job Listings: In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity (collectively with the DOL, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA") in which the Project is located.
- B. First Consideration for Employment: In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the Applicant will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the Project.
- C. Annual Sales Tax Filings: In accordance with Section 874(8) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the Applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the Applicant and all consultants or subcontractors retained by the Applicant. Copies of all filings shall be provided to the Agency.
- D. Employment Reports: The Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the Applicant agrees to file, or cause to be filed, with the Agency, at least annually or as otherwise required by the Agency, reports regarding the number of people employed at the project site, salary levels, contractor utilization and such other information (collectively, "Employment Reports") that may be required from time to time on such appropriate forms as designated by the Agency. Failure to provide Employment Reports within 30 days of an Agency request shall be an Event of Default under the PILOT Agreement between the Agency and Applicant and, if applicable, an Event of Default under the Agent Agreement between the Agency and applicant. In addition, a Notice of Failure to provide the Agency with an Employment Report may be reported to Agency board members, said report being an agenda item subject to the Open Meetings Law.

- E. The Applicant acknowledges that certain environmental representations will be required at closing. The Applicant shall provide with this Representation, Certification and Indemnification Form copies of any known environmental reports, including any existing Phase I Environmental Site Assessment Report(s) and/or Phase II Environmental Investigations. The Agency may require the Company and/or owner of the premises to prepare and submit an environmental assessment and audit report, including but not necessarily limited to, a Phase I Environmental Site Assessment Report and a Phase II Environmental Investigation, with respect to the Premises at the sole cost and expense of the owner and/or the Applicant. All environmental assessment and audit reports shall be completed in accordance with ASTM Standard Practice E1527-05, and shall be conformed over to the Agency so that the Agency is authorized to use and rely on the reports. The Agency, however, does not adopt, ratify, confirm or assume any representation made within reports required herein.
- F. The Applicant and/or the owner, and their successors and assigns, hereby release, defend and indemnify the Agency from any and all suits, causes of action, litigations, damages, losses, liabilities, obligations, penalties, claims, demands, judgments, costs, disbursements, fees or expenses of any kind or nature whatsoever (including, without limitation, attorneys', consultants' and experts' fees) which may at any time be imposed upon, incurred by or asserted or awarded against the Agency, resulting from or arising out of any inquiries and/or environmental assessments, investigations and audits performed on behalf of the Applicant and/or the owner pursuant hereto, including the scope, level of detail, contents or accuracy of any environmental assessment, audit, inspection or investigation report completed hereunder and/or the selection of the environmental consultant, engineer or other qualified person to perform such assessments, investigations, and audits.
- G. Hold Harmless Provision: The Applicant acknowledges and agrees that the Applicant shall be and is responsible for all costs of the Agency incurred in connection with any actions required to be taken by the Agency in furtherance of the Application including the Agency's costs of general counsel and/or the Agency's bond/transaction counsel whether or not the Application, the proposed Project it describes, the attendant negotiations, or the issue of bonds or other transaction or agreement are ultimately ever carried to successful conclusion and agrees that the Agency shall not be liable for and agrees to indemnify, defend, and hold the Agency harmless from and against any and all liability arising from or expense incurred by: (i) the Agency's examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the proposed Project described herein or the tax exemptions and other assistance requested herein are favorably acted upon by the Agency; (ii) the Agency's acquisition, construction and/or installation of the proposed Project described herein; and (iii) any further action taken by the Agency with respect to the proposed Project including, without limiting the generality of the foregoing, all causes of action and attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. Applicant hereby understands and agrees, in accordance with Section 875(3) of the New York General Municipal Law and the policies of the Agency that any New York

State and local sales and use tax exemption claimed by the Applicant and approved by the Agency, any mortgage recording tax exemption claimed by the Applicant and approved by the Agency, and/or any real property tax abatement claimed by the Applicant and approved by the Agency, in connection with the Project, may be subject to recapture and/or termination by the Agency under such terms and conditions as will be established by the Agency and set forth in transaction documents to be entered into by and between the Agency and the Applicant. The Applicant further represents and warrants that the information contained in this Application, including without limitation information regarding the amount of the New York State and local sales and use tax exemption benefit, the amount of the mortgage recording tax exemption benefit, and the amount of the real property tax abatement, if and as applicable, to the best of the Applicant's knowledge, is true, accurate and complete.

- H. This obligation includes an obligation to submit an Agency Fee Payment to the Agency in accordance with the Agency Fee policy and schedule effective as of the date of the Applicant's Application.
- I. By executing and submitting this Application, the Applicant covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel, the same to be paid at the times indicated: (i) All fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel and/or the Agency's bond/transaction counsel, thus note that the Applicant is entitled to receive a written estimate of fees and costs of the Agency's general counsel and the Agency's bond/transaction counsel; and (2) other consultants retained by the Agency in connection with the proposed project, with all such charges to be paid by the Applicant at the closing.
- J. If the Applicant fails to conclude or consummate the necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable proper or requested action, or withdraws, abandons, cancels, or neglects the Application, or if the Applicant is unable to find buyers willing to purchase the bond issue requested, or if the Applicant is unable to facilitate the sale/leaseback or lease/leaseback transaction, then, upon the presentation of an invoice, Applicant shall pay to the Agency, its agents, or assigns all actual costs incurred by the Agency in furtherance of the Application, up to that date and time, including but not necessarily limited to, fees of the Agency's general counsel and/or the Agency's bond/transaction counsel.
- K. The Applicant acknowledges and agrees that all payment liabilities to the Agency and the Agency's general counsel and/or the Agency's bond and/or transaction counsel as expressed in Sections H and I are obligations that are not dependent on final documentation of the transaction contemplated by this Application.
- L. The cost incurred by the Agency and paid by the Applicant, the Agency's general counsel and/or bond/transaction counsel fees and the processing fees, may be considered as a cost

of the Project and included in the financing of costs of the proposed Project, except as limited by the applicable provisions of the Internal Revenue Code with respect to tax-exempt bond financing.

- M. The Applicant acknowledges that the Agency is subject to New York State's Freedom of Information Law (FOIL). Applicant understands that all Project information and records related to this application are potentially subject to disclosure under FOIL subject to limited statutory exclusions.
- N. The Applicant acknowledges that it has been provided with a copy of the Agency's Policy for Termination of Agency Benefits and Recapture of Agency Benefits Previously Granted (the "Termination and Recapture Policy"). The Applicant covenants and agrees that it fully understands that the Termination and Recapture Policy is applicable to the Project that is the subject of this Application, and that the Agency will implement the Termination and Recapture Policy if and when it is so required to do so. The Applicant further covenants and agrees that its Project is potentially subject to termination of Agency financial assistance and/or recapture of Agency financial assistance so provided and/or previously granted.
- O. The Applicant understands and agrees that the provisions of Section 862(1) of the New York General Municipal Law, as provided below, will not be violated if Financial Assistance is provided for the proposed Project: § 862. Restrictions on funds of the agency. (1) No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.
- P. The Applicant confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the proposed Project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.
- Q. The Applicant confirms and acknowledges that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any Financial Assistance and the reimbursement of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement the Project.
- R. The Applicant confirms and hereby acknowledges that as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the New

York General Municipal Law, including, but not limited to, the provision of Section 859-a and Section 862(1) of the New York General Municipal Law.

- S. The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations and covenants made in this Application when acting hereon and hereby represents that the statements made herein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.