

SEVENTH:

The Applicant hereby certifies that, as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the General Municipal Law, including, but not limited to, the provisions of Section 859-a and Section 862(1) thereof.

Name of
Applicant: _____

By: _____

Name:

Title:

**CERTIFICATION AND AGREEMENT
WITH RESPECT TO FEES AND COSTS**

Capitalized terms used but not otherwise defined in this Certification and Agreement shall have the meanings assigned to such terms in the Application.

The undersigned, being duly sworn, deposes and says, under penalties of perjury, as follows: that I am the chief executive officer or other representative authorized to bind the Applicant named in the attached application for financial assistance ("Application") and that I hold the office specified below my signature at the end of this Certification and Agreement, that I am authorized and empowered to deliver this Certification and Agreement and the Application for and on behalf of the Applicant, that I am familiar with the contents of said Application (including all schedules, exhibits and attachments thereto), and that said contents are true, accurate and complete to the best of my knowledge and belief.

The grounds of my belief relative to all matters in the Application that are not based upon my own personal knowledge are based upon investigations I have made or have caused to be made concerning the subject matter of this Application, as well as upon information acquired in the course of my duties and from the books and records of the Applicant.

As an authorized representative of the Applicant, I acknowledge and agree on behalf of the Applicant that the Applicant hereby releases the Nassau County Industrial Development Agency, its members, officers, servants, attorneys, agents and employees (collectively, the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend (with counsel selected by the Agency) and hold the Agency harmless from and against any and all liability, damages, causes of actions, losses, costs or expenses incurred by the Agency in connection with: (A) examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the financial assistance requested therein are favorably acted upon by the Agency, (B) the acquisition, construction, reconstruction, renovation, installation and/or equipping of the Project by the Agency, and (C) any further action taken by the Agency with respect to the Project; including, without limiting the generality of the foregoing, (i) all fees and expenses of the Agency's general counsel, bond counsel, economic development consultant, real property tax valuation consultant and other experts and consultants (if deemed necessary or advisable by the Agency), and (ii) all other expenses incurred by the Agency in defending any suits, actions or proceedings that may arise as a result of any of the foregoing. If, for any reason whatsoever, the Applicant fails to conclude or consummate 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 total bond issue required or is unable to secure other third party financing or otherwise fails to conclude the Project, then upon presentation of an invoice by the Agency, its agents, attorneys or assigns, the Applicant shall pay to the Agency, its agents, attorneys or assigns, as the case may be, all fees and expenses reflected in any such invoice.

As an authorized representative of the Applicant, I acknowledge and agree on behalf of the Applicant that each of the Agency's general counsel, bond counsel, economic development consultant, real property tax valuation consultant and other experts and consultants is an intended third-party beneficiary of this Certification and Agreement, and that each of them may (but shall not be obligated to) enforce the provisions of the immediately preceding paragraph, whether by lawsuit or otherwise, to collect the fees and expenses of such party or person incurred by the Agency (whether or not first paid by the Agency) with respect to the Application.

Upon successful closing of the required bond issue or other form of financing or Agency assistance, the Applicant shall pay to the Agency an administrative fee set by the Agency (which amount is payable at closing) in accordance with the following schedule:

- (A) Taxable Bond Issues - Six-tenths (6/10) of one percent (1%) for the first twenty million dollars (\$20,000,000) of total project costs and, if applicable, two-tenths (2/10) of one percent (1%) for any additional amounts in excess of twenty million dollars (\$20,000,000) of total project costs.
- (B) Tax-Exempt Bond Issues – Six-tenths (6/10) of one percent (1%) of total project costs.
- (C) General Counsel Fee – One-tenth (1/10) of one percent (1%) of total project costs, with a minimum fee of \$2,000.
- (D) All Initial Transactions - Two Thousand Five Hundred Dollars (\$2,500) closing compliance fee payable at closing and One Thousand Dollars (\$1,000) per year (or part thereof) administrative fee, payable in advance, at the closing for the first year (or part thereof) and on January 1st of each year for the term of the financing. The annual service fee is subject to periodic review and may be adjusted from time to time in the discretion of the Agency.
- (E) Refundings – The Agency fee shall be determined on a case-by-case basis.
- (F) Assumptions – The Agency fee shall be determined on a case-by-case basis.
- (G) Modifications – The Agency fee shall be determined on a case-by-case basis.

The Agency's bond counsel fees and expenses are payable at closing and are based on the work performed in connection with the Project.

The Agency's bond counsel's fees, general counsel fee and the administrative fees may be considered as a cost of the Project and included as part of any resultant financing, subject to compliance with applicable law.

Upon the termination of the financing of the Project, Applicant agrees to pay all costs in connection with any conveyance by the Agency to the Applicant of the Agency's interest in the Project and the termination of all related Project documents, including the fees and expenses of the Agency's general counsel, bond counsel, and all applicable recording, filing or other related fees, taxes and charges.

I further acknowledge and agree on behalf of the Applicant that, in the event the Agency shall have used all of its available tax-exempt bond financing allocation from the State of New York, if applicable, and shall accordingly be unable to obtain an additional allocation for the benefit of the Applicant, the Agency shall have no liability or responsibility as a result of the inability of the Agency to issue and deliver tax-exempt bonds for the benefit of the Applicant.

Name
Title:

Subscribed and affirmed to me this ____
day of _____, 20__

Notary Public

TABLE OF SCHEDULES:

<u>Schedule</u>	<u>Title</u>	<u>Complete as Indicated Below</u>
A.	Tax-Exempt Bond Manufacturing Questionnaire	If Applicant checked "YES" in Part I, Question H of Application, if applicable[[
B.	New York State Financial and Employment Requirements for Industrial Development Agencies	All applicants
C.	Guidelines for Access to Employment Opportunities	All applicants
D.	Anti-Raiding Questionnaire	If Applicant checked "YES" in Part I, Question O.2. of Application
E.	Retail Questionnaire	If Applicant checked "YES" in Part II, Question Q of Application
F.	Applicant's Financial Attachments, consisting of:	All applicants
	1. Applicant's financial statements for the last two fiscal years (unless included in Applicant's annual reports).	
	2. Applicant's annual reports (or Form 10-K's) for the two most recent fiscal years.	
	3. Applicant's quarterly reports (Form 10-Q's) and current reports (Form 8-K's) since the most recent Annual Report, if any.	
	4. In addition, attach the financial information described above in items F1, F2, and F3 of any anticipated Guarantor of the proposed transaction, if different than the Applicant, including the personal financial statement of any anticipated Guarantor that is a natural person.	
G.	Environmental Assessment Form	All applicants
H.	Form NYS-45-MN	All applicants
I.	Other Attachments	As required

TAX-EXEMPT BOND MANUFACTURING QUESTIONNAIRE

(To be completed by the Applicant if the Applicant checked "YES" in Part I, Question H of the Application for Financial Assistance, if applicable).

Please complete the following questions for each facility to be financed. Use additional pages as necessary.

1. Describe the production process which occurs at the facility to be financed.

2. Allocate the facility to be financed by function (expressed in square footage) (e.g., production line, employee lunchroom, offices, restrooms, storage, warehouse, loading dock, repair shop, parking, research, sales, etc.) and location in relation to production (e.g., same building, adjacent land or building, off-site, etc.). Please attach blueprints of the facility to be financed.

<u>FUNCTION</u>	<u>LOCATION</u>	<u>SQ. FOOTAGE</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

TOTAL

3. Of the space allocated to offices above, identify by function (e.g., executive offices, payroll, production, etc.) and location in relation to production (e.g., same building, adjacent land or building, off-site, etc.).

<u>FUNCTION</u>	<u>LOCATION</u>	<u>SQ. FOOTAGE</u>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

TOTAL

4. Of the space allocated to storage or warehousing above, identify the square footage and location of the areas devoted to storage of the following:

SQ. FOOTAGE

LOCATION

Raw Materials used
for production of
manufactured goods

Finished product storage

Component parts of
goods manufactured at
the facility

Purchased component
parts

Other (specify)

TOTAL

5. List raw materials used at the facility to be financed in the processing of the finished product(s).

6. List finished product(s) which are produced at the facility to be financed.

The UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above and in any statement attached hereto are true and correct.

Name of
Applicant:

Signature:

Name:

Title:

Date:

**NEW YORK STATE FINANCIAL AND EMPLOYMENT REPORTING
REQUIREMENTS FOR INDUSTRIAL DEVELOPMENT AGENCIES**

- A. Pursuant to applicable law, the Agency requires the completion of an Initial Employment Plan (see Schedule C) and a year-end employment plan status report, both of which shall be filed by the Nassau County Industrial Development Agency (the "Agency") with the New York State Department of Economic Development. The Project documents will require the Applicant to provide such report to the Agency on or before February 11 of the succeeding year, together with such employment verification information as the Agency may require.

Except as otherwise provided by collective bargaining agreements, the Applicant agrees to list any new employment opportunities with the New York Department of Labor Community Services Division and the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. 97-300), or any successor statute thereto (the "JTPA Entities"). In addition, except as otherwise provided by collective bargaining agreements, the Applicant, where practicable, will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for such new employment opportunities.

- B. The Applicant will be required to file annually a statement with the New York State Department of Taxation and Finance and the Agency of the value of all sales or use tax exemptions claimed in connection with the Project by reason of the involvement of the Agency.

- C. The following information must be provided for all bonds issued, outstanding or retired during the year:

Name, address and owner of the project; total amount of tax exemptions granted (broken out by state and local sales tax, property taxes, and mortgage recording tax); payments in lieu of taxes made; total real estate taxes on the Project prior to exemption; number of jobs created and retained, and other economic benefits realized.

Date of issue; interest rate at end of year; bonds outstanding at beginning of year; bonds issued during year; principal payments made during year; bonds outstanding at end of year; federal tax status; and maturity date(s).

Failure to provide any of the aforesaid information will be constitute a DEFAULT under the Project documents to be entered into by the Agency and the Applicant in connection with the proposed Project.

Please sign below to indicate that the Applicant has read and understood the above and agrees to provide the described information on a timely basis.

Name of
Applicant: _____

Signature: _____

Name: _____

Title: _____

Date: _____

GUIDELINES FOR ACCESS TO EMPLOYMENT OPPORTUNITIES**INITIAL EMPLOYMENT PLAN**

Prior to the expenditure of bond proceeds or the granting of other financial assistance, the Applicant shall complete the following initial employment plan:

Applicant Name: _____

Address: _____

Type of Business: _____

Contact Person: _____ Tel. No.: _____

Please complete the following table describing the projected full-time equivalent employment plan for the proposed Project following receipt of financial assistance:

<u>Current and Planned Occupations</u>	<u>Present Jobs Per Occupation</u>	<u>Estimated Number of Full Time Equivalent Jobs After Completion of the Project:⁴</u>			<u>Estimate of Number of Residents of the LMA⁵ that would fill such jobs by the third year</u>
		<u>1 year</u>	<u>2 years</u>	<u>3 years</u>	
<u>Management</u>	_____	_____	_____	_____	_____
<u>Professional</u>	_____	_____	_____	_____	_____
<u>Administrative</u>	_____	_____	_____	_____	_____
<u>Production</u>	_____	_____	_____	_____	_____
<u>Supervisor</u>	_____	_____	_____	_____	_____
<u>Laborer</u>	_____	_____	_____	_____	_____
<u>Independent Contractor</u>	_____	_____	_____	_____	_____
<u>Other (describe)</u>	_____	_____	_____	_____	_____

⁴ NOTE: Convert part-time jobs into FTE's for evaluation and reporting purposes by dividing the number of part-time jobs by two (2).

⁵ The "LMA" means the Local Market Area, which is defined by the Agency as Nassau and Suffolk Counties. The Labor Market Area is the same as the Long Island Economic Development Region, as established pursuant to Section 230 of the New York State Economic Development Law.

Please indicate the number of temporary construction jobs anticipated to be created in connection with the acquisition, construction and/or renovation of the Project: _____

Please indicate the estimated hiring dates for the new jobs shown above and any special recruitment or training that will be required:

Are the Applicant's employees currently covered by a collective bargaining agreement?

YES _____

NO _____

IF YES, Union Name and Local: _____

Please note that the Agency may utilize the foregoing employment projections, among other things, to determine the financial assistance that will be offered by the Agency to the Applicant. The Applicant acknowledges that the transaction/bond documents may include a covenant by the Applicant to retain the above number of jobs, types of occupations and amount of payroll with respect to the proposed project.

Attached hereto as Schedule H is a true, correct and complete copy of the Applicant's most recent Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return (Form NYS-45-MN). Upon request of the Agency, the Applicant shall provide such other or additional information or documentation as the Agency may require with respect to the Applicant's current employment levels in the State of New York.

The UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above and in any statement attached hereto are true, correct and complete.

Name of
Applicant: _____

Signature: _____

Name: _____

Title: _____

Date: _____

ANTI-RAIDING QUESTIONNAIRE

(To be completed by Applicant if Applicant checked "YES" in Part I, Question O of the Application for Financial Assistance)

- A. Will the completion of the Project result in the removal of a plant or facility of the Applicant, or of a proposed user, occupant or tenant of the Project, or a relocation of any employee of the Applicant or of a proposed user, occupant or tenant of the Project, from an area in New York State (but outside of Nassau County) to an area within Nassau County?

YES ____

NO ____

If the answer to Question A is YES, please provide the following information:

Address of the to-be-removed plant or facility or the plants or facilities from which employees are relocated: ____

Names of all current users, occupants or tenants of the to-be-removed plant or facility: _____

- B. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Applicant, or of a proposed user, occupant or tenant of the Project, located in an area of the State of New York other than in Nassau County?

YES ____

NO ____

If the answer to Question B is YES, please provide the following information:

Addresses of the to-be-abandoned plants or facilities: _____

Names of all current occupants of the to-be-abandoned plants or facilities:

- C. Has the Applicant contacted the local industrial development agency at which its current plants or facilities in New York State are located with respect to the Applicant's intention to move or abandon such plants or facilities?

YES ____

NO ____

If the answer to Question C is YES, please provide details in a separate attachment.

IF THE ANSWER TO EITHER QUESTION A OR B IS "YES", ANSWER QUESTIONS D AND E.

- D. Is the Project reasonably necessary to preserve the competitive position of the Applicant, or of a proposed user, occupant or tenant of the Project, in its industry?

YES ____

NO ____

- E. Is the Project reasonably necessary to discourage the Applicant, or a proposed user, occupant or tenant of the Project, from removing such plant or facility to a location outside of the State of New York?

YES ____

NO ____

IF THE ANSWER TO EITHER QUESTION D OR E IS "YES", PLEASE PROVIDE DETAILS IN A SEPARATE ATTACHMENT.

Accordingly, the Applicant certifies that the provisions of Section 862(1) of the General Municipal Law will not be violated if financial assistance is provided by the Agency for the proposed Project.

NOTE: If the proposed Project involves the removal or abandonment of a plant or facility of the Applicant, or a proposed user, occupant or tenant of the Project, within the State of New York, notification will be made by the Agency to the chief executive officer(s) of the municipality or municipalities in which such plant or facility was located.

THE UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above and in any statement attached hereto are true, correct and complete.

Name of
Applicant: _____

Signature: _____

Name: _____

Title: _____

Date: _____

RETAIL QUESTIONNAIRE

(To be completed by Applicant if Applicant checked either "YES" in Part II, Question Q of the Application for Financial Assistance)

- A. Will any portion of the Project (including that portion of the cost to be financed from equity or sources other than Agency financing) consist of facilities or property that are or will be primarily used in making retail sales to customers who personally visit the Project?

YES ____

NO ____

For purposes of Question A, the term "retail sales" means (i) sales by a registered vendor under Article 28 of Tax Law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

- B. If the answer to Question A is YES, what percentage of the cost of the Project (including that portion of the cost to be financed from equity or sources other than Agency financing) will be expended on such facilities or property primarily used in making retail sales of goods or services to customers who personally visit the Project?

_____%

- C. If the answer to Question A is YES, and the amount entered for Question B is greater than 33.33%, indicate whether any of the following apply to the Project:

1. Is the Project likely to attract a significant number of visitors from outside the economic development region (i.e., Nassau and Suffolk Counties) in which the Project is or will be located?

YES ____

NO ____

2. Is the predominant purpose of the Project to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the city, town or village within which the Project will be located, because of a lack of reasonably accessible retail trade facilities offering such goods or services?

YES ____

NO ____

3. Will the Project be located in one of the following: (a) an area designated as an empire zone pursuant to Article 18-B of the General Municipal Law; or (b) a census tract or block numbering area (or census tract or block numbering area contiguous thereto) which, according to the most recent census data, has (i) a poverty rate of at least 20% for the year in which the data relates, or at least 20% of the households receiving public assistance, and (ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates?

YES ____

NO ____

If the answer to any of the subdivisions 1 through 3 of Question C is YES, attach details.

- D. If the answer to any of the subdivisions 2 through 3 of Question C is YES, will the Project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York? If YES, attach details.

YES ____

NO ____

- E. State percentage of the Applicant's annual gross revenues comprised of each of the following:

Retail Sales: ____%

Services: ____%

- F. State percentage of Project premises utilized for same:

Retail Sales: ____%

Services: ____%

The UNDERSIGNED HEREBY CERTIFIES that the answers and information provided above and in any statement attached hereto are true, correct and complete.

Name of
Applicant:

Signature:

Name:

Title:

Date:

APPLICANT'S FINANCIAL ATTACHMENTS

ENVIRONMENTAL ASSESSMENT FORM

FORM NYS-45-MN

Attach most recent quarterly filing of Form NYS-45-MN, as well as the most recent fourth quarter filing. Please remove the employee social security numbers and note which employees are part-time.

OTHER ATTACHMENTS

Exhibit A

Upon acceptance of the Application of the Application by the Agency and completion of the Cost/Benefit Analysis, the Agency will attach the proposed PILOT Schedule hereto, together with an estimate of the net tax benefit/cost of the proposed PILOT Schedule.

EXHIBIT C

See Attached

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Memorandum

To: Agency Staff
From: Members of the Agency
Date: June 28, 2016
Re: Uniform Criteria for Processing/ Evaluation of Projects

The following are the Agency's guidelines for the review, processing, evaluation and selection of potential project applications from initial contact to closing of the transaction. The following apply to all categories of potential projects. The following are intended to provide overall guidance but are by no means exhaustive or all inclusive and, except as set forth below, may not be applicable to all matters:

1. Initial Contact
 - The Executive Director or other designated staff member ("Agency Contact") shall make a written record of the initial contact including time, date and method of contact, name of applicant, address, type of enterprise and applicant point of contact.
 - Agency Contact provides Pre-Application Questionnaire to the potential applicant and schedules a meeting to review the applicant's response.
 - Logs of initial contacts shall be distributed to the members periodically.
2. Meeting with Agency Contact
 - Applicant should bring documentation of and/or be prepared to discuss: (i) location of proposed project, (ii) nature of proposed

project, (iii) location of existing facilities of the applicant, (iv) proposals for job retention/creation, (v) likely community impacts and reaction, and (vi) requested types and amounts of financial assistance.

- If the Agency Contact determines that the proposed project is viable, the applicant is invited to appear before the Transactions Committee and the Executive Director provides the appropriate form of Application for Financial Assistance to the applicant. The Applicant is asked to complete the Application (to the extent possible) and to deliver it to the Agency in draft form. Payment of the Agency's expense deposit is not normally required at this stage.
- General Counsel to the Agency will generally participate in the initial meeting with the applicant.

3. Presentation to Transactions Committee

- Prior to presentation, the Agency Contact provides the pre-application questionnaire response (if applicable), the draft Application for Financial Assistance from the applicant, and any other relevant materials to the Transactions Committee. Incomplete draft Applications will not be considered by the Transactions Committee.
- Transactions Committee shall consist of at least one (1) member of the Agency, the Executive Director and such other members and persons as the members of the Agency shall appoint. The Committee's function shall be advisory in nature and all final decisionmaking shall remain with the members of the Agency.
- Applicant informally presents the proposed project to the Transactions Committee and receives feedback as to the anticipated financial assistance package, either at the end of the proposal or shortly thereafter. Transactions Committee authorizes the Agency Contact to further negotiate the terms of the financial assistance package and to initiate the SEQR and public notice(s) process upon receipt of a completed and executed Application for Financial Assistance.
- Agency Contact, at the direction of the Transactions Committee, advises the applicant that the Agency will authorize the applicant to file the completed and executed Application for processing if made within 30 days following the date of the presentation.

- Agency Contact provides a form of Preliminary Agreement to the Applicant which may be signed at the conclusion of the Transactions Committee meeting but shall be signed in no event later than the submission of the formal Application by the Applicant. The Preliminary Agreement constitutes an agreement by the Applicant to pay or reimburse the Agency for its expenses in connection with the processing, review and evaluation of the Application. A copy of the form of Preliminary Agreement is attached to this memo.

4. Application to the Agency

- Applicant submits completed and executed Application for Financial Assistance, including Environmental Assessment Form and other required exhibits. Incomplete Applications will not be considered by the Agency.
- Applicant deposits with the Agency: (i) \$1,000 application fee, (ii) \$3,500 expense deposit for bond counsel fees, (iii) \$2,500 expense deposit for cost/benefit analysis, and (iv) \$500 expense deposit for real property tax valuation analysis. In the event that the transaction does not close, the Agency shall use the expense deposits to defray the costs of the applicable professionals and return any balance to the applicant. In the event that the transaction closes, such expense deposits shall be credited at closing against the final invoices delivered by the applicable professionals.
- Agency staff obtains background check releases from the Applicant, its affiliates and principals as deemed appropriate by Agency staff, and orders or causes to be ordered appropriate searches and background checks, including, without limitation, bankruptcy, tax lien, judgment and OFAC searches as applicable.
- Agency staff reviews financial statements and data (e.g., past earnings and projected cash flows, as applicable) received from the Applicant to assess the strength of the Applicant.
- Bond Counsel reviews the Application and provides due diligence memo (if required).

5. Public Hearing

- Agency Contact schedules and conducts public hearing (if required).
 - Agency Contact is authorized to hold such public hearing on behalf of the Agency and is directed to mail notices to the affected tax jurisdictions and publish public notices in a newspaper of general circulation in the County of Nassau, all as required by applicable law.
 - Agency Contact prepares report of public hearing and delivers report to the members. Alternatively, the Agency Contact is authorized to have a stenographer take minutes of the public hearing.
6. Financial Assistance "Deviation Notice" (if required)
- Agency Contact is authorized to issue "deviation notice" consistent with guidance from the Transactions Committee.
 - Agency Contact provides acknowledgment of and, if desired, responds to all correspondence received from affected tax jurisdictions.
7. SEQR Review Process
- Initiated by Bond Counsel upon receipt of Environmental Assessment Form from applicant.
 - Additional documentation supplied as necessary.
 - Bond Counsel drafts appropriate findings/resolution.
8. Cost-Benefit Analysis/Real Property Tax Valuation Analysis
- Ordered upon receipt of the Application and shall be distributed to all members of the Agency.
 - The Agency will perform or cause to be performed a written cost/benefit analysis with respect to each proposed project. The cost-benefit analysis or documentation prepared by the Agency's staff in support thereof shall, at a minimum, identify: (a) the extent to which a proposed project will create or retain permanent, private sector jobs, (b) the estimated value of any tax exemptions to be provided, (c) the amount of private sector investment generated or likely to be generated by the proposed project, (d) the likelihood of accomplishing the proposed project in a timely fashion, (e) the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts, and (f)

any other public benefits that might occur as a result of the proposed project.

- Generally, the Agency will obtain such analysis from an independent, third-party consultant engaged by the Agency, unless the size or type of the proposed project does not warrant the expense of such a third-party analysis, in which event the Agency's staff shall perform the cost/benefit analysis for the Agency.
- In the sole discretion of the Agency, a cost/benefit analysis will not be obtained from an independent, third-party consultant if such analysis is cost prohibitive given the contemplated financial assistance or is otherwise not warranted or beneficial under the particular circumstances.

9.3 Bond Counsel prepares transaction documents

- Bond Counsel/General Counsel obtains "public approval" of tax-exempt bonds from County Executive (if applicable).
- If required for the transaction, the Executive Director assigns title work to a title company from the Agency's then-applicable approved list of title companies (the "Title Companies") and Bond Counsel contacts the Title Company or the Applicant to order the title report; provided, however, that the cost thereof shall be borne by the Applicant. Assignments to the Title Companies will be made on a sequential basis in a manner designed to give full opportunity to all Title Companies to provide the required services; provided, however, that the Executive Director shall have the authority to assign title for a project to a particular Title Company in his discretion if the circumstances warrant. Circumstances that may warrant assignment of a matter to a particular Title Company may include, but are not limited to, complexity of the transaction, special title issues and prior experience/involvement of the Title Company with respect to the subject property. In addition, the Executive Director shall have discretion to allow the Applicant to select a title company if circumstances warrant. In any instance that a title company is selected other than on a sequential basis, the Executive Director shall first document such selection in a memorandum explaining the reasons therefor, which memorandum shall be included in the project file and a copy of which shall be provided to the Agency's Finance Committee.

- Bond Counsel/ Administrative Director obtains volume cap from State (if required).
- Bond Counsel attempts to obtain bond issuance charge and Commissioner of Health charge waivers (no longer likely to be granted).
- Bond Counsel/General Counsel forwards draft PILOT documents to County Attorney.
- Bond Counsel/General Counsel/Executive Director negotiate and revise applicable documents.

10. Inducement/ Approving/ Bond Resolution

- The Executive Director prepares, prior to the Agency meeting, the requisite internal forms and summaries, including, without limitation, a Staff Review of Application (in substantially the form attached hereto as Exhibit A), which should be delivered to the members of the Agency at least one (1) week in advance of the Agency meeting.
- Agency Contact prepares notice of Agency meeting and agenda for Agency meeting; Agency contact posts notice as required by Open Meetings Law, posts notice on Agency website and e-mails notice to major television, radio and newspaper outlets as well as local community papers (to the extent applicable).
- Includes approval of "deviation" from uniform tax exemption policy (if applicable).
- Closing documents may not be in final form, but all major issues should be resolved.

11. Closing

- General Counsel and Bond Counsel deliver requisite opinions.
- The Applicant's counsel shall deliver customary opinions in connection with the transaction, including, but not limited to, zoning and land use (where applicable) and compliance with applicable law.
- Bond Counsel delivers 412-a notice to County Assessor and tax jurisdictions.
- Bond Counsel delivers ST-60 to New York State Department of Taxation and Finance.

- Bond Counsel makes applicable filings with the Internal Revenue Service.

** The members of the Agency may waive or deviate from any of the foregoing procedures in their discretion if the circumstances warrant such waiver or deviation. **

Notwithstanding the foregoing, the members of the Agency have adopted the following uniform criteria for the evaluation and selection of all categories of Projects for which Financial Assistance shall be granted and staff and counsel to the Agency are directed to undertake or obtain the following, as applicable, prior to presenting any proposed Project for approval by the members of the Agency:

1. an assessment by the Agency of all material information included in connection with an Application for Financial Assistance as shall be necessary to afford the members of the Agency a reasonable basis for their decision to provide Financial Assistance for such proposed Project;
2. a written cost-benefit analysis as set forth above;
3. a statement in writing by the applicant that, as of the date of the Application, the proposed Project is in substantial compliance with all provisions of Article 18-A of the General Municipal Law, including, but not limited to, the provisions of Section 859-a and Section 862(1) thereof; and
4. if the proposed Project involves the removal or abandonment of a facility or plant within the State, the Agency's staff shall notify the chief executive officer(s) of the municipality or municipalities in which such removed or abandoned facility or plant was located.

EXHIBIT A

STAFF REVIEW OF APPLICATION

Date: _____

PROJECT: _____

I. APPLICANT INFORMATION

Applicant: _____

Applicant
Address: _____

Direct
Parents: _____

Principals: _____

II. PROJECT DESCRIPTION

Project: The Project consists of:
_____.

See Appendix A for a location map and photograph of each site
comprising the Project Facility.

Timeline: Renovation/Construction Start: Within _____.

Renovation/Construction Completion: _____ (the
"Scheduled Completion Date").

Financing: _____.

III. PROJECT TEAM

Attorneys: _____.

Engineer: _____.

Architect: _____.

General Contractor: _____.

IV. DATA SUMMARY

Job Covenant: The Applicant will _____ [indicate number of permanent full-time equivalent jobs to be retained/created including timeframe, estimated salary and fringe benefit averages or ranges for categories of jobs and an estimate of the number of jobs that would be filled from within the Labor Market Area].

Capital Investment: Total Budget -- \$
Land/Building Acquisition -- \$
Construction/Reconstruction/Renovation -- \$
Site Work - \$
Infrastructure Work - \$
Furniture/Fixture/Equipment Acquisition - \$
Soft Costs -- \$

Estimated Value of Requested Benefits: Mortgage Recording Tax - \$
Sales/Use Tax - \$ (estimated maximum)
Interest savings - \$
Real Property Tax -

Property Tax Comparison: Estimated otherwise applicable taxes -- \$

Total Estimated PILOT Payments:

Total Estimated Taxes:

Net Benefit to Company: \$

In Year __, the Project Facility would revert to taxable status and the Applicant is responsible to pay property taxes based on the fully taxable assessed value of the Project Facility and then effective tax rates.

Pursuant to PILOT Agreement, the Applicant cannot change its PILOT obligations during the PILOT period by challenging its assessment.

Other New Revenue to Local Taxing Jurisdictions: _____

Miscellaneous Public Benefits: _____

V. ESTIMATED ECONOMIC IMPACT ANALYSIS

See Camoin Associates economic impact report attached as Appendix B. The figures and job numbers in this Section V are all "net new" per the Camoin report.

Projected Direct & Indirect Permanent Jobs Retained & Created:	
Projected Annual Earnings from Direct & Indirect Permanent Jobs Retained & Created:	
Projected Annual Spending from Permanent Jobs Retained & Created:	
Projected Annual Local Sales Tax Revenue from Created & Retained Annual Spending:	
Direct & Indirect Construction-Phase Jobs (job-years):	
Construct-Phase Earnings:	
Construct-Phase Spending:	
Local Sales Tax Revenue from Construction-Phase Spending	
Projected Economic Benefit (from Projected Created & Retained Permanent Jobs and Construction-Phase Spending) (construction period and ___ year permanent period)	
Projected Net Fiscal Tax Benefit (\$_____ per annum sales tax revenue for 5 years (i.e., projected period of new permanent jobs) from operations, plus \$_____ sales tax revenue for construction-phase, less \$_____ property tax revenue lost over ___ years)	

VI. ENVIRONMENTAL IMPACT ANALYSIS

Based on the Environmental Assessment Form ("EAF") completed by the Applicant and the analysis of the EAF undertaken by the Agency's transaction counsel, the Agency has concluded that the Project is _____ under SEQRA [and that the Project will not have a significant adverse impact on the environment. The Agency will take only a leasehold interest in the Project Facility and will require indemnification with respect to environmental matters from the Applicant.]

Environmental Benefits: _____.

VII. COMMUNITY ANALYSIS

Public Hearing: The Director of Business Development conducted a public hearing on _____ at _____. The Minutes of the Public Hearing are attached as Appendix C.

Other Support/
Opposition to Project: _____.

New Infrastructure Required: _____.

Impact on Locality: _____.

Retail Impact: _____.

Added Revenue: _____.

Money Spent in Community: _____.

Unique Needs: _____.

VIII. PROJECT / APPLICANT ANALYSIS

Project Team: The Applicant's project team is led by _____. Staff has determined that _____ and the other principals of the Applicant have more than adequate experience in operating _____.

Likelihood of Project
Being Completed in
a Timely Manner: _____.

Financial Analysis: The Applicant submitted its _____ financial statements and Staff is of the opinion that the Applicant is adequately capitalized to comply with its responsibilities under the Agency's documents.

Prior Relationship with IDA: None identified.

Conflicts: None identified.

Project Specific
Evaluation Criteria: [See UTEP for criteria applicable to project and address here]

Legal/Regulatory Issues: _____.

The Applicant has made statements in the Application that: (i) the provisions of Section 862(1) of the General Municipal Law will not be violated if the Financial Assistance is provided for the proposed project, (ii) the owner, occupant or operator receiving financial assistance is in substantial compliance with applicable federal, state and local tax, worker protection and environmental laws, rules and regulations, (iii) the proposed project is in substantial compliance with all provisions of Article 18-a of the General Municipal Law, including, without limitation, the provisions of Section 859-a and Section 862(1) thereof, and (iv) [there is a likelihood that the proposed project would not be undertaken but for the financial assistance provided by the Agency]. Furthermore, the Applicant has acknowledged in the Application that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any financial assistance and the recapture of all or a portion of any tax exemptions claimed by reason of the Agency's involvement with respect to the proposed project.

[If the Project involves the removal or abandonment of a facility or plant within the State, staff has notified the chief executive officer(s) of the municipality or municipalities in which such removed or abandoned facility or plant was located.]

Background Check: Staff obtained credit checks from Castlebranch with respect to the Applicant and the Principals. No substantive negative issues were noted by the Chief Financial Officer.

IX. RECOMMENDATION

1. [Staff has concluded that there is a likelihood that the proposed project would not be undertaken but for the financial assistance provided by the Agency.] OR [If the proposed project could be undertaken without the financial assistance provided by the Agency, the proposed should be undertaken by the Agency because _____.]
2. [Staff has reviewed and assessed all material information included in connection with the Application for Financial Assistance and has concluded that there is a reasonable basis for the Agency to provide financial assistance for the proposed project.]

EXHIBIT D

See Attached

=====

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY
as sublessor

AND

[_____]
as sublessee

SUBLEASE AGREEMENT
(UNIFORM PROJECT AGREEMENT)

DATED AS OF [____] 1, 2016

ADDRESS:

VILLAGE: --
TOWN:
COUNTY: Nassau
STATE: New York
SECTION:
BLOCK:
LOTS:

=====

Prepared By:

Phillips Lytle LLP
1205 Franklin Avenue, Suite 390
Garden City, NY 11530
Attention: Paul V. O'Brien, Esq.

TABLE OF CONTENTS

ARTICLE I	DEFINITIONS.....	3
	SECTION 1.1	DEFINITIONS..... 3
	SECTION 1.2	INTERPRETATION..... 10
ARTICLE II	REPRESENTATIONS, WARRANTIES AND COVENANTS	11
	SECTION 2.1	REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AGENCY..... 11
	SECTION 2.2	REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY. 12
ARTICLE III	CONVEYANCE AND USE OF PROJECT FACILITY	15
	SECTION 3.1	CONVEYANCE TO THE AGENCY. (A)..... 15
	SECTION 3.2	USE OF PROJECT FACILITY..... 16
	SECTION 3.3	HAZARDOUS MATERIALS. 16
	SECTION 3.4	NON-MERGER. 18
	SECTION 3.5	TITLE INSURANCE..... 18
ARTICLE IV	UNDERTAKING AND COMPLETION OF THE PROJECT	19
	SECTION 4.1	ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF THE PROJECT FACILITY. 19
	SECTION 4.2	COMPLETION OF THE PROJECT FACILITY; FEES. 21
	SECTION 4.3	REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES..... 22
ARTICLE V	DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE	23
	SECTION 5.1	SUBLEASE OF THE PROJECT FACILITY. 23
	SECTION 5.2	DURATION OF THE LEASE TERM; QUIET ENJOYMENT..... 23
	SECTION 5.3	RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE. 23
	SECTION 5.4	NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER. 24
	SECTION 5.5	GRANT OF SECURITY INTEREST 25
ARTICLE VI	MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE	26

SECTION 6.1	MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY.	26
SECTION 6.2	TAXES, ASSESSMENTS AND UTILITY CHARGES.....	28
SECTION 6.3	INSURANCE REQUIRED.	28
SECTION 6.4	ADDITIONAL PROVISIONS RESPECTING INSURANCE.....	30
SECTION 6.5	APPLICATION OF NET PROCEEDS OF INSURANCE.....	31
SECTION 6.6	PAYMENTS IN LIEU OF TAXES.....	31
ARTICLE VII	DAMAGE, DESTRUCTION AND CONDEMNATION.....	32
SECTION 7.1	DAMAGE OR DESTRUCTION.....	32
SECTION 7.2	CONDEMNATION.....	33
SECTION 7.3	ADDITIONS TO THE PROJECT FACILITY.....	34
ARTICLE VIII	SPECIAL COVENANTS	35
SECTION 8.1	NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS".	35
SECTION 8.2	HOLD HARMLESS PROVISIONS.	35
SECTION 8.3	RIGHT OF ACCESS TO THE PROJECT FACILITY.	36
SECTION 8.4	COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS.....	36
SECTION 8.5	AGREEMENT TO PROVIDE INFORMATION.	37
SECTION 8.6	BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES.....	37
SECTION 8.7	COMPLIANCE WITH APPLICABLE LAWS.....	37
SECTION 8.8	DISCHARGE OF LIENS AND ENCUMBRANCES.....	38
SECTION 8.9	PERFORMANCE OF THE COMPANY'S OBLIGATIONS.....	38
SECTION 8.10	DEPRECIATION DEDUCTIONS AND TAX CREDITS.....	38
SECTION 8.11	EMPLOYMENT OPPORTUNITIES.....	38
SECTION 8.12	SALES AND USE TAX EXEMPTION.....	39
SECTION 8.13	IDENTIFICATION OF THE EQUIPMENT.....	44
SECTION 8.14	FINANCIAL STATEMENTS.....	44
ARTICLE IX	ASSIGNMENTS; LEASING; MERGER OF THE AGENCY	46
SECTION 9.1	ASSIGNMENT OF THIS LEASE.	46
SECTION 9.2	MERGER OF THE AGENCY.	46
SECTION 9.3	SALE OR LEASE OF THE PROJECT FACILITY...	46

ARTICLE X	EVENTS OF DEFAULT AND REMEDIES	48
	SECTION 10.1	EVENTS OF DEFAULT DEFINED..... 48
	SECTION 10.2	REMEDIES ON DEFAULT..... 51
	SECTION 10.3	REMEDIES CUMULATIVE. 52
	SECTION 10.4	AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES..... 52
	SECTION 10.5	NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER..... 52
ARTICLE XI	OPTIONS TO TERMINATE	53
	SECTION 11.1	EARLY TERMINATION OF THE LEASE. 53
	SECTION 11.2	OBLIGATION TO TERMINATE THE LEASE. 53
	SECTION 11.3	RESERVED..... 54
	SECTION 11.4	RECAPTURE OF AGENCY BENEFITS..... 54
ARTICLE XII	MISCELLANEOUS	56
	SECTION 12.1	NOTICES..... 56
	SECTION 12.2	BINDING EFFECT. 57
	SECTION 12.3	SEVERABILITY..... 57
	SECTION 12.4	AMENDMENT..... 57
	SECTION 12.5	EXECUTION OF COUNTERPARTS. 57
	SECTION 12.6	APPLICABLE LAW. 57
	SECTION 12.7	SURVIVAL OF OBLIGATIONS. 57
	SECTION 12.8	TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING..... 58
	SECTION 12.9	NO RECOURSE; SPECIAL OBLIGATION..... 58
	SECTION 12.10	NET LEASE. 59
	SECTION 12.11	WAIVER OF JURY TRIAL..... 59
	SECTION 12.12	PRIOR AGREEMENTS..... 59
	SECTION 12.13	SERVICE OF PROCESS. 59
	SECTION 12.14	THIRD PARTY BENEFICIARIES..... 60
	SECTION 12.15	NON-DISCRIMINATION. 60
	SECTION 12.16	DATE OF LEASE. 60
	SECTION 12.17	RECORDING AND FILING. 60
	SECTION 12.18	SUBORDINATION..... 61

EXHIBIT A - Description of the Land
EXHIBIT B - Description of the Equipment
EXHIBIT C - Form of Termination of Company Lease
EXHIBIT D - Form of Bill of Sale to Company
EXHIBIT E - Form of Sales Tax Agency Agreement
EXHIBIT F - Form of Termination of Sublease Agreement
EXHIBIT G - Forms of Annual Employment Reports
EXHIBIT H - Copy of PILOT Agreement

**SUBLEASE AGREEMENT
(UNIFORM PROJECT AGREEMENT)**

THIS SUBLEASE AGREEMENT (UNIFORM PROJECT AGREEMENT) dated as of [] 1, 2016 (this "Lease") by and between the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 1550 Franklin Avenue, Suite 235, Mineola, NY 11501 (the "Agency"), and [] (the "Company").

WITNESSETH:

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act, as in effect as of the date of this Lease, being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, the Company submitted an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: []; and

WHEREAS, [insert Project specific review process recitals]; and

WHEREAS, by resolution adopted by the members of the Agency on [], 2016 (the "Authorizing Resolution"), the Agency, following a review of the Report, determined to proceed with the Project, to grant the Financial Assistance (as hereinafter defined) and to enter into the "straight lease transaction" (as such quoted term is defined in the Act) contemplated by this Lease and the other Transaction Documents (as hereinafter defined); and

WHEREAS, the Agency proposes to appoint the Company as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Project Facility and to sublease the Project Facility to the Company, and the Company desires to act as agent of the Agency to undertake the acquisition, construction, installation and equipping of the Project Facility and to sublease the Project Facility from the Agency, all pursuant to the terms and conditions hereinafter set forth in this Lease and in the other Transaction Documents; and

WHEREAS, the acquisition of an interest in the Project Facility, the straight lease of the Project Facility and the granting of the Financial Assistance by the Agency to the Company are for proper purposes, including, without limitation, the advancement of the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State of New York and the prevention of unemployment and economic deterioration pursuant to the provisions of the Act; and

WHEREAS, the members of the Agency have determined that (i) the granting of the Financial Assistance by the Agency to the Company is necessary to induce the Company to proceed with the Project, (ii) [there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Company] OR [although the Project could be undertaken without the granting of the Financial Assistance, the Agency should undertake the Project because _____]; and

WHEREAS, immediately prior to the execution and delivery of this Lease, the Company will execute and deliver or cause to be executed and delivered to the Agency (A) a certain company lease agreement of even date herewith (the "Company Lease") between the Company and the Agency, which conveys to the Agency a leasehold interest in and to the Premises (as hereinafter defined), and (B) a bill of sale dated the Closing Date (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in and to the Equipment; and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement of even date herewith between the Company and the Agency (the "PILOT Agreement"), the Company has agreed to make certain payments in lieu of real property taxes with respect to the Premises and such obligation is secured by a Mortgage and Assignment of Leases and Rents of even date herewith (the "PILOT Mortgage") from the Company and the Agency, as mortgagor, to the County of Nassau, as mortgagee (the "PILOT Mortgagee"), pursuant to which the Agency and the Company grant a first mortgage on the Premises to the PILOT Mortgagee; and

WHEREAS, in order to finance a portion of the costs of the Project, a bank, trust company or other financial institution (the "Bank"), may make loans to the Company in the aggregate principal amount of up to \$[_____] (the "Bank Loan"), which Bank Loan would be evidenced by one (1) or more promissory notes and/or loan agreements (together with all modifications, renewals and replacements therefore, collectively, the "Bank Note") made by the Company to the Bank in the aggregate principal amount of the Bank Loan; and

WHEREAS, in order to secure the obligations of the Company to the Bank under the Bank Note, the Company may execute and deliver one (1) or more mortgages in favor of the Bank in the maximum aggregate principal amount of the Bank Loan (collectively, the "Bank Mortgage"), which Bank Mortgage the Agency may execute for the sole purpose of subjecting to the lien thereof its interest in the Premises, and pursuant to which Bank Mortgage the Company and the Agency would grant to the Bank a mortgage lien on the Premises;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS:

ARTICLE I DEFINITIONS

SECTION 1.1 DEFINITIONS. The following words and terms used in this Lease shall have the respective meanings set forth below, unless the context or use indicates another or different meaning or intent:

“Act” shall have the meaning assigned to such term in the recitals to this Lease.

“Administrative Fee” shall have the meaning assigned to such term in Section 5.3(B) of this Lease.

“Affiliate” of a Person shall mean a Person who directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, such Person. The term “control” means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, either directly or indirectly, of at least fifty-one percent (51%) of the voting stock or other equity interest of such Person.

“Agency” means (A) the Nassau County Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which the Nassau County Industrial Development Agency, or its successors or assigns, may be a party.

“Annual Fee” shall have the meaning assigned to such term in Section 5.3(C) of this Lease.

“Anti-Terrorism Laws” means any applicable laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, applicable laws comprising or implementing the Bank Secrecy Act, and applicable laws administered by the United States Treasury Department’s Office of Foreign Asset Control (as any of the foregoing may from time to time be amended, renewed, extended, or replaced).

“Applicable Law” or “Applicable Laws” means, individually or collectively as the context may require, all current and future statutes, codes, laws, acts, ordinances, treaties, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, determinations and requirements, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of the foregoing to be determined both as if the Agency were the owner of an interest in the Project Facility and as if the Company and not the Agency were the owner of an interest in the Project Facility), including but not limited to (1) applicable health, building, zoning, use, rent, accessibility, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, (3) judgments, decrees, orders or injunctions issued by any court or other judicial

or quasi-judicial Governmental Authority, and (4) applicable covenants and restrictions relating in any way to the Project Facility.

“Application” shall have the meaning assigned to such term in the recitals to this Lease.

“Authorizing Resolution” shall have the meaning assigned to such term in the recitals to this Lease.

“Authorized Representative” means the Person or Persons at the time designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Agency or the Company, as the case may be, containing the specimen signature of each such Person and signed on behalf of (A) the Agency by its Chairman, Vice-Chairman, Secretary, Executive Director, Administrative Director or such other Person as may be authorized by resolution of the members of the Agency to act on behalf of the Agency, and (B) the Company by its President or any Vice President, if a corporation, or a member or a manager, if a limited liability company, or a general partner, if a partnership, or such other Person as may be authorized in writing by the members of such limited liability company or by the board of directors of such corporation or by the general partner of such partnership, to act on behalf of the Company, as the case may be.

“Bank” shall have the meaning assigned to such term in the recitals to this Lease, together with such entity’s successors and/or assigns, provided that the Agency is given notice of any such succession or assignment in accordance with Section 12.1 of this Lease.

“Bank Loan” shall have the meaning assigned to such term in the recitals to this Lease.

“Bank Mortgage” shall have the meaning assigned to such term in the recitals to this Lease.

“Bank Note” shall have the meaning assigned to such term in the recitals to this Lease.

“Bill of Sale to Agency” shall have the meaning assigned to such term in the recitals to this Lease.

“Bill of Sale to Company” means the bill of sale from the Agency to the Company, pursuant to which the Agency conveys to the Company all of the Agency’s interest in the Equipment, substantially in the form attached as Exhibit D to this Lease.

“Building” shall have the meaning assigned to such term in the recitals to this Lease.

“Business Day” means a day on which banks located in the County are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

“Closing” means the closing at which this Lease and the other Transaction Documents are executed and delivered by the Company, the Agency and the other parties thereto.

“Closing Date” means the date of the Closing.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

"Collateral" shall have the meaning assigned to such term in Section 5.5 of this Lease.

"Commissioner" means the Commissioner of Taxation and Finance of the State of New York.

"Company" means [____], and its successors and assigns, to the extent permitted pursuant to this Lease.

"Company Lease" shall have the meaning assigned to such term in the recitals to this Lease.

"Completion Date" means such date as shall be certified by the Company to the Agency (and accepted by the Agency in its reasonable discretion) as the date of completion of the Project pursuant to Section 4.2 of this Lease, or such earlier date as the Company shall notify the Agency as being the date of completion of the Project (subject to acceptance thereof by the Agency in its reasonable discretion).

"Compliance Report" shall have the meaning assigned to such term in Section 8.12 of this Lease.

"Condemnation" means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

"County" means the County of Nassau, New York.

"Default Interest Rate" means a rate of interest equal to eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is less.

"Environmental Indemnification" means the Environmental Compliance and Indemnification Agreement of even date herewith from the Company and the Guarantor in favor of the Agency.

"Environmental Law" or "Environmental Laws" shall have the meaning assigned to such term in Section 3.3 of this Lease.

"Equipment" shall have the meaning assigned to such term in the recitals to this Lease and shall include all those materials, machinery, equipment, fixtures and furnishings intended to be acquired with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of this Lease, and such substitutions and replacements therefor as may be made from time to time pursuant to this Lease, including without limitation, all the Property described in Exhibit B attached to this Lease. "Equipment" shall not include: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are

licensed by the Department of Motor Vehicles or similar agency for use on public highways or streets.

"Event of Default" means, with respect to any particular Transaction Document, any event specified as an Event of Default pursuant to the provisions thereof.

"Financial Assistance" means [(A) an exemption from all New York State and local sales and use taxes for purchases and rental of qualifying personal property necessary for the completion of the Project and having a value not exceeding the Maximum Sales Tax Benefit, (B) an exemption from mortgage recording tax with respect to the recording of the Bank Mortgage and the PILOT Mortgage and having a value not exceeding the Maximum Mortgage Recording Tax Benefit, and (C) an exemption from real property taxes pursuant to the PILOT Agreement, which the Agency has estimated to have a value of \$ _____.]

"Governmental Authority" means the United States of America, the State, any other state, the County, any political subdivision of any of the foregoing, and any court, tribunal, arbitrator, mediator, agency, department, commission, board, bureau, authority or instrumentality of any of them.

"Gross Proceeds" means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to, the settlement of any insurance or Condemnation award.

"Guarantor" or "Guarantors" means, individually or collectively, as the context may require, [_____], each a natural person.

"Guaranty" means the Guaranty of even date herewith from the Guarantors to the Agency.

"Hazardous Materials" means all hazardous materials including, without limitation, any explosives, radioactive materials, radon, asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, lead based paints, petroleum, petroleum products, methane, hazardous materials, hazardous chemicals, hazardous wastes, extremely hazardous wastes, restricted hazardous wastes, hazardous or toxic substances, toxic pollutants, hazardous air pollutants, pollutants, contaminants, toxic chemicals, toxics, pesticides or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Clean Water Act, as amended (33 U.S.C. Section 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.) the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), Articles 15 or 27 of the New York State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule or regulation of any Governmental Authority having jurisdiction.

"IDA Meeting" shall have the meaning assigned to such term in the recitals to this Lease.

"Indebtedness" means (1) the monetary obligations of the Company to the Agency or to any of its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, under this Lease or any of the other Transaction Documents, and (2) all interest accrued on any of the foregoing.

"Land" shall have the meaning assigned to such term in the recitals to this Lease and is more particularly described in Exhibit A to this Lease.

"Lien" means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or a judgment against the Company. The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including, but not limited to, mechanics', materialmen's, landlord's, warehousemen's and carriers' liens and other similar encumbrances affecting real property. For purposes of the Transaction Documents, a Person shall also be deemed to be the owner of any Property that it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

"Maximum Mortgage Recording Tax Benefit" means \$[_____].

"Maximum Sales Tax Benefit" means \$[_____].

"Minimum Employment Requirement" shall have the meaning assigned to such term in Section 2.2 of this Lease.

"Net Proceeds" means so much of the Gross Proceeds with respect to which that term is used as remain after payment of all fees for services, expenses, costs and taxes (including attorneys' fees) incurred in obtaining such Gross Proceeds.

"Permitted Encumbrances" means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and are identified on Schedule B to the Title Policy, (B) Liens for taxes, assessments and utility charges, to the extent permitted by this Lease, (C) any Lien or encumbrance on the Project Facility obtained through any Transaction Document, (D) the Bank Mortgage, and (E) any Lien or encumbrance requested by the Company in writing and consented to by the Agency, which consent may be granted or denied in the Agency's sole and absolute discretion.

"Person" means an individual, partnership, limited liability company, corporation, trust, unincorporated organization or Governmental Authority.

"PILOT Agreement" shall have the meaning assigned to such term in the recitals to this Lease.

"PILOT Mortgage" shall have the meaning assigned to such term in the recitals to this Lease.

"PILOT Mortgagee" means the County, on behalf of itself and such other instrumentalities to which amounts shall be due and owing pursuant to the PILOT Agreement, and its successors and/or assigns under the PILOT Mortgage.

"Plans and Specifications" means the plans and specifications for the construction, installation and equipping of the Project Facility contemplated by Section 4.1 of this Lease prepared by the Company's architect and reviewed by the Agency (solely for purposes of the granting of the Financial Assistance) and all applicable Governmental Authorities, as the same may be amended, modified, supplemented, restated or replaced from time to time in accordance with the terms hereof and subject to the review and approval of the Agency (solely for purposes of determining compliance with this Lease).

"Premises" means the Land, together with the Building, and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land; provided, however, that nothing in this definition shall constitute the Agency's consent to the construction of any new building or structure thereon or the construction of an addition to any existing building or structure thereon, other than the construction, installation and equipping of the improvements depicted in the Plans and Specifications.

"Prohibited Person" means (i) any Person (A) that is in default or in breach, beyond any applicable grace or cure 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 or cure 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" means that project being undertaken by the Agency consisting of (A) the acquisition of a leasehold interest in the Premises, (B) the construction of the Building and related improvements on the Land, (C) the acquisition and installation of the Equipment, (D) the granting of the Financial Assistance, and (E) the subleasing of the Project Facility by the Agency to the Company, all as more particularly described in the recitals to this Lease.

"Project Facility" shall have the meaning assigned to such term in the recitals to this Lease.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, tangible or intangible.

“Public Hearing” shall have the meaning assigned to such term in the recitals to this Lease.

“Quarterly Sales Tax Report” shall have the meaning assigned to such term in Section 8.12(C) of this Lease.

“Real Property Tax Exemption Form” shall have the meaning assigned to such term in Section 6.6 of this Lease.

“Recapture Event” shall have the meaning assigned to such term in Section 11.4 of this Lease.

“Recapture of Benefits” shall have the meaning assigned to such term in Section 11.4 of this Lease.

“Report” shall have the meaning assigned to such term in the recitals to this Lease.

“Restricted Party” means any individual or entity: (a) listed in the Annex to the Executive Order No. 13224 or is otherwise subject to the provisions of such Executive Order; (b) listed on the “Specially Designated Nationals and Blocked Persons” list maintained by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury, as updated or amended from time to time, or any similar list issued by OFAC; or (c) whose property has been blocked, or is subject to seizure, forfeiture or confiscation, by any order relating to terrorism or money laundering issued by the President, Attorney General, Secretary of State, Secretary of Defense, Secretary of the Treasury or any other U.S. State or Federal governmental official or entity.

“Sales Tax Agency Agreement” shall have the meaning assigned to such term in Section 8.12 of this Lease.

“Scheduled Completion Date” shall have the meaning assigned to such term in Section 4.2(A) of this Lease.

“SEQRA” shall have the meaning assigned to such term in the recitals to this Lease.

“Special Counsel” means the law firm of Phillips Lytle LLP, Garden City, New York, or such other attorney or firm of attorneys located in the State whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and who are acceptable to the Agency.

“State” means the State of New York.

“State Sales and Use Taxes” means sales and compensating use taxes and fees imposed by Article 28 or Article 28-A of the New York State Tax Law, but excluding such taxes imposed in a city by Section 1107 or Section 1108 of such Article 28.

“Stated Expiration Date” shall have the meaning assigned to such term in Section 5.2(B) of this Lease.

"Sub-Agent Agency Agreement" shall have the meaning assigned to such term in Section 8.12(H) of this Lease.

"Sublease Agreement" or "Sublease Agreements" means any lease, sublease, sub-sublease or other occupancy agreement with respect to the Project Facility, or any part thereof, permitted or approved pursuant to Section 9.3 of this Lease, other than this Lease and the Company Lease.

"Sublessee" or "Sublessees" means each tenant, lessee, sublessee, sub-sublessee or other occupant under a Sublease Agreement.

"Taxing Entities" shall have the meaning assigned to such term in Section 6.6 of this Lease.

"Termination of Company Lease" means the termination of company lease from the Agency to the Company, pursuant to which the Agency terminates the Company Lease, substantially in the form attached as Exhibit C to this Lease.

"Termination of Lease" means the termination of sublease agreement between the Company and the Agency, pursuant to which the Agency and the Company terminate this Lease, substantially in the form attached as Exhibit F to this Lease.

"Title Policy" shall have the meaning assigned to such term in Section 3.5 of this Lease.

"Transaction Documents" means the Company Lease, the Bill of Sale to Agency, the PILOT Agreement, the PILOT Mortgage, this Lease, the Environmental Indemnification, the Sales Tax Agency Agreement, any Sub-Agent Agency Agreement and all other instruments, agreements, certificates and documents related thereto and executed in connection therewith, and any other instrument, agreement, certificate or document supplemental thereto.

"UCC" shall have the meaning assigned to such term in Section 5.5 of this Lease.

"Unassigned Rights" means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.1, 3.2, 3.3, 4.1(B), 4.1(D), 4.1(E), 4.1(F), 4.1(G), 5.2 (A), 5.3 (B) and (C), 5.4, 5.5, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.12, 8.13, 8.14, 9.1, 9.3, 11.2, 11.4, 12.4, 12.7, 12.9 and 12.19 of this Lease, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents, servants and employees, past, present and future, of the Agency for their own account pursuant to Sections 2.2(G), 3.1, 3.3, 4.1, 5.3, 5.4, 6.4(B), 6.6, 8.2, 8.9, 8.12, 9.1, 9.3, 10.2, 10.4, 11.2 and 11.4 of this Lease, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.6 of this Lease and as Recapture of Benefits pursuant to Section 11.4 of this Lease, (D) the right of the Agency in its own behalf to enforce the obligation of the Company to undertake and complete the Project and to confirm the qualification of the Project as a "project" under the Act, and (E) the right to enforce the foregoing pursuant to the PILOT Agreement, the PILOT Mortgage and Section 5.5 and Article X of this Lease.

SECTION 1.2 INTERPRETATION. In this Lease, unless the context otherwise requires:

(A) the terms "hereby", "hereof", "herein", "hereunder" and any similar terms as used in this Lease, refer to this Lease, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the Closing Date;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa;

(D) words importing persons shall include firms, associations, partnerships, trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons;

(E) any certificates, letters or opinions required to be given pursuant to this Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Lease; and

(F) references to documents, instruments or agreements shall mean such documents, instruments and agreements as they may be amended, modified, renewed, replaced or restated from time to time in accordance with the terms hereof.

ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AGENCY. The Agency makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Agency is duly established under the provisions of the Act and has the power to enter into this Lease and the other Transaction Documents to which the Agency is a party and to carry out its obligations hereunder and thereunder. Based upon the representations of the Company, the Project will constitute a "project", as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver and perform this Lease and the other Transaction Documents to which the Agency is a party.

(B) Neither the execution and delivery of this Lease or the other Transaction Documents to which the Agency is a party, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the provisions of this Lease or the other Transaction Documents to which the Agency is a party will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by which the Agency is bound, nor will constitute a default by the Agency under any of the foregoing.

(C) Except as provided in Articles IX, X and XI hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project

Facility or any part thereof and shall maintain the Project Facility free and clear of all liens or encumbrances created by the Agency, except as contemplated or permitted by the terms of this Lease and the other Transaction Documents.

SECTION 2.2 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Company is a [limited liability company] duly organized, validly existing and in good standing under the laws of the State of New York, is qualified and authorized to do business as a foreign [limited liability company] in all other jurisdictions in which its operations or ownership of its Properties so require, and has the power to enter into this Lease and the other Transaction Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its [members/managers], the Company has been duly authorized to execute, deliver and perform this Lease and the other Transaction Documents to which the Company is a party. No other consent, approval or action by the [members or managers] of the Company or any other consent or approval (governmental or otherwise) or the taking of any other action is required as a condition to the validity or enforceability of this Lease or any of the other Transaction Documents.

(B) Neither the execution and delivery of this Lease or any of the other Transaction Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the provisions of this Lease or the other Transaction Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Company's articles of organization or operating agreement or any other company restriction, order, judgment, agreement, document or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any of the foregoing, other than Permitted Encumbrances, (2) conflict with or result in a violation of Applicable Laws, (3) require consent or approval (which has not been heretofore received and provided to the Agency) under any company restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent or approval (which has not been heretofore obtained and provided to the Agency) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any Governmental Authority having jurisdiction over the Company or any of the Property of the Company.

(C) The completion of the Project Facility by the Company as agent of the Agency, the sublease thereof by the Agency to the Company and the operation thereof by the Company will not result in the removal of a facility or plant of the Company or any Sublessee of the Project Facility, or any part thereof, from one area of the State to another area of the State (other than relocations within the County) or in the abandonment of one or more plants or facilities of the Company or any Sublessee of the Project Facility, or any part thereof, located in the State (other than within the County); provided, however, that nothing in this Section shall constitute an authorization by the Agency for the Company to lease, sublease, sub-sublease or permit any other occupancy arrangements with respect to the Project Facility or any part thereof

without the prior written consent of the Agency, except as set forth in Section 9.3 of this Lease. Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Company.

(D) The Transaction Documents to which the Company is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid, legal and binding obligations of the Company, enforceable in accordance with their respective terms.

(E) The Project constitutes a commercial facility and will advance the Agency's purposes by promoting employment opportunities and preventing economic deterioration in the County. The Project Facility is, and so long as this Lease shall remain in effect, the Project Facility will continue to be a "project", as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action), or allow any action to be taken or not taken, which action, inaction or omission would in any way cause the Project Facility not to constitute a "project", as such quoted term is defined in the Act.

(F) The Project Facility and the operation thereof will comply with all Applicable Laws, and the Company will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure, or alleged failure, to comply with all Applicable Laws. The Company shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project or the operation of the Project Facility, and the Company will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future harmless, from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure, or alleged failure, to comply therewith; provided that such claims, liabilities, damages, fees, expenses, fines and penalties of the Agency are not incurred or do not result solely from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company), attorneys, servants or employees, and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(G) The Project will not have a "significant adverse environmental impact" (as such term is used in SEQRA) and the Company hereby covenants to comply with all mitigating measures, requirements and conditions enumerated in the resolution adopted by the Agency on [____], 2016, under SEQRA applicable to the acquisition, construction, installation, equipping and operation of the Project Facility contemplated by Section 4.1 of this Lease and in any other approvals issued by any other Governmental Authority with respect to the Project Facility. No material changes with respect to any aspect of the Project Facility have arisen from the date of the adoption of such resolution which would cause the determinations contained therein to be untrue.

(H) The owner, occupant or operator receiving Financial Assistance hereby certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

(I) The Project is in substantial compliance with all provisions of the Act, including, but not limited to, the provisions of Section 859-a and 862(1) thereof.

(J) There are no actions, suits, investigations or proceedings of or before any Governmental Authority, pending or threatened against the Company or any of its Property which (i) either in any case or in the aggregate, if adversely determined, would materially, adversely affect the business, operations or condition, financial or otherwise, of the Company, or (ii) question the validity of any of the Transaction Documents or any action to be taken in connection with the transactions contemplated thereby.

(K) The Company is not in default with respect to any order, writ, injunction or decree of any Governmental Authority, or in violation of any law, statute or regulation, domestic or foreign, to which the Company or any of its Property is subject.

(L) The subleasing of the Project Facility by the Agency to the Company and the granting of the Financial Assistance have induced the Company to proceed with the Project in the County. The granting of the Financial Assistance by the Agency with respect to the Project Facility, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the County and the State and improve their prosperity and standard of living, and will prevent unemployment and economic deterioration and thereby serve the public purposes of the Act.

(M) The Company shall [] (collectively, the "Minimum Employment Requirement").

(N) The funds available to the Company are sufficient to pay all costs in connection with the acquisition, construction, installation and equipping of the Project Facility.

(O) The Company is not a Prohibited Person, no Guarantor is a Prohibited Person, no Affiliate of the Company or any Guarantor is a Prohibited Person and no member, manager, director or shareholder of the Company is a Prohibited Person.

(P) Neither this Lease nor any other Transaction Document nor any other document, certificate, agreement or instrument furnished to the Agency by or on behalf of the Company or any Guarantor contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading.

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

(R) The Company is, and shall at all times during the term of this Lease, continue to be owned solely by [_____].

(S) The Project Facility is located entirely within the boundaries of [_____].

(T) The total cost of the Project is at least \$[_____].

(U) As of the Closing Date, no leases, licenses or other occupancy arrangements exist with respect to the Project Facility or any part thereof except this Lease and the Company Lease, and no Person is in occupancy or possession of any portion of the Project Facility, other than the Company.

(V) The Company has not conveyed, assigned, transferred, mortgaged, hypothecated, pledged or granted a security interest in its interest in the Project Facility pursuant to a mortgage, security agreement, pledge or other agreement that prohibits the Company from executing and delivering the Company Lease, this Lease or any other Transaction Document. The Company covenants and agrees that it shall not enter into a mortgage, security agreement, pledge or other agreement pursuant to which the existence of the Company Lease, this Lease or any other Transaction Document would constitute a default or an event of default.

(W) Neither the Company, nor any Guarantor nor any Affiliate of the Company or any Guarantor has employed or retained any appointed or elected governmental official to solicit or secure the Agency's undertaking of the Project or its agreement to enter into this Lease or any other Transaction Document upon an agreement of understanding for a commission or percentage, brokerage or contingent fee.

(X) The Project Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers.

(Y) The recording of the Bank Mortgage shall not result in the claiming of an exemption from mortgage recording tax in excess of the Maximum Mortgage Recording Tax Benefit.

ARTICLE III CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1 CONVEYANCE TO THE AGENCY. (A) Pursuant to the Company Lease, the Company has conveyed or will convey to the Agency a leasehold interest in and to the Premises for the purpose of undertaking and completing the Project. The Company hereby represents and warrants that it has good and valid fee title to the Premises, free and clear from all

Liens except for Permitted Encumbrances, and agrees that the Company will defend (with counsel selected by the Agency), indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto or due to any defect in the leasehold interest granted to the Agency pursuant to the Company Lease.

(B) The Company and the Agency acknowledge that the Project Facility and the leasehold interest therein conveyed to the Agency from the Company and subleased by the Agency back to the Company are not "property" as defined in Title 5-A of the Public Authorities Law of the State because such property and the interests therein are security for the Company's obligations to the Agency under this Lease and the other Transaction Documents, including, without limitation, (i) the Company's obligation to acquire, construct, install, equip and maintain the Project Facility on behalf of the Agency, and (ii) the performance by the Company to the Agency of the Company's other obligations under this Lease and the other Transaction Documents.

SECTION 3.2 USE OF PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Transaction Documents, provided such use causes the Project Facility to qualify or to continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project into disrepute as a public project; provided, further, however, that at no time shall any such use be other than by the Company as a [_____], together with uses incidental thereto, except with the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion. The Company shall not occupy, use or operate the Project Facility, or any part thereof, or permit or suffer the Project Facility, or any part thereof, to be occupied, used or operated (1) for any unlawful purpose, or (2) in violation of any certificate of occupancy affecting the Project Facility, or (3) for any use that constitutes a nuisance, public or private, or (4) for any use that makes void or voidable any insurance then in force with respect thereto, or (5) by any tenant, subtenant, user or occupant whose use, occupancy or operation of the Project Facility would be in violation of Applicable Laws. All permits and licenses necessary for the operation of the Project Facility as contemplated by this Section 3.2 shall be procured promptly by the Company. Any provision of this Lease to the contrary notwithstanding, the Company shall be liable at all times for all risk, loss and damage with respect to the Project Facility.

Nothing in this Section shall constitute an authorization by the Agency for the Company to lease, license, sublease, sub-sublease or permit any other occupancy arrangements with respect to the Project Facility or any part thereof, except in accordance with Section 9.3 of this Lease.

SECTION 3.3 HAZARDOUS MATERIALS.

(A) The Company represents, warrants and covenants that, (i) the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner that violates any Applicable Law, including, but not limited to, those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials (each, an "Environmental Law" and, collectively, the "Environmental Laws"), (ii) the environmental and ecological condition of the Project Facility is not in violation of any Applicable Law, including, without limitation, any Environmental Law, (iii) the Company

has all Environmental Permits required to construct and operate the Project Facility and is in compliance with their requirements, (iv) the Premises is not listed in CERCLIS, the NPL or any similar state or local listing nor is it included in an area included in such a list, and the Company has no knowledge that such a listing is pending or contemplated, (v) no event has occurred which, with the passage of time or the giving of notice or both, would constitute a violation of any Environmental Law, (vi) to the best of the Company's knowledge, there are not now, nor have there ever been, underground storage tanks on or under the Premises, (vii) there are no actions, suits, claims or proceedings seeking money damages, injunctive relief, remedial action or any other remedy pending or, to the Company's knowledge, threatened relating to a violation of Environmental Law or the disposal, discharge or release of Hazardous Materials, and (viii) to the best of the Company's knowledge, no prior owner of the Project Facility or any tenant, subtenant, operator, occupant, prior tenant, prior subtenant, prior operator or prior occupant, has used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Environmental Law.

(B) The Company shall keep and shall cause the Project Facility to be kept free of Hazardous Materials except in compliance with Environmental Laws. Without limiting the foregoing, the Company shall not cause or permit the Project Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Environmental Laws, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company, or any Sublessee of the Project Facility, or any part thereof, an unlawful release of Hazardous Materials onto, under or from the Project Facility or onto any other property. The Company shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or its members, managers, shareholders, directors, officers, agents, servants, employees or representatives, a release of Hazardous Materials on, under or from the Project Facility, except in compliance with all Environmental Laws.

(C) The Company shall comply with and cause all Sublessees of the Project Facility, or any part thereof, to comply with, all Environmental Laws whenever and by whomever triggered, and shall obtain and comply with, and shall cause all such Sublessees to obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company agrees to provide the Agency with copies of any notifications given by the Company to any Governmental Authorities or received by the Company from any Governmental Authorities with respect to the environmental or ecological condition of the Project Facility. The Company hereby agrees that at all times during which it owns, leases or operates the Project Facility, and whether or not this Lease or any other Transaction Document is in effect, to comply with, and ensure compliance by all tenants, subtenants, users and occupants of the Project Facility with, the provisions of the Environmental Indemnification.

(D) The Company shall (1) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Materials on, from or affecting the Project Facility (a) in accordance with all Environmental Laws, (b) to the satisfaction of the Agency, and (c) in accordance with the orders and directives of all Governmental Authorities, and (2) defend (with counsel selected by the Agency), indemnify, and hold harmless the Agency and its employees, agents, officers, attorneys, servants and members, past, present and future, from and against any claims, demands,

penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to: (a) the presence, disposal, release or threatened release of any Hazardous Materials on, from, under or affecting the Project Facility, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (c) any lawsuit brought or threatened, settlement reached, or any government order relating to such Hazardous Materials, and/or (d) any violations of Environmental Laws which are based upon or in any way related to such Hazardous Materials, including, without limitation, consultant fees, costs of remediation, investigation and laboratory fees, court costs, reasonable attorney fees and litigation expenses. Costs under this subsection (D) will be repaid immediately upon demand with interest at the Default Interest Rate commencing five (5) days after such demand.

(E) In the event this Lease is terminated, the Company shall deliver the Project Facility to the Agency free of any and all Hazardous Materials (except Hazardous Materials the presence of which do not violate any Environmental Laws), so that the condition of the Project Facility shall conform with all Environmental Laws affecting the Project Facility.

(F) The Company agrees that the Agency and its officers, agents, employees, members, servants or representatives, may at any reasonable time, and at the Company's expense inspect the Company's books and records and inspect and conduct any tests on the Project Facility, including taking soil samples, in order to determine that the Company is in compliance with all Environmental Laws.

(G) In the event that insurance is or shall become available at a reasonable cost to cover the Company's obligations under this Section 3.3, then, at the option of the Agency, the Company shall obtain adequate coverage.

SECTION 3.4 NON-MERGER. During the term of this Lease, there shall be no merger of this Lease or the Company Lease nor of the leasehold estate created by the Company Lease or the subleasehold estate created by this Lease with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Lease or the Company Lease or the subleasehold estate created by this Lease or the leasehold estate created by the Company Lease or any interest in this Lease or the Company Lease or in any such leasehold or subleasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including any mortgagee having any interest in (x) this Lease or the Company Lease or the subleasehold estate created by this Lease or the leasehold estate created by the Company Lease and (y) the fee estate in the Premises or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

SECTION 3.5 TITLE INSURANCE. On or prior to the Closing Date, the Company will obtain and deliver to the Agency, in form, amount and substance satisfactory to the Agency, (a) an owner's title insurance policy (the "Title Policy") insuring the Agency's leasehold interest in the Premises against loss as a result of defects in title, subject only to Permitted Encumbrances, (b) a mortgagee title insurance policy insuring the PILOT Mortgagee's mortgage interest in the Premises against loss as a result of defects in title, subject only to Permitted Encumbrances, and

(c) a current survey of the Premises certified to the Agency, the Company, the PILOT Mortgagee and the title insurance company issuing the Title Policy. Any proceeds of the Title Policy shall be paid to the Company and applied by the Company to remedy the applicable defect in title. If not so capable of being applied or if a balance remains after such application, the Net Proceeds or the remaining balance of the Net Proceeds, as the case may be, shall be applied to the payment of any sums due the Agency under this Lease or under any other Transaction Document, and any balance thereafter may be used by the Company for any lawful company purpose.

ARTICLE IV UNDERTAKING AND COMPLETION OF THE PROJECT

SECTION 4.1 ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF THE PROJECT FACILITY.

(A) The Company shall, on behalf of the Agency, promptly acquire, construct, install and equip the Project Facility, or cause the acquisition, construction, installation and equipping of the Project Facility, all in accordance with the Plans and Specifications, in a first-class, workmanlike manner using high grade materials, free of material defects in materials and workmanship. Notwithstanding the foregoing, the Company shall not, at any time during the term of this Lease, construct any new structure on the Land (other than the Building) or construct an addition to or otherwise increase the useable square footage of the Building depicted in the Plans and Specifications or otherwise construct any additional improvements on the Land without the prior written consent of the Agency.

(B) No material change in the Plans and Specifications shall be made unless the Agency shall have consented thereto in writing (which consent shall not be unreasonably withheld or delayed).

(C) Title to all materials, equipment, machinery and other items of Property presently incorporated or installed in and which are a part of the Project Facility shall vest in the Agency immediately upon execution of the Bill of Sale to Agency. Title to all materials, equipment, machinery and other items of Property acquired subsequent to the Closing Date and intended to be incorporated or installed in and to become part of the Project Facility shall vest in the Agency immediately upon deposit on the Premises or incorporation or installation in the Project Facility, whichever shall first occur. The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest title to the above in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(D) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1; provided, however, that the liability of the Agency thereunder shall be limited to the moneys of the Company available therefor and advanced by the Company for such purpose pursuant to Section 4.1(H) of this Lease.

(E) The Agency hereby appoints the Company, and the Company hereby accepts such appointment, as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Transaction Documents: (1) to acquire, construct, install and

equip the Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be required or proper, all for the acquisition, construction, installation and equipping of the Project Facility, with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefore by the Company and advanced for such purposes by the Company pursuant to Section 4.1(H) of this Lease, (3) to pay all fees, costs and expenses incurred in the acquisition, construction, installation and equipping of the Project Facility from funds made available therefor in accordance with this Lease, and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt, writing or instruction in connection with the acquisition, construction, installation and equipping of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same.

(F) The Company has given or will give or cause to be given all notices and has complied and will comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project Facility, and the Company will defend (with counsel selected by the Agency), indemnify and save the Agency and its officers, members, agents, attorneys, servants and employees, past, present and future, harmless from all fees, expenses, fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(G) The Company shall not take any action, or neglect to take any action, including, without limitation, the employment of any contractor, if such action or inaction would result in jurisdictional disputes or strikes or labor disharmony in connection with the Project.

(H) The Company agrees, for the benefit of the Agency, to undertake and complete the Project and to pay all such sums as may be required in connection therewith. A leasehold interest in portions of the Project Facility acquired, constructed and installed at the Company's cost shall immediately upon such acquisition, construction or installation vest in the Agency, subject to Permitted Encumbrances. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's interest in and to such portions of the Project Facility.

(I) No payment by the Company pursuant to this Section 4.1 shall entitle the Company to any reimbursement for any such expenditure from the Agency or to any diminution or abatement of any amounts payable by the Company under this Lease.

(J) The Company agrees, (i) at the sole expense of the Company, to erect signage at the Project Facility during the construction, installation and equipping of the Project Facility, which signage shall be in form and content reasonably satisfactory to the Agency and shall identify the Agency and its role in the Project, (ii) at the option of the Agency and at the sole expense of the Company, to install within the Project Facility a sign or plaque permanently memorializing the Agency's role in the Project, which sign or plaque shall be in form, content and placed in a location satisfactory to the Agency, and (iii) that the Agency may otherwise publicize the Agency's role in the Project.

(K) The Company agrees to solicit bids or cause to be solicited bids from at least one (1) contractor or vendor based in the County for each contract entered into with respect to the Project Facility, including, without limitation, contracts for construction (including, without limitation, the initial construction, installation and equipping of the Project Facility), renovation, alteration, management, purchase of goods or services, maintenance and repair, provided that the required goods and/or services are available from a contractor/vendor based in the County. Further, the Company covenants to use its best efforts to let such contracts or cause its contractors or subcontractors to let such contracts, where practicable, to contractors or vendors based in the County.

(L) W/MBE Contractors.

(1) The Company will use its best efforts to take or cause to be taken "affirmative steps" (as defined below) to assure that qualified women-owned and/or minority-owned business enterprises ("W/MBE's") are used, when possible, for each contract entered into with respect to the Project Facility, including, without limitation, contracts for construction (including, without limitation, the initial construction, installation and equipping of the Project Facility), renovation, demolition, replacement, alteration, management, purchase of goods and services, maintenance and repair, provided that the required goods and/or services are available from a W/MBE.

(2) For purposes of this subsection, the term "affirmative steps" shall mean: (a) placing qualified W/MBE's on solicitation lists; (b) assuring that qualified W/MBE's are solicited whenever they are potential sources; (c) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified W/MBE's; (d) establishing delivery schedules, where the requirement permits, that encourage participation by qualified W/MBE's; and (e) requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in clauses (a) through (d).

(3) For purposes of this subsection, the term "qualified W/MBE's" shall mean those women-owned and/or minority-owned business enterprises designated as such by New York State.

(M) The Company covenants and agrees to make a total investment in the Project Facility as of the Scheduled Completion Date in an amount not less than \$[] (which represents the product of (1) 0.90 and (2) the sum of \$[] being the total project costs as stated in the Application. The Agency shall provide written documentation of such investment, in form and substance satisfactory to the Agency, no later than February 11th of the calendar year following the Scheduled Completion Date.

(N) The Company shall furnish to the Agency all information and/or documentation requested by the Agency pursuant to this Section 4.1 and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section 4.1.

SECTION 4.2 COMPLETION OF THE PROJECT FACILITY; FEES.