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NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
as sublessor

AND

THE ENTITIES LISTED AS OWNERS ON EXHIBIT K HERETO  
as sublessees

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MASTER SUBLEASE AGREEMENT  
(UNIFORM PROJECT AGREEMENT)

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DATED AS OF NOVEMBER 1, 2018

AFFECTING THE PROPERTIES IN THE TOWN OF HEMPSTEAD,  
COUNTY OF NASSAU, STATE OF NEW YORK, AS MORE  
PARTICULARLY DESCRIBED IN EXHIBIT A TO  
THIS MASTER SUBLEASE AGREEMENT

Prepared By:

Phillips Lytle LLP  
1205 Franklin Avenue, Suite 390  
Garden City, NY 11530  
Attention: Milan K. Tyler, Esq.

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## MASTER SUBLEASE AGREEMENT

### (Uniform Project Agreement)

THIS MASTER SUBLEASE AGREEMENT dated as of November 1, 2018 (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 One West Street, Mineola, NY 11501 (the "Agency"), and THE ENTITIES LISTED AS OWNER(S) ON SCHEDULE A HERETO, each having an office at 385 Brook Street, Garden City, NY 11530 (each, a "Company" and, collectively, the "Companies").

#### 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, Seviroli Foods Inc., a corporation duly organized and existing under the laws of the State of New York (the "Applicant"), submitted an application for financial assistance (the "Application") to the Agency requesting that the Agency consider undertaking a project (the "Project") consisting of, inter alia, the following: (A) (1) the acquisition of an interest in those certain parcels of land located in the Town of Hempstead, Nassau County, New York, more particularly identified on Exhibit A attached hereto (collectively, the "Land"), (2) the renovation of the existing buildings and other structures on the Land (collectively, the "Building") together with related improvements to the Land, and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (collectively, the "Equipment"), all of the foregoing for use as manufacturing, warehousing and office facilities of the Applicant (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from real property taxes, sales and use taxes and mortgage recording taxes; and (C) the lease (with an obligation to purchase) or sale of the Project Facility to

the Companies or such other entity(ies) as may be designated by the Companies and agreed upon by the Agency; and

WHEREAS, the Applicant proposed that the Companies, which hold fee title to the Land and the Building and are Affiliates (as hereinafter defined) of the Applicant, be the sublessees of the Project Facility under this Lease, and the Agency has approved such proposal; and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance (as hereinafter defined) contemplated by the Agency with respect to the Project, to be mailed on May 25, 2018 to the chief executive officer of Nassau County, New York and of each other affected tax jurisdiction within which the Project Facility is or is to be located; (B) caused notice of the Public Hearing to be published on May 25, 2018 in the Nassau edition of *Newsday*, a newspaper of general circulation available to residents of the County of Nassau, New York; (C) caused the Public Hearing to be conducted on June 12, 2018, at 2:00 p.m., local time, at Nassau County Executive and Legislative Building, Ceremonial Chambers, 1550 Franklin Avenue, Mineola, Town of Hempstead, Nassau County, New York; and (D) caused a report of the Public Hearing (the "Report") to be prepared which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, in accordance with Section 874(4) of the Act, (A) the Executive Director of the Agency caused notice of a meeting of the Agency (the "IDA Meeting") with respect to the proposed deviation from the Agency's uniform tax exemption policy to be mailed on May 25, 2018 to the chief executive officer of each affected tax jurisdiction; and (B) the members of the Agency conducted the IDA Meeting on June 19, 2018 and reviewed any written comments or correspondence received with respect to the proposed deviation from the Agency's uniform tax exemption policy and approved the proposed deviation; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Companies and made any necessary comments to members of the Agency, and by resolution of the members of the Agency adopted on June 19, 2018, the Agency decided to conduct an uncoordinated review of the Project and determined that the Project will not have a significant adverse environmental impact and that an environmental impact statement will not be prepared; and

WHEREAS, by resolution adopted by the members of the Agency on June 19, 2018 (the "Authorizing Resolution"), the Agency, following a review of the Report, determined to proceed with the Project, to grant the Financial Assistance 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 Companies as agent of the Agency to undertake the acquisition of the Project Facility and to sublease the Project Facility to the Companies, and the Companies desire to act as agent of the Agency to undertake the acquisition 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 Companies 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 (A) the granting of the Financial Assistance by the Agency to the Companies is necessary to induce the Companies to proceed with the Project, and (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 Companies; and

WHEREAS, the Companies and the Applicant are parties to certain operating leases listed on Exhibit I attached hereto (collectively, the "Operating Leases"); and

WHEREAS, immediately prior to the execution and delivery of this Lease, the Companies will execute and deliver or cause to be executed and delivered to the Agency a certain Master Company Lease Agreement of even date herewith (the "Company Lease") between the Companies and the Agency, which conveys to the Agency a leasehold interest in and to the Premises; and

WHEREAS, immediately prior to the execution and delivery of this Agreement, the Companies will execute and deliver to cause to be executed and delivered to the Agency a bill of sale dated the Closing Date (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest in and to the Equipment; and

WHEREAS, pursuant to certain Payment in Lieu of Taxes Agreements of even date herewith between each of the Companies and the Agency (collectively, the "PILOT Agreements"), each of the Companies 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 each of the Companies, the Applicant and the Agency, as mortgagor, to the County of Nassau, as mortgagee (the "PILOT Mortgagee"), pursuant to which the Agency, the Applicant and each of the Companies grant a first mortgage on the Premises to the PILOT Mortgagee

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 Companies or the Applicant 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.

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

“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 Companies, as the case may be, by written certificate furnished to the Agency or the Companies, 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 Companies by its President or any Vice President, if a corporation, or a member or a manager, if a limited liability Companies, or a general partner, if a partnership, or such other Person as may be authorized in writing by the members of such limited liability Companies or by the board of directors of such corporation or by the general partner of such partnership, to act on behalf of the Companies, as the case may be.

“Bank” shall mean a state chartered bank or savings and loan association or a national banking association that makes or holds a mortgage loan that is secured by the Project Facility, including any refinancing of the original Bank Loan, provided that the Agency is given notice of any such succession, assignment, refinancing or new mortgage loan in accordance with Section 12.1 of this Lease.

“Bank Loan” shall mean a loan from a Bank to the Applicant and/or the Companies to fund and/or refund the Project Facility, as well as any amendment to or refinancing of the original Bank Loan, and/or a replacement Bank Loan.

“Bank Mortgage” shall mean a mortgage given to a Bank to secure a Bank Loan, as well as any amendment to or refinancing of the Bank Mortgage, and/or a replacement Bank Mortgage securing a Bank Loan; provided, however, that only the original Bank Mortgage shall be entitled to an Agency exemption from mortgage recording tax.

“Bank Note” shall mean a note given to a Bank to evidence a Bank Loan, as well as any amendment to or refinancing of the original Bank Note, and/or a replacement Bank Note evidencing a future Bank Loan.

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

“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 Agreement.

“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 Companies, 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.

“Companies” or “Companies” shall have the meaning assigned to such term in the preamble 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 Companies 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 Companies shall notify the Agency as being the date of completion of the Project (subject to acceptance thereof by the Agency in its reasonable discretion).

“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 Companies, the Applicant and the other Guarantors 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.

“Environmental Report” means, collectively, those certain Phase I Environmental Site Reports with respect to the Project Facility listed on Exhibit J attached hereto.

“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 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 (B) an exemption from real property taxes pursuant to the PILOT Agreement, which the Agency has estimated to have a value of \$1,262,806.00.

“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 the Applicant, the Companies and Joseph Seviroli, Jr., Maria Beau and Maria Seviroli and David H. Peirez, Esq., as co-guardians of the property of John Joseph Seviroli, an infant.

“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 Companies to the Agency or to any of its members, officers, agents (other than the Companies), 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.

“Initial Owners” shall have the meaning assigned to such term in Section 2.2(R) of this Lease.

“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 Companies. 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.

“Material Work” shall have the meaning assigned to such term in Section 6.1(B) of this Lease.

“Maximum Mortgage Recording Tax Benefit” means \$21,375, which represents the value of the mortgage recording tax exemption that would not otherwise be available to the Companies without the Agency’s involvement in the Project.

“Maximum Sales Tax Benefit” means \$96,000 with respect to the construction, installation and equipping of the Project Facility.

“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.

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

“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) any Lien or encumbrance requested by the Companies in writing and consented to by the Agency, which consent may be granted or denied in the Agency’s reasonable discretion, (E) the Operating Lease, and (F) the Bank Mortgage.

“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, renovation, installation and equipping of the Project Facility contemplated by Section 4.1 of this Agreement prepared by the Company’s architect and approved by the Agency 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 approval of the Agency.

“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.

“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 granting of the Financial Assistance, and (C) the subleasing of the Project Facility by the Agency to the Companies, 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 Agreement.

“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 Agreement.

“Scheduled Completion Date” shall have the meaning assigned to such term in Section 4.1(A) of this Agreement.

“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 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.

“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 Companies, pursuant to which the Agency terminates the Company Lease, and any memorandum thereof substantially in the form attached as Exhibit C together with Exhibit C-2 to this Lease.

“Termination of Lease” means the termination of sublease agreement between the Companies and the Agency, pursuant to which the Agency and the Companies terminate this Lease and any memorandum thereof, substantially in the form attached as Exhibit F together with Exhibit F-2 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 PILOT Agreement, the PILOT Mortgage, this Lease, the Guaranty, the Environmental Indemnification 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.

“Unassigned Rights” means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.1, 3.2, 3.3, 4.1(G), 5.2 (A), 5.3 (B) and (C), 5.4, 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, 8.14, 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, 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 or 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 Companies 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 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 Companies, 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.

(D) The Transaction Documents to which the Agency 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 Agency, enforceable in accordance with their terms, subject to the provisions of applicable bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium, rearrangement, liquidation, conservatorship or similar laws of general application now or hereafter in effect relating to or affecting the rights of creditors generally.



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

(A) The Companies are each a corporation or limited liability company duly organized, validly existing and in good standing under the laws of the State of New York and 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 Companies are a party and to carry out its obligations hereunder and thereunder. By proper action of its board of directors or members, the Companies have been duly authorized to execute, deliver and perform this Lease and the other Transaction Documents to which the Companies is a party. No other consent, approval or action by the shareholders or directors of the Companies 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 Companies 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 Companies is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Companies' certificate of incorporation or by-laws or any other Companies restriction, order, judgment, agreement, document or instrument to which the Companies is a party or by which the Companies or any of its Property is bound, or constitute a default by the Companies 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 corporate or company restriction, agreement or instrument to which the Companies is a party or by which the Companies 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 Companies or any of the Property of the Companies.

(C) The acquisition of the Project Facility by the Companies as agent of the Agency, the sublease thereof by the Agency to the Companies, and the operation thereof by the Applicant will not result in the removal of a facility or plant of the Companies or the Applicant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Companies located in the State (other than within the County). 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 Companies and the Applicant.

(D) The Transaction Documents to which the Companies are a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid, legal and binding obligations of the Companies, 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 Companies will not take any action (or omit to take any action), or allow any action to be taken or not taken by the Applicant or otherwise, 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 Companies will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Companies), 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 Companies 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 Companies will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Companies), 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 Companies), 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 Companies), 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 Companies hereby covenants to comply with all mitigating measures, requirements and conditions enumerated in the resolution adopted by the Agency on June 19, 2018, under SEQRA applicable to the acquisition 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 Applicant 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 any of the Companies or the Applicant or any of its respective 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 Companies or the Applicant, 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 Companies are 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 Companies or the Applicant or any of its Property is subject.

(L) The subleasing of the Project Facility by the Agency to the Companies and the granting of the Financial Assistance have induced the Companies 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 Companies (together with the Applicant) shall (i) maintain its current level of employment of not less than two hundred thirty-five (235) full-time equivalent, private sector jobs as described in the Application throughout the term of this Lease and (ii) create at least an additional thirty (30) new, full-time equivalent, private sector jobs in the County of Nassau within three (3) years after the Closing Date as described in the Application and maintain such jobs throughout the term of this Lease; all of which jobs shall, at all applicable times during the term of this Lease, be located at the Project Facility (collectively, the "Minimum Employment Requirement").

(N) The funds available to the Companies are sufficient to pay all costs in connection with the acquisition of the Project Facility.

(O) The Companies are not a Prohibited Person, the Applicant is not a Prohibited Person, no Guarantor is a Prohibited Person, no Affiliate of the Companies, the Applicant or any Guarantor is a Prohibited Person and no member, manager, officer, director or shareholder of the Companies or the Applicant, as applicable, 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 Companies, the Applicant 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) Each of the Companies and the Applicant is owned solely as set forth in Exhibit K attached hereto (such owners, collectively, the "Initial Owners").

(S) The Project Facility is located entirely within the boundaries of the Town of Hempstead, Nassau County, New York, is not located in whole or in part within the boundaries of any incorporated village, and is located only within the Uniondale School District.

(T) The total cost of the Project is at least \$6,445,015.

(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 the Operating Lease, this Lease and the Company Lease, and no Person (other than the Applicant) is in occupancy or possession of any portion of the Project Facility.

(V) Neither the Applicant nor the Companies has 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 Companies or the Applicant from executing and delivering the Company Lease, this Lease or any other Transaction Document. The Companies covenant and agree 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 Companies, the Applicant, any Guarantor, nor any Affiliate of the Companies, the Applicant 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 Companies have conveyed or will convey to the Agency a leasehold interest in and to the Premises for the purpose of undertaking the Project. The Companies hereby represent and warrant that they have a good and valid fee interest in the Premises, free and clear from all Liens except for Permitted Encumbrances, and agree that the Companies 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 Companies and the Agency acknowledge that the Project Facility and the leasehold interest therein conveyed to the Agency from the Companies and subleased by the Agency back to the Companies 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 Companies' obligations to the Agency under this Lease and the other Transaction Documents, including, without limitation, (i) the Companies' obligation to acquire and maintain the Project Facility on behalf of the Agency, and (ii) the performance by the Companies to the Agency of the Companies' other obligations under this Lease and the other Transaction Documents.

SECTION 3.2 USE OF PROJECT FACILITY. Subsequent to the Closing Date, the Companies 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 Applicant as its office, manufacturing, and warehousing facility for its food production and distribution business, except with the prior written consent of the Agency, which consent may be withheld in the Agency's reasonable discretion. The Companies 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) for any use, occupancy or operation of the Project Facility that 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 Companies. Any provision of this Lease to the contrary notwithstanding, the Companies 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 Companies 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 Companies represent, warrant and covenant that, (i) except as expressly set forth in the Environmental Report, the Companies and the Applicant have 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) except as expressly set forth in the Environmental Report, to the best of the Companies' knowledge, the environmental and ecological condition of the Project Facility is not in violation of any Applicable Law, including, without limitation, any Environmental Law, (iii) to the best of the Companies' knowledge, the Companies and the Applicant have all Environmental Permits required to operate

the Project Facility and are 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 Companies have no knowledge that such a listing is pending or contemplated, (v) except as expressly set forth in the Environmental Report, to the best of the Companies' knowledge, 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) except as expressly set forth in the Environmental Report, to the best of the Companies' knowledge, there are not now, nor have there ever been, underground storage tanks on or under the Premises which have not been maintained or removed in accordance with Environmental Laws, (vii) except as expressly set forth in the Environmental Report, there are no actions, suits, claims or proceedings seeking money damages, injunctive relief, remedial action or any other remedy pending or, to the Companies' actual knowledge, threatened relating to a violation of Environmental Law or the disposal, discharge or release of Hazardous Materials, and (viii) except as expressly set forth in the Environmental Report, to the best of the Companies' actual knowledge, no prior owner of the Project Facility nor 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 Companies and the Applicant 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 Companies and the Applicant 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 Companies or the Applicant cause or permit, as a result of any intentional or unintentional act or omission on the part of the Companies, or any tenant, subtenant, operator or occupant 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 Companies and the Applicant shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Companies and the Applicant or its respective 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 Companies and the Applicant shall comply with and cause all tenants, subtenants, operators and occupants 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 the Applicant and all such all tenants, subtenants, operators and occupants of the Project Facility to obtain and comply with, any and all approvals, registrations or permits required thereunder. The Companies agree to provide the Agency with copies of any notifications given by the Companies or the Applicant to any Governmental Authorities or received by the Companies or the Applicant from any Governmental Authorities with respect to the environmental or ecological condition of the Project Facility. The Companies hereby agree 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 the Applicant and all tenants, subtenants, users and occupants of the Project Facility with, the provisions of the Environmental Indemnification.

(D) The Companies and the Applicant 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 within immediately upon demand with interest at the Default Interest Rate commencing five (5) days after such demand. Notwithstanding anything herein or in the other Transaction Documents to the contrary, the Companies and the Applicant shall not have any liability for any acts or occurrences caused by the Agency or that first takes place after Agency has exercised a default remedy against the Companies and/or the Applicant and the Companies and the Applicant are no longer in possession or control of the Project Facility.

(E) In the event this Lease is terminated, the Companies 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 Companies and the Applicant agree that the Agency and its officers, agents, employees, members, servants or representatives, may at any reasonable time, and at the Companies' expense inspect the Companies' and the Applicant's books and records and inspect and conduct any tests on the Project Facility, including taking soil samples, in order to determine that the Companies and the Applicant are in compliance with all Environmental Laws.

(G) In the event that insurance is or shall become available at a reasonable cost to cover the Companies' obligations under this Section 3.3, then, at the option of the Agency, the Companies 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 subleasehold estate created by the Company Lease or the sub-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 sub-subleasehold estate created by this Lease or the subleasehold 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 subleasehold 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 Companies 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 subleasehold 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 fee, leasehold and subleasehold 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 Companies, the PILOT Mortgagee and the title insurance Companies issuing the Title Policy. Any proceeds of the Title Policy shall be paid to the Companies and applied by the Companies 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 Companies for any lawful corporate purpose.

#### ARTICLE IV UNDERTAKING OF THE PROJECT

##### SECTION 4.1 ACQUISITION OF THE PROJECT FACILITY.

(A) The Companies shall, on behalf of the Agency, promptly acquire the Project Facility. Notwithstanding the foregoing, the Companies 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 or otherwise construct any additional structural improvements on the Land (other than the initial work) without the prior written consent of the Agency.

(B) No material change in the initial work 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 Projected Facility, whichever shall first occur. The Companies 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 Companies 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 Companies available therefore and advanced by the Companies for such purpose pursuant to Section 4.1(H) of this Lease.

(E) The Agency hereby appoints the Companies, and the Companies 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, renovate, install and equip the Project Facility as contemplated by this Lease; (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 such acquisition, renovation, 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 Companies and advanced for such purposes by the Companies pursuant to Section 4.1(H) of this Lease, (3) to pay all fees, costs and expenses incurred in such acquisition, renovation, installation and equipping of the Project Facility from their own funds, 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 entered into by the Companies, or any of them, in connection with such acquisition, renovation, 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 Companies have given or will give or cause to be given all notices and have 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 Companies 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 Companies.

(G) The Companies 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 Companies agree, for the benefit of the Agency, to undertake the Project and to pay all such sums as may be required in connection therewith.

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

(J) The Companies agree, (i) at the option of the Agency and at the sole expense of the Companies, 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 (ii) that the Agency may otherwise publicize the Agency's role in the Project.

(K) The Companies agree 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, 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 Companies covenant 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 Companies will use their 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, 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 Companies covenant and agree to make a total investment (including acquisition costs) in the Project Facility as of the Closing Date in an amount not less than \$6,445,015. The Companies shall provide written documentation of such investment, in form and substance reasonably satisfactory to the Agency, no later than February 11th of the calendar year following the Closing Date.

(N) The Companies and the Applicant 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.

(A) The Companies will proceed with due diligence to commence the initial work in accordance with Section 4.1 of this Lease within thirty (30) days after the Closing Date and shall proceed with due diligence to complete the initial work, within 180 days after the Closing Date, as such date may be extended in accordance with this Lease (the "Scheduled Completion Date"). Each Company covenants to diligently prosecute applications for any required building permits for the Project Facility (and each Company is hereby authorized to prosecute same for the portion of the Project Facility it owns independently of any other Company that does not have any ownership interest in such property). Completion of the initial work shall be evidenced by a certificate signed by an Authorized Representative of the Companies delivered to the Agency stating (A) the date of such completion, (B) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid, (C) that the initial work contemplated by Section 4.1 of this Lease has been completed in a good and workmanlike manner, (D) that the Companies and the Agency have good and valid interests in and to all Property constituting a portion of the Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances, and (E) that the Project Facility or the applicable portion thereof, as the case may be, is ready for occupancy, use and operation for its intended purposes. Such certificate shall be accompanied by a certificate of occupancy for the Project Facility and/or all appropriate permissions, licenses or consents required of Governmental Authorities for the occupancy, operation and use of the Project Facility for its intended purposes (other than any such permissions, licenses or consents required with respect to the specific occupancy of the Project Facility, or a portion thereof, by an occupant thereof).

(B) The Companies shall pay within the time periods required by applicable Governmental Authorities, all construction related and other fees for the Project, including, without limitation, building permit fees, plumbing fixture permit fees, recreation fees, site planning fees, municipal consultant review fees, special use fees, variance fees, sewer hookup fees, water service installation fees and fire line fees, if any.

**SECTION 4.3 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.** In the event of a default by any contractor, subcontractor or materialman under any contract made by it in connection with the acquisition, renovation, installation and equipping of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the applicable Companies shall proceeds, either separately or in conjunction with others, to exhaust the remedies of such Companies and the Agency against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Companies may, in their own name or, with the prior written consent of the Agency, which consent shall not be unreasonably withheld, in the name of the Agency, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety which the Companies deem reasonably necessary, and in such event the Agency hereby agrees, at the Companies' sole expense, to cooperate fully with the Companies and to take all action necessary to effect the substitution of the Companies for the Agency in any such action or proceeding. The Companies shall advise the Agency of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Companies as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Project Facility then to pay all reasonable costs and expenses incurred by the Agency in connection therewith, and thereafter be paid to the

Companies for their own use. Each Company is hereby authorized to comply with the provisions of this Section 4.3 with respect to the portion of the Project Facility it owns independently of any other Company that does not have an ownership interest in such property.

SECTION 4.4 PURPOSE OF THE PROJECT. It is understood and agreed by the Agency and the Companies that the purposes of the granting of the Financial Assistance are to promote, develop, encourage and assist in the acquiring and maintaining of the Project Facility to advance the job opportunities, health, general prosperity and economic welfare of the people of the County and the State, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration, and to otherwise accomplish the purposes of the Act.

ARTICLE V  
DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS  
AND OTHER AMOUNTS PAYABLE

SECTION 5.1 SUBLEASE OF THE PROJECT FACILITY. In consideration of the Companies' covenant herein to make rental payments hereunder, and in consideration of the other covenants of the Companies contained herein, including the covenant to make additional and other payments required hereby, the Agency hereby agrees to demise and sublease to the Companies, and the Companies hereby agrees to rent and sublease from the Agency, a subleasehold interest in the Project Facility, subject only to the Permitted Encumbrances.

SECTION 5.2 DURATION OF THE LEASE TERM; QUIET ENJOYMENT.

(A) The Agency shall deliver to the Companies' possession of the Project Facility, subject to the provisions of this Lease, and the subleasehold estate created hereby shall commence, on the Closing Date, and the Companies shall accept possession of the Project Facility on the Closing Date.

(B) Provided that all amounts, costs and expenses payable by the Companies to the Agency under this Lease and all other Transaction Documents are paid in full, the subleasehold estate created hereby shall terminate at 12:00 a.m. on the earlier to occur of (1) December 31, 2039 (the "Stated Expiration Date"), or (2) the date that this Lease shall terminate pursuant to Article X or Article XI hereof.

(C) The Agency shall take no action, other than pursuant to Article X or Article XI of this Lease, to prevent the Companies from having quiet and peaceable possession and enjoyment of the Project Facility during the term of this Lease and will, at the request of the Companies and at the Companies' expense, cooperate with the Companies in order that the Companies may have quiet and peaceable possession and enjoyment of the Project Facility.

SECTION 5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.

(A) The Companies shall pay on the date of execution and delivery of this Lease, as the basic sub-sublease payments due hereunder: (1) the sum of \$1.00, (2) all reasonable fees and expenses of counsel to the Agency and Special Counsel to date with respect to the Project, and (3) all other actual costs and expenses incurred by the Agency in connection with the transactions contemplated by this Lease and the other Transaction Documents.

(B) The Companies agree to pay to the Agency the following fees: (1) a closing compliance fee in the amount of \$2,500.00, (2) an Agency administrative fee in the amount of \$38,670.00 with respect to the Project, and (3) the Agency's general counsel fee in the amount of \$6,445.00 (collectively, the "Administrative Fee"). The Administrative Fee is due and payable by the Companies to the Agency on the Closing Date. The Administrative Fee is non-refundable and is deemed earned in full upon the execution and delivery of this Lease.

(C) The Companies agree to pay to the Agency an annual administrative fee in the amount of \$1,000 (the "Annual Fee"). The Annual Fee for the first year of the lease term or part thereof (i.e., 2018) shall be due and payable on the Closing Date and the Annual Fee for each year thereafter (i.e., 2019 and thereafter) shall be due and payable, in advance, on January 1 of each year.

(D) Within five (5) business days after receipt of a demand therefor from the Agency, the Companies shall pay to the Agency the sum of the reasonable costs and expenses of the Agency and the officers, members, agents, attorneys, servants and employees thereof, past, present and future, incurred by reason of the Agency's ownership, leasing, subleasing, sub-subleasing or sale of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease or any of the other Transaction Documents, and any other reasonable fee or expense of the Agency with respect to the Project Facility, the leasing, subleasing, sub-subleasing or sale of the Project Facility to the Companies, the payment of which is not otherwise provided for under this Lease.

(E) The Companies agree to make the above-mentioned payments in immediately available funds, without any further notice or demand, by wire transfer or other form of payment satisfactory to the Agency, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Companies shall fail to make any payment required by this Section 5.3 and such failure continues for more than ten (10) business days after notice from the Agency, the Companies shall pay the same, together with interest thereon at the Default Interest Rate, from the date on which such payment was due until the date on which such payment is received by the Agency.

#### SECTION 5.4 NATURE OF OBLIGATIONS OF THE COMPANIES HEREUNDER.

(A) The obligations of the Companies to make the payments required by this Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Companies and shall be absolute and unconditional irrespective of any defense or any right of setoff, recoupment, counterclaim or abatement that the Companies may otherwise have against the Agency. The Companies agree that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, this Lease, or terminate this Lease (except as set forth in Section 11.1 hereof), for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Companies' purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State

or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease.

(B) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part expressly contained in this Lease, and, in the event the Agency should fail to perform any such agreement, the Companies' may institute such action against the Agency as the Companies may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 12.9 hereof); provided, however, that the Companies shall look solely to the Agency's estate and interest in the Project Facility for the satisfaction of any right or remedy of the Companies for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Companies), servants or employees, past, present and future, of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Companies' remedies under or with respect to this Lease, the relationship of the Agency and the Companies hereunder or the Companies' use and occupancy to the Project Facility, or any other liability of the Agency to the Companies.

(C) The obligations of the Companies under this Lease and the other Transaction Documents shall be joint and several, except as otherwise expressly set forth herein.

## ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1 MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY. (A) The Companies shall (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) occupy, use and operate the Project Facility, and shall cause the Project Facility to be occupied, used and operated, in the manner for which it was intended and contemplated by this Lease, (3) make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), (4) operate the Project Facility in a sound and economical manner, (5) not abandon the Project Facility, (6) perform or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency under and pursuant to the Bank Mortgage, and (7) not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Project Facility, or any part thereof, or the interest of the Agency or the Companies in the Project Facility, the Company Lease or this Lease, except for Permitted Encumbrances. The Agency shall have no obligation to replace, maintain or effect replacements, renewals or repairs of the Project Facility, or to furnish any utilities or services for the Project Facility and the Companies hereby agrees to assume full responsibility therefor.

(B) Upon prior written notice to the Agency (only required for Material Work, defined below), the Companies may make any alterations, modifications or improvements to the Project Facility, or any part thereof, provided:

(1) the Companies shall (a) give or cause to be given all notices and comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on such modification or improvement to the Project Facility, or any part thereof, (b) indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Companies), attorneys, servants and employees, past, present and future harmless from all fees, expenses, fines and penalties due to failure to comply therewith, (c) promptly procure all permits and licenses necessary for the prosecution of any work described in this Section 6.1(B), and (d) not be in monetary default under this Lease or under any of the other Transaction Documents beyond applicable notice and cure periods;

(2) such alterations, modifications and improvements are effected with due diligence, in a good and workmanlike manner and in compliance with all Applicable Laws;

(3) the Companies shall promptly and fully pay for such alterations, modifications and improvements in accordance with the terms of the applicable contract(s) therefor;

(4) the alteration, modification or improvement to the Project Facility shall not constitute or cause a default under any of the Transaction Documents;

(5) if such alterations, modifications or improvements, individually or pursuant to a longer term plan (i) cost more than \$500,000, (ii) entail a structural addition to any building, or (iii) would otherwise result in a change to the assessed value of the Project Facility (any such alteration, modification or improvement, "Material Work"), then the Companies shall furnish to the Agency, at least thirty (30) days prior to commencing such alteration, modification or improvement to the Project Facility, detailed plans and specifications therefor;

(6) as a result of such alterations, modifications or improvements, neither the usefulness, structural integrity nor operating efficiency of the Project Facility would be materially impaired in the reasonable judgment of the Agency;

(7) if the cost of such alterations, modifications or improvements is estimated to exceed \$500,000.00, such alterations, modifications or improvements shall be conducted only after the Companies shall have furnished to the Agency a labor and materials payment bond, or other security, naming the Agency as dual obligee and otherwise in form and substance reasonably satisfactory to the Agency, or other evidence reasonably satisfactory to the Agency of the Companies' ability to timely pay for such work; provided, however, that such bond or other security need not be furnished to the Agency in connection with customary and reasonable initial tenant improvements;

(8) the Agency receives reasonably satisfactory evidence that such alterations, modifications and alterations do not change the nature of the Project Facility such that it would not comply with the terms of this Lease or such that it would not constitute a "project" (as such quoted term is defined in the Act);

(9) if such alterations, modifications or improvements involve an addition to the Project Facility (other than the initial work) or would otherwise result, but for the Agency's

interest in the Project Facility, in an increase in the assessed value of the Premises, then the Agency may require an increase in the Administrative Fee, the Annual Fee and/or the sums payable under the PILOT Agreement, if any;

(10) no such alterations, modifications or improvements (other than the initial work) shall be entitled to any "financial assistance" (as such quoted term is defined in the Act) from the Agency unless agreed to in writing by the Agency; and

(11) an Event of Default shall not have occurred and be continuing beyond any applicable grace or cure period under this Lease or any other Transaction Document.

All such alterations, modifications and improvements shall constitute a part of the Project Facility and the Companies shall deliver or cause to be delivered to the Agency appropriate documents to convey title to or a leasehold interest in such property, as the case may be, to the Agency, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances, and to subject such property to this Lease.

(C) The Companies have given or will give or cause to be given all notices and have complied or will comply or cause compliance with all Applicable Laws applying to or affecting the operation of the Project Facility, and the Companies will defend (with counsel selected by the Agency), indemnify and save the Agency and its officers, members, agents (other than the Companies), attorneys, servants and employees, past, present and future, harmless from all fees, expenses, fines and penalties due to failure to comply therewith.

(D) Any provision of this Lease to the contrary notwithstanding, the Companies shall not construct any new building or structure on the Land (other than the Building) or any addition to any existing building on the Land, without the prior written consent of the Agency, which consent may be withheld in the Agency's reasonable discretion.

## SECTION 6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES.

(A) The Companies shall pay as the same respectively become due: (1) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility (other than those taxes for which payments in lieu thereof are being paid pursuant to the PILOT Agreement), (2) all utility and other charges, including "service charges" and deposits, incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, and (3) all assessments and charges of any kind whatsoever lawfully made against the Project Facility by any Governmental Authority for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Companies shall be obligated hereunder to pay only such installments as are required to be paid during the term of this Lease.

(B) If the Companies fail to pay any tax, assessment or charge required to be paid pursuant to this Section 6.2, the Agency may pay or cause to be paid such taxes, assessments or charges. The Companies shall reimburse the Agency for any amount paid under this Section 6.2, together with interest thereon from the date of payment at the Default Interest Rate.



(C) Notwithstanding the provisions of this Section 6.2, the Companies may withhold any such payment and the Companies may in good faith actively contest the amount, validity or the applicability of any payment referred to in such subsection (A), provided that (1) the Companies shall have first notified the Agency in writing of such contest, (2) no Event of Default shall have occurred and be continuing under any of the Transaction Documents beyond applicable notice and cure periods, (3) the overall operating efficiency of the Project for the purposes for which it is intended is not materially impaired, (4) neither the Project Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings, (5) the Companies shall have set aside on its books adequate reserves with respect thereto, and (6) the Companies diligently prosecutes such contest to completion. Otherwise, the Companies shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

**SECTION 6.3 INSURANCE REQUIRED.** During the term of this Lease, the Companies shall maintain insurance with respect to the Project Facility against such risks and liabilities and for such amounts as are, in the Agency's reasonable judgment, customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) Insurance protecting the interests of the Companies, as insured, the PILOT Mortgagee, as mortgagee, and the Agency, as loss payee (subject to Section 6.4(F) of this Lease), against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils embraced by a so-called "Special Form" policy of property insurance, in amounts sufficient to prevent the Companies, the PILOT Mortgagee and the Agency from becoming a co-insurer under such policy and not less than 100% of the replacement cost of the Project Facility, without deduction for depreciation, and including coverage against acts of terrorism. Additionally, during any period in which construction work or alterations are being performed at the Project Facility, the Companies shall maintain "Special Form" property insurance in the form of a "Builder's Risk" completed value non-reporting policy in an amount satisfactory to the Agency and which shall contain a provision granting the insured permission to complete and/or occupy.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Companies is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Companies who are located at or assigned to the Project Facility or who are responsible for the operation or maintenance of the Project Facility.

(C) Commercial general liability insurance protecting the Companies, as insured, and the PILOT Mortgagee and the Agency, as additional insureds, against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Companies under Section 8.2 of this Lease), or arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000.00 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000.00 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Companies by any applicable workers' compensation law, and a separate umbrella liability policy

protecting the Companies, as insured, and the PILOT Mortgagee and the Agency, as additional insureds, with a limit of not less than \$10,000,000.00, as said amounts may be adjusted by the Agency from time to time in its sole and absolute discretion.

(D) During any period of construction, renovation, improvement or reconstruction, to the extent not covered by the general liability insurance set forth in Subsection (C) above, Owners & Contractors Liability insurance for the benefit of the Companies, the PILOT Mortgagee and the Agency in a minimum amount of \$2,000,000.00 aggregate coverage for personal injury and property damage.

(E) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus, insuring risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar enterprises.

(F) A policy or policies of flood insurance in an amount not less than the maximum amount of flood insurance available with respect to the Project Facility under the Flood Disaster Protection Act of 1973, as amended. The requirements of this Subsection (F) shall be waived upon presentation of evidence satisfactory to the Agency that no portion of the Project Facility is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

(G) Such other insurance in such amounts and against such insurable hazards and risks as the Agency from time to time may reasonably require, including, without limitation, environmental hazard and liability insurance.

#### SECTION 6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE.

(A) All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Companies and authorized to write such insurance in the State and satisfactory and having an A.M. Best rating of A- or better and a financial size category of at least VII. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Companies are engaged and shall provide that such insurance shall be without any right of contribution from any other insurance carried by the Agency. All policies evidencing such insurance shall name the Companies, as named insured, and the Agency and the PILOT Mortgagee, as additional insureds, with respect to liability policies, and name the Agency as loss payee (subject to Subsection (F) hereof) and the PILOT Mortgagee as mortgagee, with respect to casualty policies, and provide for at least thirty (30) days' written notice to the Companies, the PILOT Mortgagee and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage reasonably satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Companies shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next

succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 hereof. At least fifteen (15) days prior to the expiration of any such policy, the Companies shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease.

(B) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Companies; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Companies shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate.

(C) In the event of construction, reconstruction, improvement or renovation of any part of the Project Facility, the Companies shall require its contractors and subcontractors, if any, to name the Agency and the PILOT Mortgagee as additional insureds on liability policies carried by such contractors or subcontractors with respect to their operations at the Premises or with respect to the Project.

(D) Each of the policies evidencing the insurance required by Section 6.3 of this Lease shall provide that: (i) there shall be no recourse against the Agency or the PILOT Mortgagee for the payment of premiums or commissions or, if such policies provide for the payment thereof, additional premiums or assessments; (ii) in respect of the interest of the Agency or the PILOT Mortgagee in such policies, the insurance shall not be invalidated by any action or inaction of the Companies or any other Person and shall insure the Agency and the PILOT Mortgagee regardless of, and any losses shall be payable notwithstanding, any such action or inaction; (iii) if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or if there shall occur any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency or the PILOT Mortgagee until at least thirty (30) days after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration, reduction or change (except for cancellation for nonpayment of premium for which ten (10) days' notice of cancellation shall be given to the Agency); and (iv) the insurers waive subrogation thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or other deduction, in respect of any liability of any Person insured under such policy.

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

(F) Any provision of this Lease to the contrary notwithstanding, at any time during the term of this Lease that any portion of the Bank Loan is outstanding and the Bank Mortgage remains a Lien on the Project Facility, the Agency agrees that (i) the Bank shall be the loss payee with respect to the Net Proceeds of the insurance required by Sections 6.3(A) and (E) hereof, and (ii) the provisions of Sections 6.5(A) and 7.1(B) hereof shall be superseded and replaced by the applicable provisions of the Bank Mortgage.

SECTION 6.5 APPLICATION OF NET PROCEEDS OF INSURANCE. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 hereof shall be applied as follows, subject to Section 6.4(F) of this Lease: (A) the Net Proceeds of the insurance required by Sections 6.3(A) and 6.3(E) hereof shall be applied as provided in Section 7.1 hereof, and (B) the Net Proceeds of the insurance required by Sections 6.3(B), 6.3(C) and 6.3(D) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

#### SECTION 6.6 PAYMENTS IN LIEU OF TAXES.

(A) It is recognized that, under the provisions of the Act, the Agency is not required to pay certain taxes or assessments upon the Property acquired by it or under its jurisdiction, control or supervision or upon its activities as more particularly set forth in Section 874 of the Act. It is the intention of the parties hereto that the Project Facility be treated as exempt from real property taxation to the extent set forth in the PILOT Agreement, a copy of which is attached hereto as Exhibit H. Accordingly, the parties hereto acknowledge that the Agency shall file New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility. The Companies hereby consent to any enforcement action provided to the Taxing Entities pursuant to law in the event that the Companies should fail to pay any taxes not exempted as aforesaid and shall not object to any such enforcement action on the grounds that a subleasehold interest in the Project Facility is held by the Agency or that the Project Facility is under the Agency's jurisdiction, control or supervision or subject to its activities.

(B) The Agency and the Companies hereby agree that the Companies shall be required to make or cause to be made payments in lieu of taxes to the school districts, cities, towns, county, villages and other political unit(s) wherein the Project Facility is located having taxing powers (such political units are hereinafter collectively referred to as the "Taxing Entities"), in such amounts and at such times as are required by the PILOT Agreement.

(C) Within thirty (30) days after receipt of written request therefore, the Companies shall deliver to the Agency official receipts of the Taxing Entities or other proof reasonably satisfactory to the Agency evidencing payment of any amount that the Companies is required to pay under the PILOT Agreement.

### ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

#### SECTION 7.1 DAMAGE OR DESTRUCTION.

(A) If the Project Facility shall be damaged or destroyed, in whole or in part:

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

(2) there shall be no abatement or reduction in the amounts payable by the Companies under this Lease or the PILOT Agreement (whether or not the Project Facility is replaced, repaired, rebuilt or restored);

(3) the Companies shall promptly give notice thereof to the Agency; and

(4) except as otherwise provided in subsection (B) of this Section 7.1, (a) the Companies shall promptly replace, repair, rebuild or restore the Project Facility to substantially the same condition and value as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Companies and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project", as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof shall be permitted without the prior written consent of the Agency, and (b) (1) the Agency shall make available to the Companies (solely from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Project Facility, and, subject to the provisions of Section 6.4(F) of this Lease, in the event that the funds from the Net Proceeds of any insurance settlement provided by the Agency to the Companies, if any, are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Companies shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any insurance settlement, if any, remaining on deposit with the Agency after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be paid to the Companies for its own purposes.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, the Companies shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Companies shall notify the Agency that it elects to exercise its option under Article XI hereof to terminate this Lease. In such event, subject to the provisions of Section 6.4(F) of this Lease, the Net Proceeds collected by the Agency under any and all policies of insurance covering the damage to or destruction of the Project Facility, after deducting the amount necessary to repay the Indebtedness shall be paid to the Companies for its own purposes. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay the Indebtedness in full, the Companies shall pay to the Agency the difference between the Net Proceeds of such insurance and the amount necessary to repay the Indebtedness in full.

(C) Unless an Event of Default under any of the Transaction Documents shall have occurred and be continuing, the Companies may adjust all claims under any policies of insurance required by Section 6.3(A) and 6.3(C) hereof.

(D) The Companies hereby waive the provisions of Section 227 of the Real Property Law of the State or any laws of like import, now or hereafter in effect.

## SECTION 7.2 CONDEMNATION.

(A) To the Companies' actual knowledge, no Condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility or the

Agency's or the Companies' interest therein or in the Operating Lease, the Company Lease or this Lease.

(B) If title to, or the use of, all or any part of the Project Facility shall be taken by Condemnation:

(1) the Agency shall have no obligation to restore the Project Facility, or any part thereof;

(2) there shall be no abatement or reduction in the amounts payable by the Companies under this Lease or the PILOT Agreement (whether or not the Project Facility is restored);

(3) the Companies shall promptly give notice thereof to the Agency; and

(4) except as otherwise provided in subsection (C) of this Section 7.2, (a) the Companies shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) as a complete architectural unit of substantially the same usefulness, design and construction as existed immediately prior to such Condemnation, with such changes, alterations and modifications as may be desired by the Companies and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project" as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b)(1) subject to the provisions of Section 6.4(F) of this Lease, the Agency shall make available to the Companies (solely from the Net Proceeds of any Condemnation award, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any Condemnation award on deposit with the Agency provided by the Agency to the Companies are not sufficient to pay in full the costs of such restoration, the Companies shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any Condemnation award remaining on deposit with the Agency, if any, after payment of all of the costs of such restoration shall be paid to the Companies for its own purposes.

(C) Notwithstanding anything to the contrary contained in subsection (B) of this Section 7.2, the Companies shall not be obligated to restore the Project Facility and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (B) (4) of this Section 7.2, if the Companies shall notify the Agency that it elects to exercise its option under Article XI hereof to terminate this Lease. In such event, subject to the applicable provisions of the Bank Mortgage, the Net Proceeds of any Condemnation award collected by the Agency, if any, after deducting the amount necessary to repay the Indebtedness, shall be paid over to the Companies for its own purposes. If the Net Proceeds collected under any and all Condemnation awards are less than the amount necessary to repay the Indebtedness in full, the Companies shall pay to the Agency the difference between such amounts and the Net Proceeds of such Condemnation awards so that the Indebtedness shall be repaid in full.

(D) Unless an Event of Default under any of the Transaction Documents shall have occurred and be continuing, the Companies shall have sole control of any Condemnation proceeding with respect to the Project Facility or any part thereof or any interest therein or in the Operating Lease, the Company Lease or this Lease and may negotiate the settlement of any such proceeding. The Companies shall notify the Agency of the institution of any Condemnation proceedings and, within seven (7) days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(E) The Agency shall, at the expense of the Companies, cooperate fully with the Companies in the handling and conduct of any such Condemnation proceeding. In no event shall the Agency voluntarily settle, or consent to the settlement of, any such Condemnation proceeding without the written consent of the Companies, which consent shall not be unreasonably withheld or delayed.

SECTION 7.3 ADDITIONS TO THE PROJECT FACILITY. All replacements, repairs, rebuilding or restoration made pursuant to Sections 7.1 or 7.2, whether or not requiring the expenditure of the Companies' own money, shall automatically become part of the Project Facility as if the same were specifically described herein and shall be subject to this Lease.

## ARTICLE VIII SPECIAL COVENANTS

SECTION 8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS". THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANIES' PURPOSES OR NEEDS. THE COMPANIES SHALL ACCEPT THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

### SECTION 8.2 HOLD HARMLESS PROVISIONS.

(A) The Companies hereby release the Agency and its members, officers, agents (other than the Companies), attorneys, servants and employees, past, present and future, from, agrees that the Agency and its members, officers, agents (other than the Companies), attorneys, servants and employees, past, present and future, shall not be liable for and agrees to indemnify, defend (with counsel selected by the Agency) and hold the Agency and its members, officers, agents (other than the Companies), attorneys, servants and employees, past, present and future, harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising directly or indirectly as a result of the Agency's undertaking the Project, including, but not limited to: (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by

any cause whatsoever pertaining to the Project or the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, owning, leasing, subleasing, sub-subleasing or selling the Project Facility or arising from or incurred based on the Agency's involvement in the Project Facility, including, without limiting the generality of the foregoing, (i) all liabilities or claims arising as a result of the Agency's obligations under this Lease or any of the other Transaction Documents or the enforcement of or defense of validity of any provision of any of the Transaction Documents, and (ii) all liabilities or claims arising as a result of the Agency's involvement in the Project or the granting of the Financial Assistance, (3) all liabilities and expenses arising from the failure or alleged failure of the Project Facility, the Companies or the Companies' members, officers, agents, attorneys, servants or employees to comply with Applicable Laws, including, without limitation, any claim that the Agency aided or abetted in such failure or alleged failure to comply with Applicable Laws, and (4) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Companies), 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 Companies), attorneys, servants or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(B) In the event of any claim against the Agency or its members, officers, agents (other than the Companies), attorneys, servants or employees, past, present or future, by any employee of the Companies or any contractor of the Companies or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Companies hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Companies or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(C) To effectuate the provisions of this Section 8.2, the Companies agree to provide for and insure its liabilities assumed pursuant to this Section 8.2 in the liability policies required by Section 6.3(C) of this Lease, if and to the extent available in the State.

(D) Notwithstanding any other provisions of this Lease, the obligations of the Companies pursuant to this Section 8.2 shall remain in full force and effect after the termination or expiration of this Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency or its members, agents (other than the Companies), attorneys, servants or employees, past, present or future, relating thereto.

**SECTION 8.3 RIGHT OF ACCESS TO THE PROJECT FACILITY.** The Companies agree that the Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to enter upon and to examine and inspect the Project Facility; provided,



however, that no such notice shall be required in the event of an emergency or if an Event of Default has occurred and is continuing under this Lease. The Companies further agree that the Agency shall have such rights of access to the Project Facility (subject to the provisions of the immediately preceding sentence of this Section) as may be reasonably necessary to cause the proper maintenance of the Project Facility in the event of failure by the Companies to perform their obligations hereunder, but the exercise of such right shall in no event be construed to mean that the Agency has assumed any obligation hereunder to perform such maintenance.

SECTION 8.4 COMPANIES NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS. The Companies agree that, during the term of this Lease, they (A) will maintain their corporate or company existence as in effect on the Closing Date, (B) will not dissolve or otherwise dispose of all or substantially all of their assets, and (C) will not consolidate with or merge into another corporation or other Person, or permit one or more corporations or other Persons to consolidate with or merge into them, without giving prior written notice to the Agency and obtaining the consent of the Agency. The Companies agree that they will not change their name or their state of organization without giving prior written notice to the Agency and obtaining the consent of the Agency, which consent shall not be unreasonably withheld or delayed.

SECTION 8.5 AGREEMENT TO PROVIDE INFORMATION. The Companies agree, whenever reasonably requested by the Agency, to promptly provide and certify or cause to be provided and certified such information concerning the Project Facility, the Companies, the Applicant, the Guarantors and/or their respective finances, operations and affairs and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by Applicable Laws or other governmental regulation or to ensure compliance with the provisions of this Lease and the other Transaction Documents.

SECTION 8.6 BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES.

(A) The Companies agree to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Companies.

(B) Within thirty (30) days after the end of each fiscal year of the Companies, the Companies shall furnish to the Agency a certificate of an Authorized Representative of the Companies stating that no Event of Default hereunder or under any other Transaction Document has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the Companies has taken or proposes to take with respect thereto. The Companies represent to the Agency that the Companies' fiscal year ends on December 31st.

SECTION 8.7 COMPLIANCE WITH APPLICABLE LAWS.

(A) The Companies agree, for the benefit of the Agency, that, during the term of this Lease, it will, and will cause the Applicant to, promptly comply with all Applicable Laws.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Companies may in good faith actively contest the validity or the applicability of any Applicable Law, provided that the Companies (1) first shall have notified the Agency in writing of such contest, (2) no Event of Default shall have occurred and be continuing under any of the Transaction Documents beyond any applicable notice or cure period, (3) shall have set aside adequate reserves for any such requirement, (4) demonstrates to the reasonable satisfaction of the Agency that noncompliance with such Applicable Law will not subject the Project Facility or any part thereof to loss or forfeiture, (5) demonstrates to the reasonable satisfaction of the Agency that such contest shall not result in the Companies or the Agency being in any danger of any civil or criminal liability for failure to comply therewith, and (6) diligently prosecutes such contest to completion. Otherwise, the Companies shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.7, if the Agency or any of its members, officers, agents (other than the Companies), attorneys, servants or employees, past, present or future, may be liable for prosecution for failure to comply therewith, the Companies shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

#### SECTION 8.8 DISCHARGE OF LIENS AND ENCUMBRANCES.

(A) The Companies hereby agree not to create or suffer to be created any Lien on any Properties of the Agency or on any funds of the Agency applicable to or deriving from the Project Facility.

(B) If any Lien (other than a Permitted Encumbrance) is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim, whether or not valid, is made against the Project Facility or any part thereof or the interest therein of the Companies or the Agency or against any funds of the Agency applicable to or deriving from the Project Facility, the Companies, immediately upon receiving notice of the filing, assertion, entry or issuance thereof, shall give written notice thereof to the Agency and shall take all action (including, without limitation, the payment of money and/or securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and remove or nullify the basis therefor. Nothing herein shall be construed as constituting the consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Project Facility.

SECTION 8.9 PERFORMANCE OF THE COMPANIES' OBLIGATIONS. Should any of the Companies fail to make any payment or to do any act as herein provided, the Agency may, but shall not be obligated to, without notice to or demand on the Companies and without releasing the Companies from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Companies or the Agency, and paying all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Agency in connection therewith; and the Companies shall pay immediately upon demand all sums so incurred or expended by the Agency under the authority hereof, together with interest thereon, at the Default Interest Rate.

SECTION 8.10 DEPRECIATION DEDUCTIONS AND TAX CREDITS. The parties agree that as between them the Companies shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

SECTION 8.11 EMPLOYMENT OPPORTUNITIES.

(A) The Companies shall ensure that all employees and applicants for employment with regard to the Project, including, without limitation, the employees of and applicants for employment with the Companies, the Applicant, or any of their Affiliates, are afforded equal employment opportunities without discrimination.

(B) Pursuant to Section 858-b of the Act, except as otherwise provided by collective bargaining contracts or agreements, the Companies agree (1) to list all new employment opportunities created as a result of the Project with the New York State Department of Labor, Community Services Division (the "NYSDOL") and with the administrative entity (collectively with NYSDOL, the "JTPA Referral Entities") of the service delivery area created by the federal Job Training Partnership Act (P.L. No. 97-300) (including any successor statute thereto, including without limitation, the Workforce Investment Act of 1998 (P.L. No. 105-270), collectively, the "JTPA") in which the Project Facility is located, and (2) where practicable, to first consider and to cause to be first considered for such new employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.

(C) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Companies agree to file with the Agency, prior to the effective date of this Lease, an employment plan, in form and substance satisfactory to the Agency.

(D) The Companies agree to file with the Agency, on a calendar year basis not later than February 11 of each year during the term of this Lease, measured as of December 31st of the immediately preceding calendar year, reports (i) certifying the full-time equivalent jobs retained and the full time equivalent jobs created as a result of the granting of the Financial Assistance, by category, including full-time equivalent independent contractors and employees of independent contractors that work at the Project Facility, and (ii) certifying that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were set forth in the Application are then still accurate or, if not then still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Said annual reports shall be in substantially the form promulgated from time to time by the Agency. The current form of report is annexed hereto as Exhibit G. The Companies shall provide such annual reports (and supporting documentation) and shall cause its Affiliates, tenants, occupants, Applicants, contractors and agents and the Applicant to provide such reports (and supporting documentation) with respect to their respective employees, if any, at the Project Facility. The Agency shall have the right, at the Companies' expense, to audit, confirm and/or require additional information with regard thereto and the Companies agrees to cooperate with the Agency in connection therewith.

(E) The Companies shall, at all times during the term of this Lease, maintain the Minimum Employment Requirement.

(F) Subject to (i) collective bargaining contracts or agreements and other existing contracts or agreements to which the Companies are a party or by which the Companies are bound and (ii) compliance with Applicable Laws, the Companies agree to list or cause to be listed all new employment opportunities created as a result of the Project on the Nassau County TweetMyJobs website or other website designated by the Agency from time to time, provided that such listing shall be at no cost to the Companies.

(G) Subject to (i) collective bargaining contracts or agreements and other existing contracts or agreements to which the Companies are a party or by which the Companies are bound and (ii) compliance with Applicable Laws, the Companies agree that to the greatest extent possible all employment opportunities shall be provided to Nassau County or Suffolk County residents first.

**SECTION 8.12 SALES AND USE TAX EXEMPTION.** Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales and use taxes imposed by the State and local governments in the State, and that the initial work may be exempted from those taxes due to the involvement of the Agency in the Project. Any exemption from the payment of New York sales and use taxes resulting from Agency involvement in the Project shall be limited to purchases of services and the purchase or lease of tangible personal property conveyed to the Agency or utilized by the Agency or by the Companies as agents of the Agency as a part of or incorporated within the Project Facility solely for the purpose of undertaking the initial work as set forth in Section 4.1 of this Lease. No operating expenses (including, without limitation, costs of utilities, cleaning services or supplies) of the Project and no other purchases of services or property (including, without limitation, any purchases of goods or services related to the acquisition, construction, installation, equipping, maintenance or operation of any part of the Project Facility for a subtenant shall be subject to an exemption from the payment of New York sales or use taxes. The Agency makes no representations or warranties that any property or service is exempt from the payment of New York sales or use taxes.

(B) On the Closing Date, the Agency shall execute and deliver to the Companies a sales and use tax exemption letter in the form attached hereto as Exhibit E (the "Sales Tax Exemption Letter"). The granting of the sales and use tax exemption herein is subject to the following additional terms and conditions:

(1) The Sales Tax Exemption Letter shall be dated the Closing Date and shall be effective for a term commencing on its date and expiring upon the earliest to occur of: (a) the termination of this Lease, (b) December 31, 2039, as such date may be extended in accordance with this Lease, or (c) the termination of the Sales Tax Exemption Letter pursuant to the terms hereof and thereof; and

(2) Anything in this Lease or the Sales Tax Exemption Letter to the contrary notwithstanding, the sales and use tax exemption to be provided pursuant to the Sales Tax Exemption Letter (a) shall not be available for any date subsequent to which the Sales Tax Exemption Letter shall have been suspended as provided in this Lease; provided, however,

that in the event the Companies shall thereafter cure the default(s) giving rise to such suspension, or shall cause such default to be cured, or the Agency shall thereafter waive such suspension and the sales and use tax exemption shall again continue from the date of such cure or waiver; (b) shall not be available for or with respect to any tangible personal property having a useful life of less than one year or which shall not constitute a tangible capital asset; and (c) shall not be available after the Companies (or their approved sub-agents) shall have made purchases under the Sales Tax Exemption Letter resulting in sales and use tax exemptions in the aggregate amount of the Maximum Sales Tax Benefit.

(C) The Companies agree to furnish to the Agency, within thirty (30) days after the end of each calendar quarter, a sales and use tax exemption report (the "Quarterly Sales Tax Report"), in form and substance satisfactory to the Agency in its reasonable judgment, with respect to the use of the Sales Tax Exemption Letter by the Companies and their agents, contractors and subcontractors during the preceding calendar quarter. Each said Quarterly Sales Tax Report shall be certified by an Authorized Representative of the Companies and shall: (1) identify the contracts and specific property exempted from sales taxes and/or use taxes during such period; (2) indicate the parties to said contract; (3) indicate the maximum amount payable under said contract, and indicate what portion of said amount would normally be subject to sales and use taxes imposed in the State; (4) indicate the amount of sales tax benefit expected to be received with respect to said contract; and (5) indicate the cumulative sales tax benefit received by the Companies with respect to the initial work for the calendar year.

(D) Pursuant to Section 874(8) of the Act, the Companies agree to file annually, with the New York State Department of Taxation and Finance (the "Department"), on a form, at such time and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Sales Tax Report"), a statement of the value of all sales and use tax exemptions claimed by the Companies and all contractors, subcontractors, consultants and other agents of the Companies under the authority granted to the Companies pursuant to Section 4.1(E) of this Lease. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be the termination of authority to act as agent of the Agency. Additionally, if any Company shall fail to comply with the requirements of this subsection (D), the Companies shall immediately cease to be the agent of the Agency in connection with the initial work.

(E) The Companies agree to furnish to the Agency, simultaneously with their delivery of such report to the Department, a copy of each such Annual Sales Tax Report submitted to the Department by the Companies pursuant to Section 874(8) of the Act.

(F) The Companies acknowledge that, pursuant to Section 873(9) of the Act, the Agency shall file within thirty (30) days of the Closing Date with the Department on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), a statement identifying the Companies as agents of the Agency, setting forth the taxpayer identification number of each of the Companies, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. The Companies agree to timely provide the foregoing information to the Agency and to otherwise

cooperate with the Agency in connection with the preparation and filing of the Thirty-Day Sales Tax Report.

(G) The Companies agree to furnish to the Agency, on request, an opinion of a certified public accountant to the effect that such accountant has audited the use by the Companies of the Sales Tax Exemption Letter for the preceding calendar year, and has reviewed the terms and provisions of the Sales Tax Exemption Letter and of this Section 8.12, and has further audited the Quarterly Sales Tax Reports for the preceding calendar year, and that such Quarterly Sales Tax Reports were properly prepared and accurately reflect the matters certified therein.

(H) Each Company covenants and agrees that it shall include or cause to be included the following language in and as a part of each contract, invoice, bill or purchase order entered into by the Company, as agent of the Agency, in connection with the initial work as set forth in Section 4.1 of this Lease:

“This [contract] is being entered into by [ ] (the “Agent”), as agent for and on behalf of the Nassau County Industrial Development Agency (the “Agency”) in connection with a certain project of the Agency for the Agent consisting in part of the acquisition and renovation of the base building systems and infrastructure of an industrial building and the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at [ ], Nassau County, New York (the “Premises”). The machinery, equipment and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption letter of the Agency; and the Agent hereby represents that this [contract] is in compliance with the terms of the sales tax exemption letter. This [contract] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract], the [vendor/contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

If the Company fails to include, incorporate by reference or otherwise cause the contract, invoice, bill or purchase order to be subject to the above provision, then such contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits that may be conferred by the Agency, the Company shall not claim any sales or use tax benefits or exemptions with respect thereto, and the Company shall return or cause to be returned to the Agency any such benefits or exemptions so taken, together with interest thereon at the Default Interest Rate, from the date of such taking.

(I) (1) Without limitation of any of the Agency’s other rights under this Lease, in the event that any Company (or its approved agents) shall utilize the sales or use tax exemption

provided pursuant to the Sales Tax Exemption Letter (i) in a manner that is not authorized or for which the Companies (or their approved agents) are not entitled to claim an exemption, (ii) to claim exemptions in excess of the Maximum Sales Tax Benefit, (iii) to purchase or lease goods or services that are not authorized under this Lease, or (iv) in a manner that violates the provisions of this Section 8.12 or any other provision of this Lease, then the Companies shall promptly deliver notice of same to the Agency, and the Companies shall promptly pay or caused to be paid to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the Default Interest Rate from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was used by the Company (or its approved agents). If the Companies fail to promptly pay such return of sales or use tax exemptions when due, the Agency shall have the right, without limitation of any of its other rights under this Lease, to take any action or commence any proceeding at law or in equity which may appear necessary or desirable to the Agency to recover any such amounts and the Agency shall have the right to join the Commissioner as a party in any such action or proceeding. The Companies shall cooperate with the Agency in all such actions and proceedings to recover such amounts. The Companies acknowledge and agree that their failure to pay over any such amounts to the Agency shall also be grounds for the Commissioner to access and determine State Sales and Use Taxes due from the Companies under Article 28 or Article 28-A of the New York State Tax Law, together with any applicable penalties and interest due on such amounts.

(2) The Companies acknowledge and agree that, in the event the Agency recovers, receives or otherwise obtains any amount of State Sales and Use Tax from the Companies (or their approved agents) pursuant to the foregoing subsection, the Agency shall have the right to remit same to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amounts, and the Companies agree to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its members, officers, agents (other than the Companies), attorneys, servants and employees, past, present and future, against any liability incurred as a result of remitting such amounts of the Commissioner.

(3) Pursuant to Section 875 of the Act, the Agency shall prepare and file an annual compliance report (each, a "Compliance Report") detailing provisions of this Lease and, if applicable, its activities and efforts to recover, receive or otherwise obtain State Sales and Use Taxes pursuant to the terms of this Lease, together with such other information as the Commissioner and/or the Commissioner of Economic Development may require, which Compliance Report will be filed with the Commissioner, the Director of the Division of the Budget, the Commissioner of Economic Development, the State Comptroller and the Nassau County Legislature. The Companies acknowledge the provisions of Section 875 of the Act, agree to timely provide any information required by the Agency in connection with such Compliance Report and agree to cooperate with the Agency in connection with the preparation and filing of such Compliance Report.

**SECTION 8.13 IDENTIFICATION OF THE EQUIPMENT.** All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease shall be properly identified by the Companies by such appropriate records, including computerized records, as may be approved by the Agency.

SECTION 8.14 FINANCIAL STATEMENTS. Within one hundred twenty (120) days after the end of each fiscal year, the Companies shall deliver to the Agency the financial statements of the Companies, certified by the chief financial officer of the Companies, including a balance sheet as of the last day of such period and an operating statement through the last day of such period. The Companies represent to the Agency that the Companies' fiscal year ends on the Saturday that is closest to December 31st.

SECTION 8.15 ANTI-TERRORISM LAWS.

(A) General. Neither the Companies nor any director, officer, member, manager or shareholder of the Companies, nor any Affiliate of any of the foregoing, is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(B) Executive Order No. 13224. Neither the Companies, nor any director, officer, member, manager or shareholder of the Companies, nor any Affiliate of any of the foregoing, nor their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by the Transaction Documents, is any of the following (each a "Blocked Person"):

(1) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(2) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(3) a Person or entity with which any lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(4) a Person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224;

(5) a Person or entity that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list, or

(6) a Person or entity who is affiliated or associated with a person or entity listed above.

(C) Blocked Person or Transactions. Neither the Companies, nor any director, officer, member, manager or shareholder of the Companies, nor any Affiliate of any of the foregoing, nor to the Companies' knowledge any of its agents acting in any capacity in connection with the transactions contemplated by the Transactions Documents (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of



any Blocked Person, or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

(D) Trading with the Enemy. The Companies are not engaged, nor do they intend to engage, in any business or activity prohibited by the Trading with the Enemy Act.

(E) OFAC and Patriot Act. The Companies represent, warrant, covenant and agree as follows: (i) the Companies, their directors, officers, members, shareholders and Affiliates are in compliance with all Anti-Terrorism Laws; (ii) the Companies shall immediately notify the Agency if it obtains knowledge that it or any of its Affiliates has become or been listed as a Restricted Party or has been charged with or has engaged in any violation of any Anti-Terrorism Law; (iii) the Companies shall not to receive any funds from a Restricted Party and, in any case, exclude any funds derived from any Restricted Party or from any person or entity involved in the violation of any Anti-Terrorism Law from being used to pay the Indebtedness or any part thereof; (iv) the Companies shall not to transfer or permit the transfer of any legal or beneficial ownership interest of any kind in the Companies to a Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; (v) the Companies shall not to acquire, directly or indirectly, ownership interest of any kind in any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; (vi) the Companies shall not form any partnership or joint venture or conduct any business with any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; (vii) the Companies shall not act, directly or indirectly, as the agent or representative of any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; and (viii) the Companies shall indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency from and against any costs incurred by the Agency, and its members, officers, agents (other than the Companies), attorneys, servants and employees, past, present and future, as a result of any violation of an Anti-Terrorism Law by the Companies or any of their directors, officers, members, shareholders or Affiliates.

## ARTICLE IX ASSIGNMENTS; LEASING; MERGER OF THE AGENCY

### SECTION 9.1 ASSIGNMENT OF THIS LEASE.

This Lease may not be sold, assigned or otherwise transferred by the Companies, in whole or in part, without the prior written consent of the Agency, which consent may be granted or withheld in the Agency's reasonable discretion, and shall in all events be subject to and conditioned upon the payment of the then-standard fees of the Agency and the satisfaction of all requirements of the Act. Any such sale, assignment or transfer made by the Companies without the prior written consent of the Agency as aforesaid shall be null and void. Any such sale, assignment or transfer consented to by the Agency shall be made pursuant to documentation satisfactory to the Agency. The Companies shall pay all reasonable and customary fees and expenses incurred by the Agency in connection with such sale, assignment or transfer.

### SECTION 9.2 MERGER OF THE AGENCY.

(A) Nothing contained in this Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other public benefit corporation of the State or any political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder and under the other Transaction Documents; provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests under this Lease shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the Agency shall endeavor to give notice thereof in reasonable detail to the Companies. The Agency shall promptly furnish to the Companies such additional information with respect to any such consolidation, merger or assignment as the Companies may reasonably request.

#### SECTION 9.3 SALE OR LEASE OF THE PROJECT FACILITY.

(A) The Companies shall not lease, sublease, sub-sublease, license or otherwise permit others to use or occupy the Project Facility or any portion thereof without the prior written consent of the Agency, not to be unreasonably withheld, except for leases, subleases, sub-subleases and other occupancy arrangements as set forth in Subsection (B) of this Section 9.3, if any.

(B) Notwithstanding the provisions of Subsection (A) of this Section 9.3, the Companies may enter into the Operating Leases, but same may not be terminated or materially amended without the Agency's prior written consent, not to be unreasonably withheld or delayed.

(C) Subject to Subsection (D) of this Lease, the Companies shall not sell, transfer, convey or otherwise dispose of their interest in the Project Facility or any portion thereof without the prior written consent of the Agency, which consent may be granted or withheld in the Agency's reasonable discretion, except that the members of each Company may transfer interest in such Company to one another or to their immediate family members or to trusts or entities created for the benefit of such members and/or their immediate families, upon prior written notice to, but without the prior written consent of, the Agency.

(D) Notwithstanding anything to the contrary contained in this Section 9.3, in any instance where the Companies determine that any portion of the Project Facility has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Companies may remove such portion of the Project Facility and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Agency but, upon reasonable prior notice to the Agency, provided that such removal will not materially impair the value of the Project Facility as collateral and provided the same is forthwith replaced with items of similar quality and value as the items replaced as of the date of original installation of the replaced items. At the request of the Companies, the Agency shall execute and deliver to the Companies all instruments reasonably necessary or appropriate to enable the Companies to sell or otherwise dispose of any such item of Property free from the Liens of the Transaction Documents. The Companies shall pay all reasonable costs and expenses (including reasonable attorneys' fees and

expenses) incurred in transferring title to and releasing from the Liens of the Transaction Documents any item of Property removed pursuant to this Section 9.3.

## ARTICLE X EVENTS OF DEFAULT AND REMEDIES

### SECTION 10.1      EVENTS OF DEFAULT DEFINED.

(A) The following shall be “Events of Default” under this Lease, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Lease, any one or more of the following events:

(1) A default by the Companies in the due and punctual payment of any amount due under this Lease or under any other Transaction Document, and the continuance thereof for a period of ten (10) business days after written notice thereof is given by the Agency to the Companies.

(2) A default in the performance or observance of any covenant, condition or agreement on the part of the Companies in this Lease (other than as set forth in subsection (1) above or in any other subsection of this Section 10.1(A)) and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Companies, or, if such covenant, condition or agreement is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Companies to commence to cure within such thirty (30) day period and to prosecute the cure to completion with due diligence.

(3) The occurrence of an “Event of Default” under any other Transaction Document.

(4) Any of the Companies shall generally not pay their debts as such debts become due or admits in writing its inability to generally pay their debts as they become due.

(5) Any of the Companies shall conceal, remove or permit to be concealed or removed any part of their Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of their Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof.

(6) (a) The filing by any of the Companies (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy or insolvency statute; (b) the failure by any of the Companies or the Applicant within thirty (30) days to lift any execution, garnishment or attachment of such consequence as will impair the Companies’ ability to carry out its obligations hereunder; (c) the commencement of a case under Title 11 of the United States Code against any of the Companies as the debtor or commencement under any other federal or state bankruptcy or insolvency statute of a case,

action or proceeding against the Companies and continuation of such case, action or proceeding without dismissal for a period of thirty (30) days; (d) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of any of the Companies; or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver, liquidator or trustee of the whole or a substantial portion of the Property of any of the Companies, unless such order, judgment or decree is vacated, dismissed or dissolved within thirty (30) days of such appointment.

(7) Except as expressly permitted pursuant to the provisions of Section 2.2(R) of this Lease, if any interest in the Companies shall be sold, assigned, transferred, conveyed, mortgaged, pledged, hypothecated or alienated, or if any member or shareholder of the Companies enters into an agreement or contract to do so, without the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed, provided that the Minimum Employment Requirement is maintained and the Companies are not otherwise in default of its obligations under this Lease or any other Transaction Document.

(8) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance and the failure of the Companies to remove such Lien, whether by the payment of money, the securing of a bond or otherwise, within thirty (30) days after the Companies receives notice or becomes aware of such imposition.

(9) The removal of the Project Facility, or any portion thereof, outside the County, without the prior written consent of the Agency, other than in connection with a removal permitted under Section 9.3(D) of this Lease.

(10) If any certificate, statement, representation, warranty or financial statement made to the Agency by or on behalf of the Companies, the Applicant or any Guarantor shall prove to have been false, misleading or incorrect in any material respect at the time as of which the facts therein set forth were made, or to have omitted any material liability or claim against the Companies, the Applicant or any Guarantor as the case may be.

(11) If the environmental or ecological condition of the Project Facility is in violation of any Environmental Law or any permit, license or approval related thereto or if the Project Facility, or any part thereof, contains any Hazardous Materials (except Hazardous Materials which do not violate Environmental Laws), and the Companies are unable to comply with such Environmental Laws within thirty (30) days of the notification or discovery of such violation or complete all appropriate and lawful remedial containment and clean-up action within thirty (30) days of the notification or discovery of the existence of such Hazardous Materials.

(12) Any loss or impairment of the Agency's interest in and to the Project Facility, or any part thereof, not due to the voluntary acts of the Agency.

(13) The Companies, the Applicant, any Guarantor or any Affiliate thereof or any director, member, manager, officer or shareholder of the Companies or the Applicant, as the case may be, shall become a Prohibited Person.

(14) Any assignment of this Lease or the Company Lease, in whole or in part, or any letting or sub-subletting of the Project Facility, or any portion thereof, except as expressly permitted by Section 9.3(B) of this Lease, without the prior written consent of the Agency, or any sale of fee title to the Project Facility by the Companies.

(15) An Event of Default shall occur under the Operating Lease, the Company Lease, the Bank Mortgage or under any other Permitted Encumbrance, or the Operating Lease shall expire by its terms or shall be sooner terminated for any reason.

(16) If a Person other than one of the Initial Owners ceases to have control of the management and operations of the Companies for any reason.

(17) If any of the events enumerated in clauses (4) through (7) of this Section 10.1(A) shall happen to the Applicant or any Guarantor.

(18) The Companies, the Applicant or any Guarantor defaults under or attempts to withdraw, renege, cancel or disclaim liability under any guaranty or indemnity made by such party in favor of the Agency, including, without limitation, the Environmental Indemnification or the Guaranty.

(19) If the Companies fails to maintain the Minimum Employment Requirement at any time during the term of this Lease.

(20) Failure by the Companies at any time to keep in full force and effect the insurance policies and coverages required by Section 6.3 of this Lease.

(21) Any loss or impairment of the Companies' interest in and to the Project Facility, or any part thereof.

(22) The Companies shall fail (i) to commence the initial work as contemplated by Section 4.1 of this Lease within forty-five (45) days after the Closing Date, or (ii) to continue with due diligence to perform or cause to be performed the initial work as contemplated by Section 4.1 of this Lease, or (iii) to substantially complete such initial work on or before the Scheduled Completion Date.

(B) Notwithstanding the provisions of Section 10.1(A) hereof if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Lease and if such party shall give notice and full particulars of such force majeure event or cause in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability to perform. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not

excuse, delay or in any way diminish the obligations of the Companies to make the payments required under this Lease, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 2.2(G), 3.1, 3.3, 6.1, 8.2 and 12.9(C) hereof and to comply with the provisions of Sections 2.2(G), 6.6, 8.2, 8.4, 8.5 and 8.7(C) hereof. The term "force majeure" as used herein shall include acts outside of the control of the Agency and the Companies, including, but not limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, restraint of government and people, civil disturbances, breakage or accident to transmission pipes or canals, and failure of utilities.

## SECTION 10.2 REMEDIES ON DEFAULT.

(A) Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent not prohibited by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Companies, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 hereof, and (b) all other payments due under this Lease or any of the other Transaction Documents, including, without limitation, any resulting Recapture of Benefits under Section 11.4 of this Lease; or

(2) re-enter and take possession of the Project Facility, enforce or terminate this Lease, sell or assign the Agency's interest in the Project Facility, subject to Permitted Encumbrances, at public or private sale, as a whole or piecemeal, in whole or in part, for such consideration as may be deemed appropriate in the circumstances by the Agency, and hold the Companies liable for the amount, if any, by which the aggregate unpaid amounts due hereunder exceed the Net Proceeds received upon such sale, or manage and operate the Project Facility, collect all or any rents accruing therefrom, let or relet the Project Facility or any part thereof for the Agency's own account or the account of the Companies, holding the Companies liable for payments due up to the effective date of such leasing and for the difference in the rent and other amounts paid by the sublessee pursuant to such lease and the rental payments and other amounts payable by the Companies hereunder, cancel or modify leases, evict tenants, bring or defend any suits in connection with the possession of the Project Facility in its own name or in the Companies' name, make repairs as the Agency deems appropriate, and perform such other acts in connection with the management, operation or disposition of the Project Facility, or any portion thereof, as the Agency, in its discretion, may deem proper; or

(3) terminate this Lease and/or terminate the Company Lease and/or convey to the Companies all the Agency's right, title and interest in and to the Project Facility. The conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the execution by the Agency of the Termination of Lease and/or the Termination of Company Lease, as applicable. The Companies hereby agree to pay all expenses and taxes, if any, applicable to or arising from any such termination and conveyance. The Companies hereby waive delivery and acceptance of such termination as

a condition to its validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording or filing of such documents; or

(4) bring an action for damages, injunction or specific performance; or

(5) intentionally omitted; or

(6) require the Companies and the Applicant to make payments in lieu of real property taxes under the PILOT Agreement in amounts equal to the amounts the Companies or the Applicant would otherwise be required to pay if the Companies or the Applicant were the owner of the Project Facility (and the Agency did not hold an interest therein); or

(7) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Companies under this Lease.

(B) No action taken pursuant to this Section 10.2 (including repossession of the Project Facility) shall relieve the Companies from their obligations to make all payments required by this Lease and the other Transaction Documents.

SECTION 10.3 REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Companies should default under any of the provisions of this Lease or any other Transaction Document and the Agency should retain attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Companies herein contained, the Companies shall, on demand therefor, pay to the Agency such fees and expenses (including, without limitation, attorneys' fees and expenses) so incurred, whether an action is commenced or not.

SECTION 10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE XI OPTIONS TO TERMINATE

**SECTION 11.1 EARLY TERMINATION OF THE LEASE.** The Companies shall have the option, subject to obtaining the written consent of the Bank, to terminate this Lease at any time prior to the termination date specified in Section 5.2 hereof, by filing with the Agency a certificate signed by an Authorized Representative of the Companies stating the Companies' intention to do so pursuant to this Section 11.1 and setting forth the effective date of such termination, which effective date shall not be less than thirty (30) days after the delivery of the certificate to the Agency. The exercise of the option to terminate pursuant to this Section 11.1 shall constitute a "Recapture Event" (as such term is defined in Section 11.4 hereof). The Companies shall not, at any time, assign or transfer its option to terminate this Lease and accept the Agency's interest in the Project Facility as contained in this Section 11.1 separate and apart from a permitted assignment of this Lease pursuant to Section 9.1 of this Lease without the prior written consent of the Agency.

### **SECTION 11.2 OBLIGATION TO TERMINATE THE LEASE.**

(A) Contemporaneously with the termination of this Lease in accordance with Section 5.2 or Section 11.1 hereof, the Companies shall pay all sums required to be paid to the Agency or any other Person pursuant to this Lease and the other Transaction Documents (including any applicable Recapture of Benefits).

(B) The termination of this Lease and the conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the execution and delivery by the Agency of (1) the Termination of Company Lease (an unexecuted copy of which is attached hereto as Exhibit C together with Exhibit C-2), (2) the Termination of Lease (an unexecuted copy of which is attached hereto as Exhibit F together with Exhibit F-2) and all transfer tax, equalization and assessment forms required to record such Terminations. The Companies hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such termination, including, without limitation, all of the Agency's reasonable costs and expenses in connection therewith (including reasonable attorneys' fees and expenses).

(C) The Companies agree to prepare the Termination of Company Lease and/or the Termination of Lease, and all schedules thereto, together with all equalization and assessment forms and other necessary documentation, and to forward same to the Agency at least fifteen (15) days prior to the date that this Lease is to be terminated and the Agency's interest in the Project Facility or any portion thereof is to be conveyed to the Companies. The Companies hereby irrevocably appoint and designate the Agency as its attorney-in-fact for the purpose of executing, delivering and/or recording such documents and to take such other and further action as shall be necessary to terminate the Agency's interest in the Project Facility.

(D) This Lease shall survive the transfer of the Project Facility to the Companies pursuant to this Section 11.2 and shall remain in full force and effect until ninety-one (91) days after all of the Indebtedness shall have been paid in full, and thereafter the obligations of the Companies shall survive as set forth in Section 12.7 hereof.



(E) Upon the payment in full of all Indebtedness, and notwithstanding the survival of certain obligations of the Companies as described in Section 12.7 hereof, the Agency shall upon the request of the Companies execute and deliver to the Companies such documents as the Companies may reasonably request, in recordable form if so requested, to evidence the termination and release of all Liens granted to the Agency hereunder.

SECTION 11.3        RESERVED.

SECTION 11.4        RECAPTURE OF AGENCY BENEFITS.

(A) It is understood and agreed by the parties to this Lease that the Agency is entering into this Lease in order to provide the Financial Assistance to the Companies for the Project and to accomplish the purposes of the Act. In consideration therefor, the Companies hereby agree that if there shall occur a Recapture Event (as hereinafter defined), then the Companies shall pay to the Agency as a return of public benefits conferred by the Agency, an amount as follows (such amount, the "Recapture of Benefits"):

(1) one hundred per cent (100%) of the Benefits (as defined below) if the Recapture Event occurs on or before the seventh (7<sup>th</sup>) anniversary of the Closing Date;

(2) eighty per cent (80%) of the Benefits if the Recapture Event occurs after the seventh (7<sup>th</sup>) anniversary of the Closing Date but on or before the tenth (10<sup>th</sup>) anniversary of the Closing Date;

(3) sixty per cent (60%) of the Benefits if the Recapture Event occurs after the tenth (10<sup>th</sup>) anniversary of the Closing Date but on or before the thirteenth (13<sup>th</sup>) anniversary of the Closing Date;

(4) forty per cent (40%) of the Benefits if the Recapture Event occurs after the thirteenth (13<sup>th</sup>) anniversary of the Closing Date but on or before the sixteenth (16<sup>th</sup>) anniversary of the Closing Date;

(5) twenty per cent (20%) of the Benefits if the Recapture Event occurs after sixteenth (16<sup>th</sup>) anniversary of the Closing Date but on or before the twentieth (20<sup>th</sup>) anniversary of the Closing Date; or

(6) zero per cent (0%) of the Benefits thereafter.

(B) The term "Benefits" shall mean the Agency's calculation of, collectively:

(1) all real estate tax benefits which have accrued to the benefit of the Companies during such time as the Agency held an interest in the Project Facility by reason of such interest, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under the PILOT Agreement (through the date that the Project Facility is returned to the tax rolls as taxable property) from those payments which the Companies would have been required to pay through such date had the Companies been the owner of the Project Facility and the Agency not been involved in the Project and based on the records of the Nassau

County Tax Assessor and any applicable village tax assessor, and treating any negative result as \$0; and

(2) all miscellaneous benefits derived from the Agency's participation in the transactions contemplated by this Lease, including, but not limited to, any exemption from real property transfer taxes and any exemption from mortgage recording taxes.

(C) For the purposes of this Section 11.4 the term "Recapture Event" shall mean the occurrence of any of the following events:

(1) The Companies shall have liquidated their operations and/or assets; or

(2) The Companies shall have ceased all or substantially all of its operations at the Project Facility (whether by closure or by relocation to another facility either within or outside of the County) for more than thirty (30) consecutive days; or

(3) The Companies shall have transferred all or substantially all of their employees engaged in the maintenance or operation of the Project Facility to a location outside of the County; or

(4) The occurrence and continuance of an Event of Default, beyond any applicable grace or cure period, under this Lease or any other Transaction Document; or

(5) The Companies shall have effected a substantial change in the scope and nature of the operations of the Companies at the Project Facility without the prior written consent of the Agency; or

(6) The Companies shall have sold, leased, subleased, sub-subleased, assigned, transferred or otherwise disposed of all or any part of its interest in the Project Facility in violation of this Lease or the Applicant shall have sold or otherwise transferred fee title to the Project Facility; or

(7) The Companies fail to maintain the Minimum Employment Requirement at any time during the term of this Lease; or

(8) The Application, or documentation in support of the Application, contained a false or misleading statement of a material nature as to any fact in the Application or omitted any information which, if included, would have rendered any information in the Application or supporting documentation false or misleading in any material respect, and such false or misleading statement or omission was made knowingly by the Companies; or

(9) The Applicant shall have committed any of the acts specified in items (1) to (8) above.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a Condemnation by governmental authority of all or substantially all of the Project Facility or any interest therein, or (ii) the inability at law of the Companies to rebuild, repair, restore or replace the Project Facility

after the occurrence of a casualty to substantially its condition prior to such casualty, which inability shall have arisen in good faith through no fault on the part of the Companies.

(D) The Companies covenant and agree to furnish the Agency with written notification upon the occurrence of any Recapture Event, which notification shall set forth the terms of such Recapture Event.

(E) In the event any payment owing by the Companies under this Section 11.4 shall not be paid on demand by the Companies, such payment shall bear interest from the date of such demand at the Default Interest Rate until the Companies shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

## ARTICLE XII MISCELLANEOUS

### SECTION 12.1 NOTICES.

(A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given on the earlier of (1) three (3) Business Days after being sent to the applicable address stated below by registered or certified mail, return receipt requested, or two (2) Business Days after being sent by nationally recognized overnight courier service, or (2) the date on which delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

#### IF TO THE COMPANIES:

Seviroli Foods, Inc.  
385 Brook Street  
Garden City, NY 11530  
Attn: Justine M. Roe, CFO

#### WITH A COPY TO:

Meltzer, Lippe, Goldstein &  
Breitstone, LLP  
190 Willis Avenue  
Mineola, NY 11501  
Attn: Gary Meltzer, Esq.

#### IF TO THE AGENCY:

Nassau County Industrial Development Agency  
One West Street  
Mineola, NY 11501

Attn: Executive Director

WITH A COPY TO:

Phillips Lytle LLP  
1205 Franklin Avenue, Suite 390  
Garden City, NY 11530  
Attn: Milan K. Tyler, Esq.

(C) The Agency and the Companies may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 12.2 BINDING EFFECT. This Lease shall inure to the benefit of the Agency and the Companies and shall be binding upon the Agency, the Companies and, as permitted by this Lease, their respective successors and assigns, but no assignment shall be effective to relieve the Companies of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency.

SECTION 12.3 SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Companies to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be held void, voidable, invalid or unenforceable by a court of competent jurisdiction, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Lease.

SECTION 12.4 AMENDMENT. This Lease may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 12.5 EXECUTION OF COUNTERPARTS. This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 12.6 APPLICABLE LAW. This Lease shall be governed by and construed in accordance with the applicable laws of the State, as in effect from time to time, without regard to its principles of conflicts of law.

SECTION 12.7 SURVIVAL OF OBLIGATIONS.

(A) The obligations of the Companies to make the payments required by Sections 2.2(G), 3.1, 3.3, 4.1, 5.3, 5.4, 6.4(B), 6.6, 8.2, 8.9, 9.1, 9.3, 10.2 10.4, 11.2 and 11.4 hereof and to provide the indemnity required by Sections 2.2(G), 3.1, 3.3, 6.1, 8.2 and 12.9(C) hereof and its obligations and those of the Companies, the Applicant and the Guarantors under the

Environmental Indemnification, as the case may be, shall survive the termination of this Lease, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Companies to the Agency with respect to the Unassigned Rights shall survive the termination or expiration of this Lease until the expiration of the period stated in the applicable statute of limitation during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents (other than the Companies), attorneys, servants or employees, past, present or future, related thereto.

SECTION 12.8 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Lease have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease.

SECTION 12.9 NO RECOURSE; SPECIAL OBLIGATION. The obligations and agreements of the Agency contained herein and in the other Transaction Documents and any other instrument or document executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Companies), servant or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Companies), servants and employees, past, present and future, of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State or the County and neither the State nor the County shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Agency's interest in the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) business days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) business days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten (10) business day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such fees and expenses, and (3) if the Agency refuses to comply

with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Companies), servants or employees, past, present or future, shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its members, officers, agents (other than the Companies), attorneys, servants and employees, past, present and future, against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Companies), servants and employees, past, present and future, against all liability expected to be incurred as a result of compliance with such request.

SECTION 12.10 NET LEASE. The obligation of the Companies to make the payments specified in this Lease shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Lease shall yield, net, to the Agency, the payments set forth herein.

SECTION 12.11 WAIVER OF JURY TRIAL. THE COMPANIES AND THE AGENCY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE, ANY OTHER TRANSACTION DOCUMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THIS LEASE.

SECTION 12.12 PRIOR AGREEMENTS. This Lease and the other Transaction Documents shall completely and fully supersede all other prior understandings or agreements, written or oral, between the Companies and the Agency relating to the Project.

SECTION 12.13 SERVICE OF PROCESS.

(A) The Companies represent that it is subject to service of process in the State of New York and covenants that it will remain so subject so long as this Lease shall be in effect. If for any reason the Companies should cease to be so subject to service of process in the State of New York, the Companies hereby designates and appoints, without power of revocation, Gary Meltzer, Esq., Meltzer, Lippe, Goldstein & Breitstone, LLP, 190 Willis Avenue, Mineola, NY 11501, and successor(s) as its agent for service of process, and if such agent shall cease to act or otherwise cease to be subject to service of process in the State of New York, the Secretary of State of the State of New York, as the agents of the Companies upon whom may be served all process, pleadings, notices or other papers which may be served upon the Companies as a result of any of its obligations under this Lease; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to the Companies' obligations hereunder.

(B) The Companies irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Lease or the other Transaction Documents may be brought in the courts of record of the State of New York in Nassau County or the courts of the United States, Eastern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as this Lease is



in effect, the Companies' agents designated above shall accept and acknowledge in the Companies' behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Companies agree and consent that any such service of process upon such agents and written notice of such service to the Companies in the manner set forth in Section 12.1 hereof shall be taken and held to be valid personal service upon the Companies whether or not the Companies shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same force and validity as if service were made upon the Companies according to the laws governing the validity and requirements of such service in the State of New York, and waives all claim of error by reason of any such service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Companies or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Companies.

SECTION 12.14 THIRD PARTY BENEFICIARIES. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto.

SECTION 12.15 NON-DISCRIMINATION.

(A) At all times during the term of this Lease, the Companies shall not discriminate against any employee or applicant for employment because of race, color, religion, age, gender, sexual orientation, national origin, marital status, military status, disability, familial status or other characteristic or criteria protected by Applicable Law. The Companies shall use reasonable efforts to ensure that employees and applicants for employment with any tenant, subtenant, occupant or user of the Project Facility, or any part thereof, or any contractor or subcontractor with respect to the Project Facility, are treated without regard to their race, color, ethnicity, religion, creed, age, gender, sexual orientation, national origin, marital status, military status, disability, familial status or other characteristic or criteria protected by Applicable Law. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(B) The Companies shall, in all solicitations or advertisements for employees placed by or on behalf of the Companies, state that all qualified applicants will be considered for employment without regard to race, color, ethnicity, religion, creed, age, gender, sexual orientation, national origin, marital status, military status, disability, familial status or other characteristic or criteria protected by Applicable Law.

(C) The Companies shall furnish to the Agency all information required by the Agency pursuant to this Section 12.15 and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section 12.15.

SECTION 12.16 DATE OF LEASE. The date of this Lease shall be for reference purposes only and shall not be construed to imply that this Lease was executed on the date first above written. This Lease was executed and delivered on November 30, 2018.

SECTION 12.17 RECORDING AND FILING. This Lease or a memorandum hereof shall be recorded by the Companies in the appropriate office of the Clerk of the County, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

SECTION 12.18 SUBORDINATION. This Lease and all of the Transaction Documents, except for the PILOT Agreement, the PILOT Mortgage, the Agency's rights under Section 11.4 of this Lease and the Agency's rights with respect to the Unassigned Rights under this Lease, shall be subject and subordinate to the lien and the terms and conditions of the Bank Mortgage, including all amounts advanced thereunder and all renewals, modifications and replacements thereof. The Bank Mortgage (including all amounts advanced thereunder and all renewals, modifications and replacements thereof) shall be subject and subordinate to the PILOT Agreement, the PILOT Mortgage, the Agency's rights under Section 11.4 of this Lease and the Agency's rights with respect to the Unassigned Rights under this Lease. This Lease, except with regard to the Agency's Unassigned Rights, is subject and subordinate to the lien of the PILOT Mortgage. The Operating Leases shall be subject and subordinate to this Lease and all of the Transaction Documents.

SECTION 12.19 BANK MORTGAGE. (A) The Companies hereby directs the Agency to give and the Agency hereby agrees to give the Bank notice, in the manner set forth in Section 12.1 of this Lease, of any default by the Companies under this Lease (including, without limitation, any Recapture Event), the PILOT Agreement or any other Transaction Document which the Agency is required to give to the Companies pursuant to the terms of this Lease, the PILOT Agreement or any such other Transaction Document, and the Bank shall have the right (but not the obligation) to cure such default within the time period, if any, provided for such cure to be carried out by the Companies pursuant to the terms of this Lease, the PILOT Agreement or such other Transaction Document, as applicable. Each of the Companies and the Agency agrees that no notice given pursuant to the preceding sentence shall be effective against the Bank unless a copy has been delivered to the Bank. The Agency shall accept such cure by the Bank as if such cure were performed by the Companies. The Companies acknowledge and agree that the Agency may accept such cure by the Bank and waives any claims it may have against the Agency based upon, arising from or in connection with this Subsection (A).

(B) The Agency and the Companies agree that the Bank may exercise the Companies' option to terminate this Lease in accordance with Section 11.1 of this Lease, whether in the name of the Companies or the Bank, subject to compliance with the provisions of Article XI of this Lease. If the Bank shall exercise such option to terminate in accordance with the terms of Article XI of this Lease, the Agency agrees to perform its obligations under such Article XI at the direction and for the benefit of the Bank. The Companies waives any claims it may have against the Agency based upon, arising from or in connection with Article XI of this Lease.

(C) The Agency acknowledges that the lien of the Bank Mortgage attaches to property insurance proceeds and, notwithstanding the provisions of this Lease to the contrary, if any, the Bank may, subject to the terms of the Bank Mortgage and the other documents, instruments and agreements executed by the Applicant in connection therewith (collectively, the "Bank Loan Documents"), require that such property insurance proceeds be applied to reduce the unpaid balance of the Applicant's obligations under the Bank Note and the other Bank Loan Documents. Also, notwithstanding any of the provisions of this Lease to the contrary, under no



circumstances shall the Bank or its successors or assigns have any obligation under this Lease to repair, restore or replace the improvements or the clean-up and removal of Hazardous Materials, or reimburse the Agency for such repair, restoration, replacement, clean-up or removal, except to the extent that any obligation to clean-up and remove Hazardous Materials arises, commences or, occurs as a result of actions taken by Bank, or continues following acquisition of the Project Facility by the Bank through foreclosure of the Bank Mortgage or a deed in lieu of foreclosure.

(D) In the event of a taking of the Project Facility through the exercise of eminent domain or similar proceedings, all proceeds shall, subject to the terms of the Bank Loan Documents, be applied first to reduce the unpaid balance of the Applicant's obligations to the Bank pursuant to the terms and conditions of the Bank Note and the other Bank Loan Documents. In addition, the Agency agrees that in the event of a taking of the Project Facility, or any portion thereof, through the exercise of eminent domain or similar proceedings, the Bank shall, subject to the terms of the Bank Loan Documents, have the right to participate in such proceedings with respect to the determination of value as provided under the terms of the Bank Mortgage and the other Bank Loan Documents.

(E) The Bank may terminate, sell, transfer or assign its rights and obligations under the Bank Loan Documents, or modify or amend any of the terms of the Bank Loan Documents at any time without the Agency's consent, but the Agency shall not be bound by any such modification or amendment thereto unless it consents thereto in writing.

(F) This Lease, the PILOT Agreement and the PILOT Mortgage shall not be amended or modified without the Bank's prior written consent, which consent shall not be unreasonably withheld or delayed.

SECTION 12.20 OPERATING LEASE. The Companies covenant and agree to comply with and perform as and when required all of the covenants and agreements imposed on the landlord under the Operating Lease.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Agency and the Companies have caused this Lease to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Joseph J. Kearney  
Executive Director

JS COMMERCIAL REALTY CORP.

By: \_\_\_\_\_  
Joseph Seviroli, Jr.  
President

585 BROOK REALTY LLC

By: \_\_\_\_\_  
Joseph Seviroli, Jr.  
Manager

BROOK STREET REALTY LLC

By: \_\_\_\_\_  
Joseph Seviroli, Jr.  
Authorized Signatory

IN WITNESS WHEREOF, the Agency and the Companies have caused this Lease to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
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JS COMMERCIAL REALTY CORP.

By: \_\_\_\_\_  
Joseph Seviroli, Jr.  
President

585 BROOK REALTY LLC

By: \_\_\_\_\_  
Joseph Seviroli, Jr.  
Manager

BROOK STREET REALTY LLC

By: \_\_\_\_\_  
Joseph Seviroli, Jr.  
Authorized Signatory

557-563-579 BROOK REALTY LLC

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

Joseph Seviroli, Jr.  
Manager

Accepted and Agreed:


SEVIROLI FOODS, INC.

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

Name: Joseph Seviroli, Jr.  
Title: President

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

On the 21<sup>st</sup> day of November, in the year 2018, before me, the undersigned, a notary public in and for said state, personally appeared Joseph J. Kearney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

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

Paul V. O'Brien  
Notary Public State of New York  
No. 020B6235944  
Qualified in Nassau County  
Commission Expires February 14, 2019 2019

On the \_\_\_\_ day of November, in the year 2018, before me, the undersigned, a notary public in and for said state, personally appeared Joseph Seviroli, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

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

On the \_\_\_\_ day of November, in the year 2018, before me, the undersigned, a notary public in and for said state, personally appeared Joseph J. Kearney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

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

On the 30<sup>th</sup> day of November, in the year 2018, before me, the undersigned, a notary public in and for said state, personally appeared Joseph Seviroli, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



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Notary Public

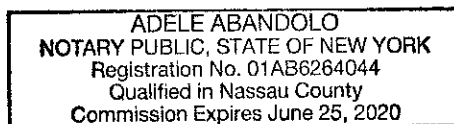


EXHIBIT A

DESCRIPTION OF THE LAND

**EXHIBIT A**

(Legal Description - 585 Brook Street)

Real property in the City of Garden City, County of Nassau, State of New York, described as follows:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF HEMPSTEAD, COUNTY OF NASSAU AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF BROOK STREET, WHERE THE SAME IS INTERSECTED BY THE WESTERLY LINE OF PROPERTY OF THE NEW YORK TELEPHONE CO., SAID POINT BEING 331.33 FEET WESTERLY FROM THE INTERSECTION FORMED BY THE NORTHERLY LINE OF BROOK STREET WITH THE WESTERLY LINE OF OAK STREET;

RUNNING THENCE NORTHERLY ALONG THE WESTERLY LINE OF PROPERTY OF THE NEW YORK TELEPHONE CO. AND AT RIGHT ANGLES TO THE NORTHERLY LINE OF BROOK STREET, NORTH 16° 23' 12" WEST, 118 FEET;

THENCE EASTERLY, STILL ALONG LAND OF THE NEW YORK TELEPHONE CO., NORTH 63° 57' 55" EAST, 101.43 FEET TO A POINT IN THE SOUTHERLY LINE OF LAND OF THE L.I.R.R. CO.;

THENCE WESTERLY ALONG THE SOUTHERLY LINE OF THE L.I.R.R. CO., SOUTH 73° 36' 48" WEST, 30 FEET;

THENCE SOUTH 63° 57' 55" WEST, 101.43 FEET TO A POINT;

THENCE SOUTHERLY AT RIGHT ANGLES TO BROOK STREET, PARALLEL WITH THE WESTERLY LINE OF PROPERTY OF THE NEW YORK TELEPHONE CO. AND DISTANT 30 FEET WESTERLY THEREFROM, SOUTH 16° 23' 12" EAST, 118 FEET TO THE NORTHERLY LINE OF BROOK STREET;

THENCE EASTERLY ALONG THE NORTHERLY LINE OF BROOK STREET, NORTH 73° 36' 48" EAST, 30 FEET TO THE POINT OR PLACE OF BEGINNING.

For Information Only: Section 34 Block 100 Lot 5

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(Legal Description - 10 Commercial Avenue)

Real property in the City of Garden City, County of Nassau, State of New York, described as follows:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE TOWN OF HEMPSTEAD, COUNTY OF NASSAU, STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH SIDE OF COMMERCIAL AVENUE, DISTANT 83 FEET SOUTHERLY FROM PROPERTY OF THE LONG ISLAND RAILROAD CO., WHICH POINT OR PLACE OF BEGINNING IS DISTANT 3080.38 FEET EASTERLY WHEN MEASURED ALONG THE NORTHERLY SIDE OF COMMERCIAL AVENUE FROM THE EASTERLY LINE OF CLINTON ROAD;

RUNNING THENCE SOUTH  $73^{\circ} 36' 48''$  WEST ALONG THE NORTHERLY LINE OF COMMERCIAL AVENUE AND 218.03 FEET TO THE LAND NOW OR FORMERLY OF IRENE M. CITRO;

THENCE NORTH  $16^{\circ} 23' 12''$  WEST ALONG THE EASTERLY BOUNDARY OF LAND NOW OR FORMERLY OF IRENE M. CITRO AND PART OF THE DISTANCE THROUGH A PARTY WALL, 83 FEET TO THE SOUTHERLY LINE OF PROPERTY OF THE LONG ISLAND RAILROAD CO.;

THENCE NORTH  $73^{\circ} 36' 48''$  EAST ALONG THE SOUTHERLY LINE OF PROPERTY OF THE LONG ISLAND RAILROAD CO., 218.03 FEET;

THENCE SOUTH  $16^{\circ} 23' 12''$  EAST, 83 FEET TO THE NORTHERLY SIDE OF COMMERCIAL AVENUE THE POINT OR PLACE OF BEGINNING.

For Information Only: Section 44 Block D Lot 8

(Legal Description - 600 Commercial Avenue)

Real property in the City of Garden City, County of Nassau, State of New York, described as follows:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING, AND BEING AT GARDEN CITY, IN THE TOWN OF HEMPSTEAD, COUNTY OF NASSAU AND STATE OF NEW YORK, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY SIDE OF COMMERCIAL AVENUE, DISTANT 55.00 FEET WESTERLY FROM THE END OF CORNER FORMED BY THE WESTERLY SIDE OF OAK STREET AND THE SOUTHERLY SIDE OF COMMERCIAL AVENUE;

RUNNING THENCE SOUTH 16 DEGREES 55 MINUTES 12 SECONDS EAST, 125.47 FEET;

THENCE SOUTH 73 DEGREES 36 MINUTES 48 SECONDS WEST, 201.22 FEET;

THENCE NORTH 16 DEGREES 23 MINUTES 12 SECONDS WEST, 135.01 FEET TO THE SOUTHERLY SIDE OF COMMERCIAL AVENUE;

THENCE ALONG THE SOUTHERLY SIDE OF COMMERCIAL AVENUE THE FOLLOWING THREE (3) COURSES AND DISTANCES:

1. NORTH 73 DEGREES 36 MINUTES 44 SECONDS EAST, 117.97 FEET;
2. NORTH 80 DEGREES 13 MINUTES 18 SECONDS EAST, 82.55 FEET;
3. SOUTH 82 DEGREES 17 MINUTES 10 SECONDS EAST, 0.10 FEET TO THE POINT OR PLACE OF BEGINNING.

For Information Only: Section 34 Block 100 Lots 12, 17 and 19

(Legal Description - 620 Commercial Avenue)

Real property in the City of Garden City, County of Nassau, State of New York, described as follows:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING, AND BEING AT GARDEN CITY, IN THE TOWN OF HEMPSTEAD, COUNTY OF NASSAU AND STATE OF NEW YORK, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE CORNER FORMED BY THE WESTERLY SIDE OF OAK STREET AND THE SOUTHERLY SIDE OF COMMERCIAL AVENUE;

RUNNING THENCE ALONG THE WESTERLY SIDE OF OAK STREET, SOUTH 16 DEGREES 55 MINUTES 12 SECONDS EAST, 103.01 FEET;

THENCE SOUTH 73 DEGREES 36 MINUTES 48 SECONDS WEST, 50.00 FEET;

THENCE NORTH 16 DEGREES 55 MINUTES 12 SECONDS WEST, 125.47 FEET TO THE SOUTHERLY SIDE OF COMMERCIAL AVENUE;

THENCE ALONG THE SOUTHERLY SIDE OF COMMERCIAL AVENUE, SOUTH 82 DEGREES 17 MINUTES 10 SECONDS EAST, 55.00 FEET TO THE POINT OR PLACE OF BEGINNING.

For Information Only: Section 34 Block 100 Lot 18

(Legal Description - 601 Brook Street)

Real property in the City of Garden City, County of Nassau, State of New York, described as follows:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF HEMPSTEAD, COUNTY OF NASSAU AND STATE OF NEW YORK, AND MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE CORNER FORMED BY THE INTERSECTION OF THE NORTHERLY SIDE OF BROOK STREET AND THE WESTERLY SIDE OF OAK STREET;

RUNNING THENCE WESTERLY ALONG THE NORTHERLY SIDE OF BROOK STREET, SOUTH 73° 36' 48" WEST, 331.33 FEET;

RUNNING THENCE NORTH 16° 23' 12" WEST, 118.00 FEET;

RUNNING THENCE NORTH 63° 57' 55" EAST, 101.43 FEET;

RUNNING THENCE NORTH 73° 36' 48" EAST 230.07 FEET TO THE WESTERLY SIDE OF OAK STREET, TO THE POINT OR PLACE OF BEGINNING.

RUNNING THENCE SOUTHERLY ALONG THE WESTERLY SIDE OF OAK STREET SOUTH 16° 55' 12" EAST 135.01 FEET TO THE POINT OR PLACE OF BEGINNING.

For Information Only: Section 34 Block 100 Lots 6 (Parcel A for reference purposes) and 7 (Parcel B for reference purposes)

(Legal Description -  
Vacant Lot at Commercial Avenue and 557-563-579 Brook Street)

Real property in the City of Garden City, County of Nassau, State of New York, described as follows:

ALL THAT CERTAIN PIECE OR PARCEL OF LAND, TWENTY-TWO FEET WIDE, SITUATE IN THE VILLAGE OF GARDEN CITY, IN THE TOWN OF HEMPSTEAD, IN THE COUNTY OF NASSAU AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHERE THE SOUTHERLY LINE OF LAND OF THE BUSCH FUEL CORPORATION MEETS THE EASTERLY LINE OF PLATTED GROVE STREET, FIFTY FEET WIDE, NOT PHYSICALLY OPENED, AT THE DISTANCE OF ONE HUNDRED THIRTY FIVE FEET MEASURED SOUTH SIXTEEN DEGREES TWENTY-THREE MINUTES TWELVE SECONDS ( $16^{\circ} 23' 12''$ ) EAST, ALONG SAID EASTERLY LINE OF PLATTED GROVE STREET, NOT PHYSICALLY OPENED, FROM THE POINT OF MEETING WITH THE SOUTHERLY LINE OF COMMERCIAL AVENUE, FORTY FEET WIDE.

EXTENDING FROM SAID BEGINNING POINT THE FOLLOWING FOUR COURSES AND DISTANCES;

(1) NORTH SEVENTY-THREE DEGREES THIRTY-SIX MINUTES FORTY-EIGHT SECONDS ( $73^{\circ} 36' 48''$ ) EAST, ALONG SAID SOUTHERLY LINE OF LAND OF THE BUSCH FUEL CORPORATION TWO HUNDRED SIXTY FEET AND SEVEN ONE HUNDREDTHS OF A FOOT AT A CORNER OF SAID LAST MENTIONED LAND;

(2) SOUTH SIXTEEN DEGREES TWENTY-THREE MINUTES TWELVE SECONDS ( $16^{\circ} 23' 12''$ ) EAST, BY LAND OF THE LONG ISLAND RAILROAD COMPANY, TWENTY-TWO FEET TO A POINT IN THE NORTHERLY LINE OF LAND OF OTHER OWNERS;

(3) SOUTH SEVENTY-THREE DEGREES THIRTY-SIX MINUTES FORTY-EIGHT SECONDS ( $73^{\circ} 36' 48''$ ) WEST, ALONG SAID NORTHERLY LINE OF LAND OF OTHER OWNERS ON A LINE PARALLEL WITH AND DISTANT TWENTY-TWO FEET MEASURED SOUTHWARDLY AND AT RIGHT ANGLES FROM THE FIRST COURSE HEREIN DESCRIBED, TWO HUNDRED SIXTY FEET AND SEVEN ONE HUNDREDTHS OF A FOOT TO A POINT IN SAID EASTERLY LINE OF PLATTED GROVE STREET, NOT PHYSICALLY OPENED; AND

THENCE (4) NORTH SIXTEEN DEGREES TWENTY-THREE MINUTES TWELVE SECONDS ( $16^{\circ} 23' 12''$ ) WEST, ALONG SAID EASTERLY LINE OF PLATTED GROVE STREET, NOT PHYSICALLY OPENED, TWENTY-TWO FEET TO THE PLACE OF BEGINNING.

For Information Only: Section 34 Block 100 Lot 8

Real property in the City of Garden City, County of Nassau, State of New York, described as follows:

ALL THAT LOT OR PARCEL OF LAND, LYING, BEING AND SITUATE IN THE TOWN OF HEMPSTEAD, ON THE NORTH SIDE OF BROOK STREET, EAST OF THE VILLAGE LINE OF THE INCORPORATED VILLAGE OF GARDEN CITY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF BROOK STREET WHERE THE SAME IS INTERSECTED BY THE EAST LINE OF GROVE STREET,

RUNNING THENCE, FROM SAID POINT OF BEGINNING, NORTHERLY ALONG THE EAST LINE OF GROVE STREET, NORTH  $16^{\circ} 23' 12''$  WEST 135.00 FEET TO THE SOUTH LINE OF PROPERTY OF THE LONG ISLAND RAILROAD;

THENCE EASTERLY AND ALONG SAID PROPERTY OF THE LONG ISLAND RAILROAD NORTH  $73^{\circ} 36' 48''$  EAST, 402.69 FEET TO A POINT MARKED BY A STAKE;

RUNNING THENCE SOUTH  $63^{\circ} 57' 55''$  WEST, 101.43 FEET TO A POINT MARKED BY A STAKE;

THENCE SOUTHERLY ALONG A LINE WHICH IS AT RIGHT ANGLES TO THE NORTHERLY LINE OF BROOK STREET, SOUTH  $16^{\circ} 23' 12''$  EAST 118.00 FEET TO THE NORTHERLY LINE OF BROOK STREET;

THENCE WESTERLY, ALONG THE NORTHERLY LINE OF BROOK STREET, SOUTH  $73^{\circ} 36' 48''$  WEST, 302.69 FEET TO THE POINT OF BEGINNING.

For Information Only: Section 34 Block 100 Lot 4

## EXHIBIT B

### DESCRIPTION OF EQUIPMENT

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed in connection with the acquisition, renovation and installation of the 2018 Seviroli Foods Project (the "Project") of the Nassau County Industrial Development Agency (the "Agency") located, in part, on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, renovated and installed by those Persons set forth as Owner(s) on Schedule A hereto (collectively, the "Company") as agents of the Agency pursuant to a master sublease agreement dated as of November 1, 2018 (the "Lease Agreement") by and between the Agency and the Company and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, hearing, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery; and

(2) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

## EXHIBIT C

### FORM OF TERMINATION OF MASTER COMPANY LEASE

WHEREAS, the Entities listed as Owners on Schedule A hereto (the "Company"), as sublandlord, and the Nassau County Industrial Development Agency (the "Agency"), as subtenant, entered into a Master Company Lease Agreement dated as of November 1, 2018 (the "Company Lease Agreement") pursuant to which, among other things, the Agency leased the Project Facility (as defined in the Company Lease Agreement) from the Company; and

WHEREAS, pursuant to the Company Lease Agreement, the Company and the Agency agreed that the Company Lease Agreement would terminate on the earlier to occur of (1) December 31, 2039 (the "Stated Expiration Date") or (2) any earlier date the Company Lease Agreement would terminate pursuant to the terms thereof; and

WHEREAS, the Company and the Agency now desire to evidence the termination of the Company Lease Agreement;

NOW, THEREFORE, it is hereby agreed that the Company Lease Agreement has terminated as of the dated date hereof; provided, however, that, (i) as provided in the Company Lease Agreement, certain obligations of the Company shall survive the termination of the Company Lease Agreement, and the execution of this termination of Company lease agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions thereof that expressly survive such termination, and (ii) in the event the Company Lease Agreement is being terminated pursuant to Article X or XI of the Lease Agreement, the Company shall pay to the Agency on the date hereof all fees and expenses of the Agency set forth in the Company Lease Agreement, in the Lease and in the other Transaction Documents.

IN WITNESS WHEREOF, the Company and the Agency have signed this termination of Company lease agreement and caused same to be dated as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Authorized Officer

NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Authorized Officer



STATE OF                                 )  
  ) ss.:  
COUNTY OF                                 )

On the \_\_\_\_ day of November, in the year \_\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Notary Public

STATE OF                                 )  
  ) ss.:  
COUNTY OF                                 )

On the \_\_\_\_ day of November, in the year \_\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Notary Public

## EXHIBIT D

### FORM OF BILL OF SALE TO COMPANIES

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 1 West Street, Mineola, NY 11501 ("the Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from, the Person listed as Owner(s) on Schedule A hereto, each having an office for the transaction of business at 385 Oak Street, Garden City, NY 11530 (collectively, the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, any and all of Grantor's right, title and interest, if any, in and to those materials, machinery, equipment, fixtures or furnishings which are described in Exhibit B attached hereto (the "Equipment") now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on certain parcels of land (collectively, the "Land") more particularly described on Exhibit A attached hereto.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IT", WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by the officer described below on the date indicated beneath the signature of such officer and dated as of the day of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

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

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

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Notary Public

## EXHIBIT E

See Attached

## **SALES TAX AGENCY AGREEMENT**

November \_\_, 2018

TO WHOM IT MAY CONCERN

Re: Nassau County Industrial Development Agency  
Straight Lease Transaction with  
Seviroli Foods, Inc. and certain affiliates

Ladies and Gentlemen:

The Nassau County Industrial Development Agency (the "Agency"), by this notice, advises you as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any New York State or Nassau County sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

Pursuant to resolutions adopted by the Agency on June 19, 2018 (the "Authorizing Resolution") and a Master Sublease Agreement, dated as of November 1, 2018 (as amended, modified, supplemented or restated, the "Lease Agreement"), between the Agency and certain affiliates of Seviroli Foods, Inc. (the "Company"), the Agency has authorized the Company to act as its agent to acquire, construct, improve, install and equip a commercial facility in Nassau County, New York, consisting of (A)(1) the acquisition of an interest in parcels of land of approximately 2.5 acres located at 10 Commercial Avenue, 600 Commercial Avenue, 620 Commercial Avenue, 585 Brook Street, 601 Brook Street, 557-579 Brook Street and a vacant parcel of land at Commercial Avenue, all located in Garden City, the Town of Hempstead, Nassau County, New York (Section 44, Block D, Lot 8 and Section 34, Block 100, Lot, 4, 5, 6, 8, 12, 17, 18, 19) (collectively, the "Land"), (2) the renovation of the existing improvements to the Land (collectively, the "Building"), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing for use by the Applicant as food production and distribution business use (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing; and (C) the lease (with an

obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency (collectively, the "Project").

2. In connection with the Authorizing Resolution and the Lease Agreement and pursuant to the authority therein granted, the Agency authorizes the Company to act as its agent in connection with the acquisition, construction, improvement, installation and equipping of the Project Facility and authorizes the Company to use this letter as its agent only for the payment of the costs of such acquisition, construction, improvement, installation and equipping of the Project Facility.

3. As agent for the Agency, the Company agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company as agent for the Agency for the acquisition, construction, improvement, installation or equipping of the Project Facility shall include language in substantially the following form:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by Seviroli Foods, Inc. (the "Agent"), as agent for and on behalf of the Nassau County Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent consisting in part of the acquisition, construction and renovation of a multiplex movie theater facility and the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 10 Commercial Avenue, 600 Commercial Avenue, 620 Commercial Avenue, 585 Brook Street, 601 Brook Street, 557-579 Brook Street and a vacant parcel of land at Commercial Avenue, all in Garden City, Nassau County, New York (the "Premises"). The machinery, equipment and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption letter of the Agency; and the Agent hereby represents that this [contract] is in compliance with the terms of the sales tax exemption letter. This [contract, agreement, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor/contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

4. The acquisition, construction, improvement, installation and equipping of facilities, capital improvements, systems, trade fixtures, tangible personal property, equipment and machinery constituting a part of the Project Facility shall be exempt from the sales and use

taxes levied by the State of New York and the County of Nassau on the condition that (i) such materials and capital improvements are separately identifiable property of the Agency, and (ii) any capital machinery, equipment or other tangible personal property shall have a useful life of one year or more, and shall solely be for the use of the Company at and in the Project Facility, and for no other entity and at no other location, and shall be effected by and at the sole cost of the Company.

5. The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Company, as agent for the Agency hereunder, and in the event liability should arise under any such contract, agreement, invoice, bill, or purchase order, the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.

6. By execution of its acceptance of the terms of this letter, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this letter by the Company is and will be strictly for the purposes above stated.

7. Accordingly, until the earliest of (i) December 31, 2019, (ii) the completion of the Project as provided in the Lease Agreement, (iii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Lease Agreement), and (iv) the termination of the Lease Agreement and/or revocation of the appointment of the Company as agent of the Agency (the earliest to occur of the foregoing, the "Termination Date"), all vendors, lessors, licensors, contractors and subcontractors are hereby authorized to rely on this letter (or on a photocopy or fax of this letter) as evidence that purchases and leases of, and improvement and installation contracts relating to, the Project Facility, to the extent effected by the Company (or by a contractor or subcontractor engaged by the Company) as agent for the Agency, are exempt from all New York State and Nassau County sales and use taxes.

9. The Company covenants and agrees that upon the occurrence of the Termination Date, the Company will immediately deliver this letter back to the Agency.

10. Any vendor, lessor, licensor or contractor that does not collect otherwise applicable sales or use tax in reliance upon this letter, shall be deemed to have acknowledged and agreed to the provisions of Paragraph 3 hereof regardless of whether or not the provisions thereof are inserted in the contract, agreement, invoice, bill or purchase order entered into with the Company.

11. This letter is provided solely for the purpose of securing exemptions from New York State and Nassau County sales and use taxes for the referenced project only. No other principal/agent relationship is intended or may be implied or inferred from this letter.

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

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

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

ACCEPTED AND AGREED TO BY:  
  
**SEVIROLI FOODS, INC.**

By \_\_\_\_\_  
Name: Joseph Seviroli, Jr.  
Title: President



## EXHIBIT F

### TERMINATION OF MASTER SUBLEASE AGREEMENT

WHEREAS, the Entities listed as Owners on Schedule A hereto (the "Company"), as subtenant, and the Nassau County Industrial Development Agency (the "Agency"), as sublandlord, entered into a Master Sublease Agreement dated as of November 1, 2018 (the "Lease Agreement") pursuant to which, among other things, the Agency subleased the Project Facility (as defined in the Lease Agreement) to the Company; and

WHEREAS, pursuant to the Lease Agreement, the Company and the Agency agreed that the Lease Agreement would terminate on the earlier to occur of (1) December 31, 2039 or (2) the date the Lease Agreement would terminate pursuant to Article X or Article XI of the Lease Agreement; and

WHEREAS, the Company and the Agency now desires to evidence the termination of the Lease Agreement;

NOW, THEREFORE, it is hereby agreed that the Lease Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 12.7 of the Lease Agreement, certain obligations of the Company shall survive the termination of the Lease Agreement, and the execution of this termination of lease agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions of Sections 11.4 and 12.7 of the Lease Agreement.

IN WITNESS WHEREOF, the Company and the Agency have signed this termination of lease agreement and caused same to be dated as of the \_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Authorized Officer

NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Authorized Officer

STATE OF                               )  
  ) ss.:  
COUNTY OF                               )

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

Notary Public

STATE OF                               )  
  ) ss.:  
COUNTY OF                               )

On the \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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Notary Public

EXHIBIT G  
FORM OF ANNUAL  
EMPLOYMENT REPORT

**NASSAU IDA JOB CONFIRMATION FORM 2018**

**1. Sales Tax Abatement Information**

Did your Company receive Sales Tax Abatement on your Project during 2018?

Yes\_\_ No\_\_

If so, please provide the amount of sales and use tax exemptions. This would be Actual tax savings; NOT total purchases.

\$ \_\_\_\_\_

**(A copy of the ST-340 sales tax report submitted to New York State for the 2018 reporting period is required to be attached with this report)**

**2. Mortgage Recording Tax Information**

a) Did your Company receive Mortgage Tax Abatement on your Project during 2018?

Yes\_\_ No\_\_

(Note this would only be applicable to the year that a mortgage was placed upon the Project, so if you did not close in 2018, the answer should be no)

b) Amount of the mortgage recording tax that was abated during 2018:

\$ \_\_\_\_\_

**3. Job Information**

(NOTE: All job information required herein shall include the employees, independent contractors and employees of independent contractors of all owners, occupants and Applicants of the Project Facility. Such information of owners, occupants and Applicants other than the Applicant shall also be separately provided in a certified statement with supporting documentation from each such owner, occupant and Applicant.)

a) Total number (as of December 31st of 2018) of full time equivalent ("FTE") jobs (including both retained and newly created jobs) at the Project Facility by job category, the average salary or range of salaries, and average fringe benefits or range of fringe benefits for each:

Category	FTE	Average Salary or Range of Salary	Avg. Fringe Benefits or Range of Benefits
----------	-----	--------------------------------------	--

Management	_____	_____	_____
Professional	_____	_____	_____
Administrative	_____	_____	_____
Production	_____	_____	_____
Supervisor	_____	_____	_____
Laborer	_____	_____	_____
Independent Contractor <sup>1</sup>	_____	_____	_____
Other	_____	_____	_____
Total	<input type="text"/>		

- b) Number of the foregoing jobs that were (as of 12/31/18) filled by residents of the Local Market Area (i.e., Nassau and Suffolk Counties): \_\_\_\_\_
- c) Please attach (1) the 2017 fourth quarter form NYS-45 filed with New York State Employment Taxation Department indicating number of employees, and (2) the Undersigned's annual payroll report for year ending 12/31/18. *It is not necessary to include Part C.*
- d) Number of FTE construction jobs during 2018 : \_\_\_\_\_
- e) Average Salary of construction jobs during 2018: \_\_\_\_\_
- f) Number of FTE jobs created at the Project Facility during the fiscal year by job category the average salary or range of salaries, and average fringe benefits or range of fringe benefits for each:

Category	FTE	Average Salary or Range of Salary	Avg. Fringe Benefits or Range of Benefits
Management	_____	_____	_____
Professional	_____	_____	_____
Administrative	_____	_____	_____
Production	_____	_____	_____
Supervisor	_____	_____	_____
Laborer	_____	_____	_____
Independent Contractor <sup>2</sup>	_____	_____	_____
Other	_____	_____	_____
Total	<input type="text"/>		

- g) Are the foregoing salary and fringe benefits figures consistent with the figures provided by the Company in its application for financial assistance? Yes \_\_\_ No \_\_\_
- h) Number of the foregoing jobs that were (as of 12/31/18) filled by residents of the Local Market Area (i.e., Nassau and Suffolk Counties): \_\_\_\_\_

<sup>1</sup> As used in this form, this category includes employees of independent contractors.

<sup>2</sup> As used in this form, this category includes employees of independent contractors.

i) Number of the foregoing jobs that were filled by Community Services Division applicants: \_\_\_\_\_

j) Number of the foregoing jobs that were filled by Job Training Partnership Act eligible persons: \_\_\_\_\_

k) Total Annual Payroll for 2018: \$ \_\_\_\_\_

#### **4. Project Investment Information**

a) Project Investment for 2018: \$ \_\_\_\_\_  
(attach evidence such as receipts, contracts, invoices etc.)

The undersigned acknowledges that the average salaries or range of salaries and the average benefits or range of benefits for both retained and created jobs set forth in the Application are still accurate.

The undersigned acknowledges that the submission of any knowingly false or knowingly misleading information herein may lead to the immediate termination of the financial assistance and/or the recapture of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement in the project.

The undersigned hereby confirms that (i) no default under the Transaction Documents has occurred and is continuing, and (ii) no leases, subleases or other arrangements permitting the use or occupancy of the Project Facility are in effect, except those expressly authorized in writing by the Agency.

The undersigned hereby represents and warrants that, to the best of his/her knowledge, the information contained herein is true, accurate and complete.

Signed: \_\_\_\_\_

Company Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

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

Phone: \_\_\_\_\_

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

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Acknowledgment to be completed by a Notary Public:

State of \_\_\_\_\_

County of \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_ in the year \_\_\_\_ before me the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she they executed the same in his/her/their, capacity(ies), and that by his/her/their

signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC (Please sign and affix stamp)

**RETURN TO:**

**NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
ONE WEST STREET  
MINEOLA, NY 11501  
ATTN: ADMINISTRATIVE DIRECTOR  
*NO LATER THAN FEBRUARY 12, 20\_\_***

EXHIBIT H

COPY OF PILOT AGREEMENTS

See Attached

**See Tab 3 of closing binder  
for PILOT Agreements.**



## EXHIBIT I

### CERTIFICATION OF SUBLEASES

See attached

See Tab 21 of closing binder  
for Certification re: Subleases from the  
Company to Applicant

## EXHIBIT J

### SCHEDULE OF ENVIRONMENTAL REPORTS

See Attached

## Environmental Reports

1. Phase I Environmental Site Assessment of Brook Street Industrial Building at 563 and 557-579 Brook Street, Garden City, New York 11530 dated August 15, 2018 prepared for Seviroli Foods/Vertullo Imports by Nova Consulting Group, Inc. (Nova Project No. R18-4078)
2. Phase I Environmental Site Assessment of 600, 610, 620 and 586 Commercial Avenue, Garden City, New York dated July 2018 prepared for Seviroli Foods, Inc. by GEI Consultants, Inc., P. C. (Project No.: 1801514)
3. Phase I Environmental Site Assessment of 10 Commercial Avenue, Garden City, New York dated July 2018 prepared for Seviroli Foods, Inc. by GEI Consultants, Inc. (Project No.: 1801513)
4. Phase I Environmental Site Assessment of 585 Brook Street, Garden City, New York dated July 2018 prepared for Seviroli Foods, Inc. by GEI Consultants, Inc., P. C. (Project No.: 1801511)
5. Phase I Environmental Site Assessment of 601 Brook Street, Garden City, New York dated July 2018 prepared for Seviroli Foods, Inc. by GEI Consultants, Inc. (Project No.: 1801512)

EXHIBIT K

SCHEDULE OF OWNERSHIP

See Attached

<b>Owner</b>	<b>Address</b>	<b>Section</b>	<b>Block</b>	<b>Lot</b>
557-563-579 Brook Street Realty LLC	557-579 Brook Street Garden City, NY 11530	34	100	4
557-563-579 Brook Street Realty LLC	Vacant lot at Commercial Ave Garden City, NY 11530	34	100	8
585 Brook Realty LLC	585 Brook Street Garden City, NY 11530	34	100	5
JS Commercial Realty Corp. and Brook Street Realty LLC	601 Brook Street Garden City, NY 11530	34	100	6 and 7
JS Commercial Realty Corp.	10 Commercial Avenue Garden City, NY 11530	44	D	8
JS Commercial Realty Corp.	600 Commercial Avenue Garden City, NY 11530	34	100	12, 17, and 19
JS Commercial Realty Corp.	620 Commercial Avenue Garden City, NY 11530	34	100	18