



**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

**APPLICATION FOR FINANCIAL ASSISTANCE**

**APPLICATION OF:**

25 Harbor Park Drive Realty LLC, a New York limited liability company

---

**APPLICANT NAME**

Please respond to all questions in this Application for Financial Assistance (the "Application") by, as appropriate:

- filling in blanks;
- checking the applicable term(s);
- attaching additional text (with notation in Application such as "see Schedule II, Item # 1", etc.); or
- writing "N.A.", signifying "not applicable".

All attachments responsive to questions found in this Application should be clearly labeled and attached as Schedule I to the Application. If an estimate is given, enter "EST" after the figure. One signed original and one photocopy of the Application (including all attachments) must be submitted.

The following amounts are payable to the Nassau County Industrial Development Agency (the "Agency") at the time this Application is submitted to the Agency: (i) a \$1,000 non-refundable application fee (the "Application Fee"); (ii) a \$3,500 expense deposit for the Agency's Transaction/Bond Counsel fees and expenses (the "Counsel Fee Deposit"); (iii) a \$2,500 expense deposit for the cost/benefit analysis with respect to the project contemplated by this Application (the "Cost/Benefit Deposit"); and (iv) a \$500 expense deposit for the real property tax valuation analysis, if applicable, with respect to the project contemplated by this Application (the "Valuation Deposit"). The Application Fee will not be credited against any other fees or expenses which are or become payable to the Agency in connection with this Application or the project contemplated herein (the "Project"). In the event that the subject transaction does not close for any reason, the Agency may use all or any part of the Counsel Fee Deposit, the Cost/Benefit Deposit and/or the Valuation Deposit to defray the cost of Transaction/Bond Counsel fees and expenses, the cost of obtaining a cost/benefit analysis and/or the cost of obtaining a real property tax valuation with respect to the Project. In the event that the subject transaction does close, the Counsel Fee Deposit, the Cost/Benefit Deposit and the Valuation Deposit shall be credited against the applicable expenses incurred by the Agency with respect to the Project.

**Every signature page comprising part of this Application must be signed by the Applicant or this Application will not be considered complete or accepted for consideration by the Agency.**

The Agency's acceptance of this Application for consideration does not constitute a commitment on the part of the Agency to undertake the proposed Project, to grant any financial assistance with respect to the proposed Project or to enter into any negotiations with respect to the proposed Project.

Information provided herein may be subject to disclosure under the New York Freedom of Information Law (New York Public Officers Law § 84 et seq.) ("FOIL"). If the Applicant believes that a portion of the material submitted with this Application is protected from disclosure under FOIL, the Applicant should mark the applicable section(s) or page(s) as "confidential" and state the applicable exception to disclosure under FOIL.

February 14, 2017

**DATE**

**PART I. APPLICANT**

**A. APPLICANT FOR FINANCIAL ASSISTANCE:**

Name: 25 Harbor Park Drive Realty LLC, a New York limited liability company

Address: c/o Kiss Nail Products, Inc., 57 Seaview Boulevard, Port Washington, NY 11010

Fax: 516-299-5282

NY State Dept. of Labor Reg #: N/A Federal Employer ID #: 914300200

NAICS Code #: 531120

Website: www.kissusa.com

Name of CEO or Authorized Representative Certifying Application: Richard K. Kim, Esq.

Title of Officer: CEO and General Counsel

Phone Number: 516-625-9292 E-Mail: ceo@kissusa.com

**B. BUSINESS TYPE (Check applicable status. Complete blanks as necessary):**

Sole Proprietorship ☐ General Partnership ☐ Limited Partnership ☐

Limited Liability Company ☒ Privately Held Corporation ☐

Publicly Held Corporation ☐ Exchange listed on

Not-for-Profit Corporation ☐

Income taxed as: Subchapter S ☐ Subchapter C ☐  
501(c)(3) Corporation ☐ Partnership ☒

State and Year of Incorporation/Organization: New York/2016

Qualified to do Business in New York: Yes ☐ No ☐ N/A ☒

**C. APPLICANT COUNSEL:**

Firm name: Farrell Fritz, P.C.

Address: 1320 RXR Plaza  
Uniondale, NY 11556

Primary  
 Contact: Peter L. Curry, Esq.  
 Phone: 516-227-772  
 Fax: 516-336-2208  
 E-Mail: pcurry@farrellfritz.com

- D. Principal stockholders, members or partners, if any (i.e., owners of 10% or more of equity/voting rights in Applicant):

Name	Percentage owned
<u>Yong Jin Chang</u>	<u>40%</u>
<u>Yong Jin Chang Family 2007 Trust F/B/O Hae Jin Chang</u>	<u>20%</u>
<u>Yong Jin Chang Family 2007 Trust F/B/O Joseph Chang</u>	<u>20%</u>
<u>Yong Jin Chang Family 2007 Trust F/B/O John Chang</u>	<u>20%</u>

- E. If any of the persons described in the response to the preceding Question, or a group of said persons, owns more than a 50% interest in the Applicant, list all other entities which are related to the Applicant by virtue of such persons having more than a 50% interest in such entities:

Kiss Nail Products, Inc., 57 Seaview Realty Associates, LLC, Ivy Enterprises, Inc., AST Systems, LLC and 3 Seaview Realty LLC

- F. Is the Applicant related to any other entity by reason of more than 50% common ownership? If YES, indicate name of related entity and relationship:

YES     

NO   X  

- G. List parent corporation, sister corporations and subsidiaries, if any:

Kiss Nail Products, Inc., 57 Seaview Realty Associates, LLC, Ivy Enterprises, Inc., AST Systems, LLC and 3 Seaview Realty LLC (Sister Corporations)



- H. Has the Applicant (or any parent company, subsidiary, affiliate or related entity or person) been involved in, applied for or benefited by any prior industrial development financing in the municipality in which this Project is located, whether by the Agency or another issuer, or in a contiguous municipality? ("Municipality" herein means city, town or village, or, if the Project is not in an incorporated city or village, Nassau County.) If YES, describe:

YES X

NO     

Ivy Enterprises, Inc. 2013 Project - Nassau County Industrial Development Agency

57 Seaview Realty Associates, LLC 2004 Project - Nassau County Industrial Development Agency

1 Harbor Park Realty Associates, LLC/J.C. Solution, Inc. 1997 Project - Nassau County Industrial Development Agency

2 Harbor Park Realty Associates, LLC 1996 Project - Nassau County Industrial Development Agency

- I. Is the Applicant (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the Applicant or its related entities involved in any litigation or aware of any threatened litigation that would have a material adverse effect on the Applicant's financial condition or the financial condition of said principal(s)? If YES, attach details at Schedule I.

YES     

NO X

- J. Has the Applicant (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the Applicant or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, ever been involved, as debtor, in bankruptcy, creditors rights or receivership proceedings or sought protection from creditors? If YES, attach details at Schedule I.

YES     

NO X

- K. Has the Applicant (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the Applicant or its related entities, ever been convicted of any felony or misdemeanor (other than minor traffic offenses), or have any such related persons or principal(s) held positions or ownership interests in any firm or corporation that has been convicted of a felony or misdemeanor (other than minor traffic offenses), or are any of the foregoing the subject of a pending criminal proceeding or investigation? If YES, attach details at Schedule I.

YES     

NO X

- L. Has the Applicant (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the Applicant or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, been cited for (or is there a pending proceeding or investigation with respect to) a civil violation of federal, state or local laws or regulations with respect to labor practices, hazardous wastes, environmental pollution, taxation, or other operating practices? If YES, attach details at Schedule I

YES ☐

NO ☒

- M. Is the Applicant (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the Applicant or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, delinquent or have any of the foregoing persons or entities been delinquent on any New York State, federal or local tax obligations within the past five (5) years? If YES, attach details at Schedule I

YES ☐

NO ☒

- N. Complete the following information for principals (including, in the case of corporations, officers and members of the board of directors and, in the case of limited liability company, members and managers) of the Applicant:

<u>Name</u>	<u>Title</u>	<u>Other Business Affiliations</u>
<u>Yon Jin Chang</u>	<u>Managing Member</u>	<u></u>
<u>Richard K. Kim</u>	<u>CFO and General Counsel</u>	<u></u>
<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

Do any of the foregoing principals hold elected or appointive positions with New York State, any political division of New York State or any other governmental agency? If YES, attach details at Schedule I

YES ☐

NO ☒

Are any of the foregoing principals employed by any federal, state or local municipality or any agency, authority, department, board, or commission thereof or any other governmental or quasi-governmental organization?

YES ☐

NO ☒

- O. Operation at existing location(s) (Complete separate Section O for each existing location):

1. (a) Location: 3 Seaview Blvd., Port Washington, NY 11050

(b) Number of Employees: Full-Time: 135 Part-Time: 0

(c) Annual Payroll, excluding benefits: \$12,400,000.00

(d) Type of operation (e.g. manufacturing, wholesale, distribution, retail, etc.)  
and products or services: manufacturing and distribution of nail  
care products, eyelashes, color  
cosmetic products, hair appliances  
and hair chemicals (dyes)

(e) Size of existing facility real property  
(i.e., acreage of land): 3.0 acres

(f) Buildings (number and square footage of each): 75,000 sq. ft.

(g) Applicant's interest in the facility

FEE TITLE: X LEASE:     OTHER (describe below):    

2. (a) Location: 57 Seaview Blvd., Port Washington, NY 11050

(b) Number of Employees: Full-Time: 343 Part-Time: 0

(c) Annual Payroll, excluding benefits: \$20,100,000.00

(d) Type of operation (e.g. manufacturing, wholesale, distribution, retail, etc.)  
and products or services: manufacturing, assembly &  
packaging, filling, showroom, lab, office for nail products

(e) Size of existing facility real property  
(i.e., acreage of land): 4.73 acres

(f) Buildings (number and square footage of each): 1 building: 125,000 sq. ft.

(g) Applicant's interest in the facility

FEE TITLE:     LEASE: X OTHER (describe below):    

Facility is leased from affiliate.

3. Will the completion of the proposed Project result in the removal of a plant or facility of the Applicant, or of a proposed user, occupant or tenant of the Project, or a relocation of any employee of the Applicant, or any employee of a proposed user, occupant or tenant of the Project, from one area of the State of New York

(but outside of Nassau County) to a location in Nassau County or in the abandonment of such a plant or facility located in an area of the State of New York outside of Nassau County? If YES, complete the attached Anti-Raiding Questionnaire (Schedule D).

YES ☐

NO ☒

4. Will the proposed Project result in the removal or abandonment of a plant or facility of the Applicant, or of a proposed user, occupant or tenant of the proposed Project, or a relocation of any employee of the Applicant, or any employee of a proposed user, occupant or tenant of the proposed Project, located within Nassau County? If YES, identify the location of the plant or facility and provide explanation.

YES ☒

NO ☐

Approximately 265 employees will be relocated to the Project site (including approximately 213 employees from the 57 Seaview Blvd location and 52 employees from the 3 Seaview Blvd location).

- P. Has the Applicant considered moving to another state or another location within New York State? If YES, explain circumstances.

YES ☒

NO ☐

Applicant would be forced to move portions of its business off of Long Island due to its rapid corporate growth. Kiss Nail Products, Inc. has already established a California location due to a lack of warehouse capacity on Long Island.

- Q. Does any one supplier or customer account for over 50% of Applicant's annual purchases or sales, respectively? If YES, attach name and contact information for supplier and or customer, as applicable:

YES ☐

NO ☒

- R. Does the Applicant (including any related entity or person) or any principal(s) of the Applicant or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, have any contractual or other relationship with the Agency or the County of Nassau? If YES, attach details at Schedule I

YES ☐

NO ☒

- S. Nature of Applicant's business (e.g., description of goods to be sold, products manufactured, assembled or processed, services rendered):



Kiss Nail Products, Inc. is the largest distributor of nail care products (including artificial fingernails, nail kits, nail polish, nail treatments, nail files, nail glue and nail brushes), eyelashes and color cosmetic products in the U.S. mass market, distributing these products in 90 different countries around the world. AST Systems, LLC distributes high quality hair appliances and eyelashes to salon professionals. Ivy Enterprises, Inc. distributes nail care products, hair appliances, hair chemicals (dyes), eyelashes and color cosmetics to beauty supply stores.

T. ANY RELATED PARTY PROPOSED TO BE A USER OF THE PROJECT:

Name: Kiss Nail Products, Inc.

Relationship to Applicant: Affiliate

Name: Ivy Enterprises, Inc.

Relationship to Applicant: Affiliate

Name: AST Systems, LLC

Relationship to Applicant: Affiliate

Name: Pall Corporation

Relationship to Applicant: Tenant (seller of Project site to Applicant)

Provide the information requested in Questions A through S above with respect to each such party by attachment at Schedule I.

**NOTE: Pall Corporation will be submitting a separate application as a User of the Project site.**



## **PART II. PROPOSED PROJECT**

**A. Types of Financial Assistance Requested:**

- ☐ Tax-Exempt Bonds
- ☐ Taxable Bonds
- ☐ Refunding Bonds
- ☒ Sales/Use Tax Exemption
- ☒ Mortgage Recording Tax Exemption
- ☒ Real Property Tax Exemption
- ☐ Other (specify): \_\_\_\_\_

**B. Type of Proposed Project (check all that apply and provide requested information):**

- ☐ New Construction of a Facility  
Square footage: \_\_\_\_\_
- ☐ Addition to Existing Facility  
Square footage of existing facility: \_\_\_\_\_  
Square footage of addition: \_\_\_\_\_
- ☒ Renovation of Existing Facility  
Square footage of area renovated: 50,000 sq. ft. EST  
Square footage of existing facility: 272,142 sq. ft. EST
- ☒ Acquisition of Land/Building  
Acreage/square footage of land: Lot 15A: 8.36 Acres (364,162 sq. ft)  
Lot 15B: 4.78 Acres (208,714 sq. ft)  
Square footage of building: 272,142 sq. ft. EST
- ☐ Acquisition of Furniture/Machinery/Equipment  
List principal items or categories:  
\_\_\_\_\_  
\_\_\_\_\_
- ☐ Other (specify): \_\_\_\_\_

**C. Briefly describe the purpose of the proposed Project, the reasons why the Project is necessary to the Applicant and why the Agency's financial assistance is necessary, and the effect the Project will have on the Applicant's business or operations:**

The Project site will be the world headquarters of Kiss Nail Products, Inc. The Project site will be used by Kiss and its affiliates, Ivy Enterprises, Inc. and AST Systems, LLC. to expand their warehouse, office space, show room, and lab, with 90,000 square feet being utilized by Pall Corporation, as per Paragraph K below.



- (b) Are tax certiorari proceedings currently pending with respect to the Project real property? If YES, attach details at Schedule I including copies of pleadings, decisions, etc.

YES ☐

NO ☒

- I. Describe proposed Project site ownership structure (*i.e.*, Applicant or other entity):

Applicant to own Project site.

- J. To what purpose will the building or buildings to be acquired, constructed or renovated be used by the Applicant? (Include description of goods to be sold, products to be manufactured, assembled or processed and services to be rendered.)

The Project site will be the world headquarters of Kiss Nail Products, Inc. The Project site will be used by Kiss and its affiliates, AST Systems, LLC and Ivy Enterprises, Inc., as a warehouse, office space, show room, and lab for nail care products, eyelashes, color cosmetic products, hair chemicals (dyes) and hair appliances.

- K. If any space in the Project is to be leased to or occupied by third parties (*i.e.*, parties not related to the Applicant), or is currently leased to or occupied by third parties who will remain as tenants, provide the names and contact information for each such tenant, indicate total square footage of the Project to be leased to each tenant, and describe proposed use by each tenant.

Pall Corporation, the seller of the Project site to Applicant, will continue to occupy the Project site, leasing approximately 90,000 sq. ft. for operation of a lab for research & development purposes and some office space in connection with operating its high-tech filtration, separation, and purification technologies business serving the life sciences and industrial sectors.

- L. Provide, to the extent available, the information requested, in Part I, Questions A, B, D and O, with respect to any party described in the preceding response.

**Pall Corporation will be submitting a separate application.**

- M. Does the proposed Project meet zoning/land use requirements at proposed location?

YES ☒

NO ☐

1. Describe present zoning/land use: Commercial

2. Describe required zoning/land use, if different: N/A

3. If a change in zoning/land use is required, please provide details/status of any request for change of zoning/land use requirements:

N/A

- N. Does the Applicant, or any related entity or person, currently hold a lease or license on the Project site? If YES, please provide details and a copy of the lease/license.

YES ☐

NO ☒

- O. Does the Applicant, or any related entity or person, currently hold fee title to (i.e. own) the Project site?

YES ☐

NO ☒

If YES, indicate:

- (a) Date of purchase: \_\_\_\_\_
- (b) Purchase price: \$ \_\_\_\_\_
- (c) Balance of existing mortgage, if any: \$ \_\_\_\_\_
- (d) Name of mortgage holder: \_\_\_\_\_
- (e) Special conditions: \_\_\_\_\_

If NO, indicate name of present owner of Project site: Pall Corporation

- P. Does the Applicant or any related person or entity have an option or a contract to purchase the Project site and/or any buildings on the Project site?

YES ☒

NO ☐

If YES, attach copy of contract or option at Schedule I and indicate:

- (a) Date signed: 11/2/16
- (b) Purchase price: \$30,000,000.00
- (c) Closing date: March/April 2017 EST

See Attachment A attached hereto.

Is there a relationship legally or by virtue of common control or ownership between the Applicant (and/or its principals) and the seller of the Project (and/or its principals)?  
If YES, describe:

YES \_\_\_\_

NO X\_\_

- Q. Will customers personally visit the Project site for either of the following economic activities? If YES with respect to either economic activity indicated below, complete the attached [Retail Questionnaire (Schedule E)].

Sales of Goods: YES \_\_\_\_ NO X\_\_      Sales of Services: YES \_\_\_\_ NO X\_\_

- R. Describe the social and economic conditions in the community where the Project site is or will be located and the impact of the proposed Project on the community (including impact on infrastructure, transportation, fire and police and other government-provided services):

As the building at the Project site is already constructed, there will be minimal impact to the social and economic conditions in the community.

- S. Identify the following Project parties (if applicable):

Architect: not yet known  
Engineer: not yet known  
Contractors: not yet known

- T. Will the Project be designed and constructed to comply with Green Building Standards? (if YES, describe the LEED green building rating that will be achieved):

YES \_\_\_\_

NO X\_\_

- U. Is the proposed Project site located on a Brownfield? (if YES, provide description of contamination and proposed remediation)

YES \_\_\_\_

NO X\_\_

- V. Will the proposed Project produce a unique service or product or provide a service that is not otherwise available in the community in which the proposed Project site is located?



YES ☐NO ☒

- W. Is the proposed Project site currently subject to an IDA transaction (whether through the Agency or otherwise)? If yes, explain.

YES ☒NO ☐

Pall Corporation 2008 Project - Nassau County Industrial Development Agency

### PART III. CAPITAL COSTS OF THE PROJECT

- A. Provide an estimate of cost of all items listed below:

	<u>Item</u>	<u>Cost</u>
1.	Land and/or Building Acquisition	\$30,000,000.00
2.	Building Demolition	\$ 0.00
3.	Construction/Reconstruction/Renovation	\$ 3,005,000.00
4.	Site Work	\$ 0.00
5.	Infrastructure Work	\$ 0.00
6.	Architectural/Engineering Fees	\$ 120,000.00
7.	Applicant's Legal Fees	\$ 0.00
8.	Financial Fees	\$ 0.00
9.	Other Professional Fees	\$ 0.00
10.	Furniture, Equipment & Machinery Acquisition (not included in 3. above)	\$ 300,000.00
11.	Other Soft Costs (describe) – permits & application fees	\$ 70,000.00
12.	Other (describe)	\$ 0.00
	Total	\$33,495,000.00

- B. Estimated Sources of Funds for Project Costs:

a.	Tax-Exempt IDA Bonds:	\$ 0.00
b.	Taxable IDA Bonds:	\$ 0.00
c.	Conventional Mortgage Loans:	\$24,000,000.00
d.	SBA or other Governmental Financing: Identify _____	\$ 0.00
e.	Other Public Sources (e.g., grants, tax credits): Identify _____	\$ 0.00
f.	Other Loans:	\$ 0.00

g. Equity Investment: \$ 9,495,000.00  
(excluding equity attributable to grants/tax credits)

TOTAL \$33,495,000.00

What percentage of the total project costs are  
funded/financed from public sector sources: 0.0%

- C. Have any of the above costs been paid or incurred (including contracts of sale or purchase orders) as of the date of this application? If YES, describe particulars.

YES ☐ NO ☒

- D. Are items of working capital, moving expenses, work in progress, or stock in trade included in the proposed uses of the bond proceeds (if applicable)? If YES, provide details:

YES ☐ NO ☐ NOT APPLICABLE ☒

- E. Will any of the funds to be borrowed through the Agency's issuance of bonds, if applicable, be used to repay or refinance an existing mortgage, outstanding loan or an outstanding bond issue? If YES, provide details:

YES ☐ NO ☐ NOT APPLICABLE ☒

- F. Has the Applicant made any arrangement for the marketing or the purchase of the bonds or the provision of other third party financing (if applicable)? If YES, indicate with whom (subject to Agency approval) and provide a copy of any term sheet or commitment letter issued with respect to such financing.

YES ☐ NO ☐ NOT APPLICABLE ☒

G. Construction Cost Breakdown:

Total Cost of Construction: \$3,305,000.00 (sum of 2-5 and 10 in Question A above)

Cost for materials: \$1,900,000.00

% Sourced in County: 60%

% Sourced in State: 90% (incl. County)

Cost for labor: \$1,405,000.00

% Sourced in County: 60%

% Sourced in State: 90% (incl. County)

Cost for "other": \$0.00

% Sourced in County: \_\_\_\_\_%

% Sourced in County: \_\_\_\_\_% (incl. County)

The Applicant acknowledges that the transaction/bond documents may include a covenant by the Applicant to undertake and document the total amount of capital investment as set forth in this Application.

#### **PART IV. COST/BENEFIT ANALYSIS**

- A. If the Applicant presently operates in Nassau County, provide the current annual payroll. Estimate projected payroll at the Project site in First Year, Second Year and Third Year after completion of the Project:

	<u>Present</u>	<u>First Year</u>	<u>Second Year</u>	<u>Third Year</u>
Full-time:	<u>\$32,500,000.00</u>	<u>\$34,125,000.00</u>	<u>\$35,830,000.00</u>	<u>\$37,620,000.00</u>
Part-time: <sup>1</sup>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

List the average salaries or provide ranges of salaries for the following categories of jobs (on a full-time equivalency basis) projected to be retained created in Nassau County as a result of the proposed Project:

<u>Category of Jobs to be Retained:</u>	<u>Average Salary or Range of Salary:</u>	<u>Average Fringe Benefits or Range of Fringe Benefits</u>
Management	\$110,000	\$23,000
Professional	\$43,000	\$15,000
Administrative	\$100,000	\$18,000
Production	\$32,000	\$13,000
Supervisor	\$50,000	\$14,000
Laborer	\$30,000	\$13,000

<sup>1</sup> NOTE: The Agency converts part-time jobs into FTE's for evaluation and reporting purposes by dividing the number of part-time jobs by two (2).

Independent Contractor <sup>2</sup>	\$0	\$0
Other	\$0	\$0

Category of Jobs to be Created:	Average Salary or Range of Salary:	Average Fringe Benefits or Range of Fringe Benefits
Management	\$115,500	\$24,380
Professional	\$45,150	\$15,900
Administrative	\$105,000	\$19,080
Production	\$33,600	\$13,780
Supervisor	\$52,500	\$14,840
Laborer	\$31,500	\$13,780
Independent Contractor <sup>3</sup>	\$0	\$0
Other	\$0	\$0

The Agency may utilize the foregoing employment projections and the projections set forth in Schedule C, among other things, to determine the financial assistance that will be offered by the Agency to the Applicant. The Applicant acknowledges that the transaction/bond documents may include a covenant by the Applicant to retain the number of jobs, types of occupations and amount of payroll with respect to the Project set forth in this Application.

- B. (i) Will the Applicant transfer current employees from existing location(s)? If YES, describe, please describe the number of current employees to be transferred and the location from which such employees would be transferred:

YES X NO     

Approximately 265 employees will be relocated to the Project site (including approximately 213 employees from the 57 Seaview Blvd location and 52 employees from the 3 Seaview Blvd location).

- (ii) Describe the number of estimated full time equivalent construction jobs to be created as a result of undertaking the project, to the extent any:

50

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

<sup>3</sup> As used in this chart, this category includes employees of independent contractors



- C. What, if any, is the anticipated increase in the dollar amount of production, sales or services following completion of the Project?

\$306,000,000.00

What percentage of the foregoing amount is subject to New York sales and use tax?

0.0%

What percentage of the Applicant's total dollar amount of production, sales or services (including production, sales or services rendered following completion of the Project) are made to customers outside the economic development region (i.e., Nassau and Suffolk Counties)?

95%

Describe any other municipal revenues that will result from the Project (excluding the above and any PILOT payments):

Permit Fees.

- D. What is the estimated aggregate annual amount of goods and services to be purchased by the Applicant for each year after completion of the Project and what portion will be sourced from businesses located in the County and the State (including the County):

	<u>Amount</u>	<u>% Sourced in County</u>	<u>% Sourced in State</u>
Year 1	<u>\$20,250,000</u>	<u>31%</u>	<u>36%</u>
Year 2	<u>\$21,260,000</u>	<u>31%</u>	<u>36%</u>
Year 3	<u>\$22,300,000</u>	<u>31%</u>	<u>36%</u>

- E. Describe, if applicable, other benefits to the County anticipated as a result of the Project, including a projected annual estimate of additional sales tax revenue generated, directly and indirectly, as a result of undertaking the project.

Spending by new employees.

- F. Estimated Value of Requested Financial Assistance:

Estimated Value of Sales Tax Benefit \$163,875.00  
(i.e., gross amount of cost of goods and services  
that are subject to state and local sales and use taxes  
multiplied by [8.625%])



Estimated Value of Mortgage Tax Benefit: \$252,000.00  
(i.e., principal amount of mortgage loans  
loans multiplied by [1.05%])

**Estimated Property Tax Benefit:**

Will the proposed Project utilize a property tax  
exemption benefit other than from the Agency: \_\_\_\_\_  
(if so, please describe)

Term of PILOT Requested: \_\_\_\_\_

Existing Property Taxes on Land and Building: \$ \_\_\_\_\_

Estimated Property Taxes on completed Project: \$ \_\_\_\_\_  
(without Agency financial assistance)

NOTE: Upon receipt of this Application by the Agency,  
the Agency's staff will create a PILOT schedule and estimate  
the amount of PILOT Benefit/Cost utilizing anticipated  
tax rates and assessed valuation, and attach such information  
as Exhibit A hereto.]

- G. Describe and estimate any other one-time municipal revenues (not including fees payable  
to the Agency) that the Project will create:

Permit Fees. \_\_\_\_\_

\_\_\_\_\_

**PART V. PROJECT SCHEDULE**

- A. If applicable, has construction/reconstruction/renovation work on the Project begun? If  
YES, indicate the percentage of completion:

1.	(a) Site clearance	YES ____	NO <u>X</u> __	____% complete
	(b) Environmental Remediation	YES ____	NO <u>X</u> __	____% complete
	(c) Foundation	YES ____	NO <u>X</u> __	____% complete
	(d) Footings	YES ____	NO <u>X</u> __	____% complete

- (e) Steel YES \_\_\_ NO X \_\_\_ % complete
- (f) Masonry YES \_\_\_ NO X \_\_\_ % complete
- (g) Interior YES \_\_\_ NO X \_\_\_ % complete
- (h) Other (describe below): YES \_\_\_ NO X \_\_\_ % complete

2. If NO to all of the above categories, what is the proposed date of commencement of construction, reconstruction, renovation, installation or equipping of the Project?

April, 2017

- B. Provide an estimate of time schedule to complete the Project and when the first use of the Project is expected to occur:

July, 2017

#### **PART VI. ENVIRONMENTAL IMPACT**

- A. What is the expected environmental impact of the Project? (Complete the attached Environmental Assessment Form (Schedule G)).

Minimal, as use of the Project site is not changing significantly from the current use.

- B. Is an environmental impact statement required by Article 8 of the N.Y. Environmental Conservation Law (i.e., the New York State Environmental Quality Review Act)?

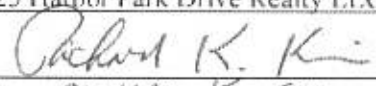
YES \_\_\_

NO X \_\_\_

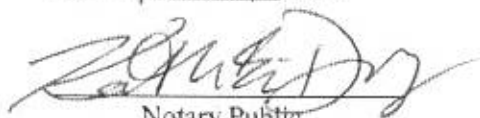
- C. Please be advised that the Agency may require at the sole cost and expense of the Applicant the preparation and delivery to the Agency of an environmental report in form and scope satisfactory to the Agency, depending on the responses set forth in the Environmental Assessment Form. If an environmental report has been or is being prepared in connection with the Project, please provide a copy.  
See Attachment B.

- D. The Applicant authorizes the Agency to make inquiry of the United States Environmental Protection Agency, the New York State Department of Environmental Conservation or any other appropriate federal, state or local governmental agency or authority as to whether the Project site or any property adjacent to or within the immediate vicinity of the Project site is or has been identified as a site at which hazardous substances are being or have been used, stored, treated, generated, transported, processed, handled, produced, released or disposed of. The Applicant will be required to secure the written consent of the owner of the Project site to such inquiries (if the Applicant is not the owner), upon request of the Agency.

THE UNDERSIGNED HEREBY CERTIFIES, under penalties of perjury, that the answers and information provided above and in any schedule, exhibit or statement attached hereto are true, accurate and complete, to the best of the knowledge of the undersigned.

Name of  
Applicant: 25 Harbor Park Drive Realty LLC  
Signature:   
Name: RICHARD K. KIM  
Title: CFO  
Date: 2/14/17

Sworn to before me this 14<sup>th</sup>  
day of February, 2017

  
Notary Public

KATHLEEN ERIN DEMPSEY  
Notary Public, State of New York  
No. 01DE6307991  
Qualified in Nassau County  
Commission Expires July 21, 2018

## CERTIFICATIONS AND ACKNOWLEDGMENTS OF THE APPLICANT

### **FIRST:**

The Applicant hereby certifies that, if financial assistance is provided by the Agency for the proposed project, no funds of the Agency (i) shall be used in connection with the Project 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, (ii) be given to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

### **SECOND:**

The Applicant hereby certifies that no member, manager, principal, officer or director of the Applicant or any affiliate thereof has any blood, marital or business relationship with any member of the Agency (or any member of the family of any member of the Agency).

### **THIRD:**

The Applicant hereby certifies that neither the Applicant nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners (other than equity owners of publicly-traded companies), nor any of their respective employees, officers, directors, or representatives (i) is a person or entity with whom United States persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (OFAC) of the Department of the Treasury, including those named on OFAC's Specially Designated and Blocked Persons List, or under any statute, executive order or other governmental action, or (ii) has engaged in any dealings or transactions or is otherwise associated with such persons or entities.

### **FOURTH:**

The Applicant hereby acknowledges that the Agency shall obtain and hereby authorizes the Agency to obtain credit reports and other financial background information and perform other due diligence on the Applicant and or any other entity or individual related thereto, as the Agency may deem necessary to provide the requested financial assistance.

### **FIFTH:**

The Applicant hereby certifies that each owner, occupant or operator that would receive financial assistance with respect to the proposed Project is in substantial compliance with applicable federal, state and local tax, worker protection and environmental laws, rules and regulations.

### **SIXTH:**

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

**SEVENTH:**

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

Name of

Applicant: 25 Harbor Park Drive Realty LLC

By: Richard K. Kim

Name: RICHARD K. KIM

Title: CEO



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

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

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

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

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

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

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

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

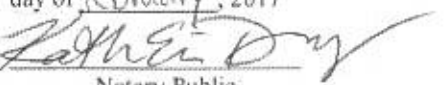
The Agency's bond counsel fees and expenses are payable at closing and are based on the work performed in connection with the Project.

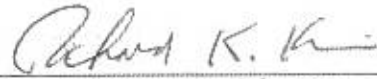
The Agency's bond counsel's fees, general counsel fee and the administrative fees may be considered as a cost of the Project and included as part of any resultant financing, subject to compliance with applicable law.

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

[continues on following page]

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

Subscribed and affirmed to me this 14<sup>th</sup>  
day of FEBRUARY, 2017  
  
Notary Public

  
Name RICHARD K. KIM  
Title: CFO  
2/14/2017

KATHLEEN ERIN DEMPSEY  
Notary Public, State of New York  
No. 01DE6307991  
Qualified in Nassau County  
Commission Expires July 21, 2018

# TABLE OF SCHEDULES

<u>Schedule</u>	<u>Title</u>	<u>Complete as Indicated Below</u>
A.	Tax-Exempt Bond Manufacturing Questionnaire	If Applicant checked "YES" in Part I, Question H of Application, if applicable
B.	New York State Financial and Employment Requirements for Industrial Development Agencies	All applicants
C.	Guidelines for Access to Employment Opportunities	All applicants
D.	Anti-Raiding Questionnaire	If Applicant checked "YES" in Part I, Question O.2. of Application
E.	Retail Questionnaire	If Applicant checked "YES" in Part II, Question Q of Application
F.	Applicant's Financial Attachments, consisting of	All applicants
	<ol style="list-style-type: none"> <li>1. Applicant's financial statements for the last two fiscal years (unless included in Applicant's annual reports).</li> <li>2. Applicant's annual reports (or Form 10-K's) for the two most recent fiscal years.</li> <li>3. Applicant's quarterly reports (Form 10-Q's) and current reports (Form 8-K's) since the most recent Annual Report, if any.</li> <li>4. In addition, attach the financial information described above in items F1, F2, and F3 of any anticipated Guarantor of the proposed transaction, if different than the Applicant, including the personal financial statement of any anticipated Guarantor that is a natural person.</li> </ol>	
G.	Environmental Assessment Form	All applicants
H.	Form NYS-45-MN	All applicants
I.	Other Attachments	As required



**TAX-EXEMPT BOND MANUFACTURING QUESTIONNAIRE**

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

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

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

---

---

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

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

TOTAL

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

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

TOTAL

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



**SQ. FOOTAGE**

**LOCATION**

Raw Materials used  
for production of  
manufactured goods

\_\_\_\_\_

Finished product storage

\_\_\_\_\_

Component parts of  
goods manufactured at  
the facility

\_\_\_\_\_

Purchased component  
parts

\_\_\_\_\_

Other (specify)

\_\_\_\_\_

TOTAL

\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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

Name of  
Applicant:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

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

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

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

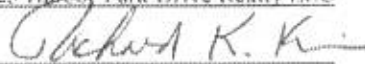
- B. The Applicant will be required to file annually a statement with the New York State Department of Taxation and Finance and the Agency of the value of all sales or use tax exemptions claimed in connection with the Project by reason of the involvement of the Agency.
- C. The following information must be provided for all bonds issued, outstanding or retired during the year:

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

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

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

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

Name of Applicant:	<u>25 Harbor Park Drive Realty LLC</u>
Signature:	<u></u>
Name:	<u>Richard K. Kim</u>
Title:	<u>CEO</u>
Date:	<u>2/14/2017</u>

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

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

Applicant Name: 25 Harbor Park Drive Realty LLC

Address: c/o Kiss Nail Products, Inc., 57 Seaview Boulevard, Port Washington, NY 11010

Type of Business: Manufacturing and distribution of nail care products, eyelashes, color cosmetic products, hair chemicals (dyes) and hair appliances

Contact Person: Richard K. Kim, Esq., CFO and General Counsel Tel. No.: 516-625-9292

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

<u>Current and Planned Occupations</u>	<u>Present Jobs Per Occupation</u>	<u>Estimated Number of Full Time Equivalent Jobs After Completion of the Project<sup>4</sup></u>			<u>Estimate of Number of Residents of the LMA<sup>5</sup> that would fill such jobs by the third year</u>
		<u>1 year</u>	<u>2 years</u>	<u>3 years</u>	
<u>Management</u>	<u>101</u>	<u>101</u>	<u>101</u>	<u>102</u>	<u>1</u>
<u>Professional</u>	<u>45</u>	<u>47</u>	<u>48</u>	<u>50</u>	<u>2</u>
<u>Administrative</u>	<u>141</u>	<u>142</u>	<u>143</u>	<u>144</u>	<u>2</u>
<u>Production</u>	<u>64</u>	<u>70</u>	<u>78</u>	<u>83</u>	<u>10</u>
<u>Supervisor</u>	<u>10</u>	<u>11</u>	<u>11</u>	<u>12</u>	<u>1</u>
<u>Laborer</u>	<u>117</u>	<u>120</u>	<u>124</u>	<u>127</u>	<u>5</u>
<u>Independent Contractor</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Other (describe)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

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

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





**ANTI-RAIDING QUESTIONNAIRE**

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

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

YES \_\_\_\_

NO \_\_\_\_

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

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

YES \_\_\_\_

NO \_\_\_\_

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

Addresses of the to-be-abandoned plants or facilities: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

YES \_\_\_\_\_

NO \_\_\_\_\_

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

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

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

YES \_\_\_\_\_

NO \_\_\_\_\_

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

YES \_\_\_\_\_

NO \_\_\_\_\_

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

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

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

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

Name of  
Applicant: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

### RETAIL QUESTIONNAIRE

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

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

YES \_\_\_\_

NO \_\_\_\_

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

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

\_\_\_\_\_ %

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

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

YES \_\_\_\_

NO \_\_\_\_

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

YES \_\_\_\_

NO \_\_\_\_

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

YES \_\_\_\_\_

NO \_\_\_\_\_

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

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

YES \_\_\_\_\_

NO \_\_\_\_\_

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

Retail Sales: \_\_\_\_\_%

Services: \_\_\_\_\_%

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

Retail Sales: \_\_\_\_\_%

Services: \_\_\_\_\_%

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

Name of  
Applicant:

\_\_\_\_\_

Signature:

\_\_\_\_\_

Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Date:

\_\_\_\_\_

APPLICANT'S FINANCIAL ATTACHMENTS

[attached hereto]

Financial statements exempt from disclosure  
pursuant to Section 87(2)(d) of the Public  
Officers Law.



Schedule G

**ENVIRONMENTAL ASSESSMENT FORM**

[attached hereto]

**Full Environmental Assessment Form**  
**Part 1 - Project and Setting**

**Instructions for Completing Part 1**

**Part 1 is to be completed by the applicant or project sponsor.** Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the project sponsor to verify that the information contained in Part 1 is accurate and complete.

**A. Project and Sponsor Information.**

Name of Action or Project: 25 Harbor Park Drive Realty LLC		
Project Location (describe, and attach a general location map): 25 Harbor Park Drive, Port Washington, New York 11050		
Brief Description of Proposed Action (include purpose or need):  The Project site will be acquired to serve as the world headquarters of Kiss Nail Products, Inc. The entire Project site, other than the portion occupied by Pall Corporation (described below), will be used by Kiss and its affiliates, AST Systems, LLC and Ivy Enterprises, Inc., as a warehouse, office space, show room, and lab for nail care products, eyelashes, color cosmetic products, hair chemicals (dyes) and hair appliances. Upon acquisition, Kiss will renovate approximately 50,000 square feet of the portion of the Project site it will occupy. Approximately 90,000 square feet will be leased by Pall Corporation for operation of a lab for research and development purposes and some office space in connection with operating its high-tech filtration, separation, and purification technologies business serving the life sciences and industrial sectors.		
Name of Applicant/Sponsor: 25 Harbor Park Drive Realty LLC		Telephone: 516-299-5282
		E-Mail: cfo@kissusa.com
Address: c/o Kiss Nail Products, Inc., 57 Seaview Boulevard		
City/PO: Port Washington	State: NY	Zip Code: 11050
Project Contact (if not same as sponsor; give name and title/role): Richard K. Kim, CFO and General Counsel		Telephone: 516-299-5282
		E-Mail: cfo@kissusa.com
Address: c/o Kiss Nail Products, Inc., 57 Seaview Boulevard		
City/PO: Port Washington	State: NY	Zip Code: 11050
Property Owner (if not same as sponsor):		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:

## B. Government Approvals

**B. Government Approvals, Funding, or Sponsorship.** ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Council, Town Board, <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No or Village Board of Trustees		
b. City, Town or Village <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Planning Board or Commission		
c. City Council, Town or <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Village Zoning Board of Appeals		
d. Other local agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Building Department - building permit	November 2017 (projected)
e. County agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Nassau County Industrial Development Agency -	March 2017 (projected)
f. Regional agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
g. State agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
h. Federal agencies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
i. Coastal Resources.		
i. Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
ii. Is the project site located in a community with an approved Local Waterfront Revitalization Program?		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
iii. Is the project site within a Coastal Erosion Hazard Area?		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

## C. Planning and Zoning

### C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? ☐ Yes ☒ No

- If Yes, complete sections C, F and G.
- If No, proceed to question C.2 and complete all remaining sections and questions in Part I

### C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? ☒ Yes ☐ No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? ☐ Yes ☒ No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) ☐ Yes ☒ No

If Yes, identify the plan(s):

---



---



---

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? ☐ Yes ☒ No

If Yes, identify the plan(s):

---



---



---

<b>C.3. Zoning</b>	
a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. If Yes, what is the zoning classification(s) including any applicable overlay district? <u>Planned Industrial Park</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
b. Is the use permitted or allowed by a special or conditional use permit?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
c. Is a zoning change requested as part of the proposed action? If Yes, i. What is the proposed new zoning for the site? _____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>C.4. Existing community services.</b>	
a. In what school district is the project site located? <u>Port Washington School District</u>	
b. What police or other public protection forces serve the project site? <u>Port Washington Police District / Port Washington - Manhasset Office of Emergency Management</u>	
c. Which fire protection and emergency medical services serve the project site? <u>Port Washington Fire Department (provides fire protection and emergency medical services)</u>	
d. What parks serve the project site? <u>Harbor Links Golf Course, North Hempstead Country Club, North Hempstead Beach Park</u>	

#### D. Project Details

<b>D.1. Proposed and Potential Development</b>	
a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? <u>Commercial</u>	
b. a. Total acreage of the site of the proposed action?	<u>16.17</u> acres
b. b. Total acreage to be physically disturbed?	<u>1.15 (EST)</u> acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?	<u>16.17</u> acres
c. Is the proposed action an expansion of an existing project or use?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____	
d. Is the proposed action a subdivision, or does it include a subdivision?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes, i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types) _____	
ii. Is a cluster/conservation layout proposed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
iii. Number of lots proposed? _____	
iv. Minimum and maximum proposed lot sizes? Minimum _____ Maximum _____	
e. Will proposed action be constructed in multiple phases?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
i. If No, anticipated period of construction;	<u>9</u> months
ii. If Yes:	
• Total number of phases anticipated	_____
• Anticipated commencement date of phase 1 (including demolition)	_____ month _____ year
• Anticipated completion date of final phase	_____ month _____ year
• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: _____	

f. Does the project include new residential uses? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>			
If Yes, show numbers of units proposed.			
<u>One Family</u>	<u>Two Family</u>	<u>Three Family</u>	<u>Multiple Family (four or more)</u>
Initial Phase	_____	_____	_____
At completion	_____	_____	_____
of all phases	_____	_____	_____

g. Does the proposed action include new non-residential construction (including expansions)? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
If Yes,	
i. Total number of structures _____	
ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length	
iii. Approximate extent of building space to be heated or cooled: _____ square feet	

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
If Yes,	
i. Purpose of the impoundment: _____	
ii. If a water impoundment, the principal source of the water: <span style="float: right;"><input type="checkbox"/> Ground water <input type="checkbox"/> Surface water streams <input type="checkbox"/> Other specify: _____</span>	
iii. If other than water, identify the type of impounded/contained liquids and their source. _____	
iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres	
v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length	
vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): _____	

**D.2. Project Operations**

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
(Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)	
If Yes:	
i. What is the purpose of the excavation or dredging? _____	
ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?	
• Volume (specify tons or cubic yards): _____	
• Over what duration of time? _____	
iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. _____	
iv. Will there be onsite dewatering or processing of excavated materials? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>	
If yes, describe. _____	
v. What is the total area to be dredged or excavated? _____ acres	
vi. What is the maximum area to be worked at any one time? _____ acres	
vii. What would be the maximum depth of excavation or dredging? _____ feet	
viii. Will the excavation require blasting? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>	
ix. Summarize site reclamation goals and plan: _____	
_____	
_____	

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
If Yes:	
i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____	
_____	
_____	



ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

iii. Will proposed action cause or result in disturbance to bottom sediments? ☐ Yes ☐ No  
If Yes, describe: \_\_\_\_\_

iv. Will proposed action cause or result in the destruction or removal of aquatic vegetation? ☐ Yes ☐ No  
If Yes:

- acres of aquatic vegetation proposed to be removed: \_\_\_\_\_
- expected acreage of aquatic vegetation remaining after project completion: \_\_\_\_\_
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): \_\_\_\_\_
- proposed method of plant removal: \_\_\_\_\_
- if chemical/herbicide treatment will be used, specify product(s): \_\_\_\_\_

v. Describe any proposed reclamation/mitigation following disturbance: \_\_\_\_\_

---

c. Will the proposed action use, or create a new demand for water? ☐ Yes ☒ No  
If Yes:

i. Total anticipated water usage/demand per day: \_\_\_\_\_ gallons/day

ii. Will the proposed action obtain water from an existing public water supply? ☐ Yes ☐ No  
If Yes:

- Name of district or service area: \_\_\_\_\_
- Does the existing public water supply have capacity to serve the proposal? ☐ Yes ☐ No
- Is the project site in the existing district? ☐ Yes ☐ No
- Is expansion of the district needed? ☐ Yes ☐ No
- Do existing lines serve the project site? ☐ Yes ☐ No

iii. Will line extension within an existing district be necessary to supply the project? ☐ Yes ☐ No  
If Yes:

- Describe extensions or capacity expansions proposed to serve this project: \_\_\_\_\_
- Source(s) of supply for the district: \_\_\_\_\_

iv. Is a new water supply district or service area proposed to be formed to serve the project site? ☐ Yes ☐ No  
If Yes:

- Applicant/sponsor for new district: \_\_\_\_\_
- Date application submitted or anticipated: \_\_\_\_\_
- Proposed source(s) of supply for new district: \_\_\_\_\_

v. If a public water supply will not be used, describe plans to provide water supply for the project: \_\_\_\_\_

vi. If water supply will be from wells (public or private), maximum pumping capacity: \_\_\_\_\_ gallons/minute.

---

d. Will the proposed action generate liquid wastes? ☐ Yes ☒ No  
If Yes:

i. Total anticipated liquid waste generation per day: \_\_\_\_\_ gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): \_\_\_\_\_

\_\_\_\_\_

iii. Will the proposed action use any existing public wastewater treatment facilities? ☐ Yes ☐ No  
If Yes:

- Name of wastewater treatment plant to be used: \_\_\_\_\_
- Name of district: \_\_\_\_\_
- Does the existing wastewater treatment plant have capacity to serve the project? ☐ Yes ☐ No
- Is the project site in the existing district? ☐ Yes ☐ No
- Is expansion of the district needed? ☐ Yes ☐ No

<ul style="list-style-type: none"> <li>• Do existing sewer lines serve the project site? _____</li> <li>• Will line extension within an existing district be necessary to serve the project? _____</li> </ul> <p>If Yes:</p> <ul style="list-style-type: none"> <li>• Describe extensions or capacity expansions proposed to serve this project: _____</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? _____</p> <p>If Yes:</p> <ul style="list-style-type: none"> <li>• Applicant/sponsor for new district: _____</li> <li>• Date application submitted or anticipated: _____</li> <li>• What is the receiving water for the wastewater discharge? _____</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge, or describe subsurface disposal plans): _____</p>		
<p>vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____</p>		
<p>c. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? _____</p> <p>If Yes:</p> <p>i. How much impervious surface will the project create in relation to total size of project parcel?</p> <p style="padding-left: 20px;">_____ Square feet or _____ acres (impervious surface)</p> <p style="padding-left: 20px;">_____ Square feet or _____ acres (parcel size)</p> <p>ii. Describe types of new point sources: _____</p> <p>iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)? _____</p> <p style="padding-left: 20px;">• If to surface waters, identify receiving water bodies or wetlands: _____</p> <p style="padding-left: 20px;">• Will stormwater runoff flow to adjacent properties? _____</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<p>iv. Does proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? _____</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? _____</p> <p>If Yes, identify:</p> <p>i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles) _____</p> <p style="padding-left: 20px;">N/A</p> <p>ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers) _____</p> <p>iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation) _____</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<p>g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? _____</p> <p>If Yes:</p> <p>i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) _____</p> <p>ii. In addition to emissions as calculated in the application, the project will generate:</p> <ul style="list-style-type: none"> <li>• _____ Tons/year (short tons) of Carbon Dioxide (CO<sub>2</sub>)</li> <li>• _____ Tons/year (short tons) of Nitrous Oxide (N<sub>2</sub>O)</li> <li>• _____ Tons/year (short tons) of Perfluorocarbons (PFCs)</li> <li>• _____ Tons/year (short tons) of Sulfur Hexafluoride (SF<sub>6</sub>)</li> <li>• _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydrofluorocarbons (HFCs)</li> <li>• _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)</li> </ul>		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? ☐ Yes ☒ No

If Yes:

i. Estimate methane generation in tons/year (metric): \_\_\_\_\_

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): \_\_\_\_\_

---

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? ☐ Yes ☒ No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): \_\_\_\_\_

---

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? ☐ Yes ☒ No

If Yes:

i. When is the peak traffic expected (Check all that apply): ☐ Morning ☐ Evening ☐ Weekend  
☐ Randomly between hours of \_\_\_\_\_ to \_\_\_\_\_

ii. For commercial activities only, projected number of semi-trailer truck trips/day: \_\_\_\_\_

iii. Parking spaces: Existing \_\_\_\_\_ Proposed \_\_\_\_\_ Net increase/decrease \_\_\_\_\_

iv. Does the proposed action include any shared use parking? ☐ Yes ☐ No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: \_\_\_\_\_

---

vi. Are public/private transportation service(s) or facilities available within 1/4 mile of the proposed site? ☐ Yes ☐ No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? ☐ Yes ☐ No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? ☐ Yes ☐ No

---

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? ☐ Yes ☒ No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: \_\_\_\_\_

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): \_\_\_\_\_

iii. Will the proposed action require a new, or an upgrade to, an existing substation? ☐ Yes ☐ No

---

l. Hours of operation. Answer all items which apply.

<p>i. During Construction:</p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____ 9 a.m. - 5 p.m.</li> <li>• Saturday: _____</li> <li>• Sunday: _____</li> <li>• Holidays: _____</li> </ul>	<p>ii. During Operations:</p> <ul style="list-style-type: none"> <li>• Monday - Friday: _____ 9 a.m. - 5 p.m.</li> <li>• Saturday: _____ 9 a.m. - 5 p.m.</li> <li>• Sunday: _____</li> <li>• Holidays: _____</li> </ul>
--	---

<p>m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>If yes:</p> <p>i. Provide details including sources, time of day and duration:  <u>Noise levels will exceed existing noise levels during construction (approximately 9 months).</u></p>
<p>ii. Will proposed action remove existing natural barriers that could act as a noise barrier or screen? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>Describe: _____</p>
<p>n. Will the proposed action have outdoor lighting? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If yes:</p> <p>i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:          _____</p>
<p>ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>Describe: _____</p>
<p>o. Does the proposed action have the potential to produce odors for more than one hour per day? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:          _____          _____</p>
<p>p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Product(s) to be stored _____</p> <p>ii. Volume(s) _____ per unit time _____ (e.g., month, year)</p> <p>iii. Generally describe proposed storage facilities: _____</p>
<p>q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Describe proposed treatment(s):          _____          _____</p>
<p>ii. Will the proposed action use Integrated Pest Management Practices? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></p>
<p>r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Describe any solid waste(s) to be generated during construction or operation of the facility:</p> <ul style="list-style-type: none"> <li>• Construction: _____ TBD tons per _____ week (unit of time)</li> <li>• Operation: _____ TBD warehouse refuse tons per _____ week (unit of time)</li> </ul> <p>ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:</p> <ul style="list-style-type: none"> <li>• Construction: _____</li> <li>• Operation: <u>Company has recycling program.</u></li> </ul>
<p>iii. Proposed disposal methods/facilities for solid waste generated on-site:</p> <ul style="list-style-type: none"> <li>• Construction: <u>Removal by Contractor</u></li> <li>• Operation: <u>Town of North Hempstead Solid Waste Management Authority</u></li> </ul>

s. Does the proposed action include construction or modification of a solid waste management facility? ☐ Yes ☒ No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): \_\_\_\_\_

ii. Anticipated rate of disposal/processing:

- \_\_\_\_\_ Tons/month, if transfer or other non-combustion/thermal treatment, or
- \_\_\_\_\_ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: \_\_\_\_\_ years

t. Will proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? ☐ Yes ☒ No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: \_\_\_\_\_

ii. Generally describe processes or activities involving hazardous wastes or constituents: \_\_\_\_\_

iii. Specify amount to be handled or generated \_\_\_\_\_ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: \_\_\_\_\_

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? ☐ Yes ☐ No

If Yes: provide name and location of facility: \_\_\_\_\_

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: \_\_\_\_\_

#### E. Site and Setting of Proposed Action

**E.1. Land uses on and surrounding the project site**

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

☐ Urban ☒ Industrial ☒ Commercial ☐ Residential (suburban) ☐ Rural (non-farm)

☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): \_\_\_\_\_

ii. If mix of uses, generally describe:

Project is in a Planned Industrial Park surrounded by residential areas and near the Long Island Sound/Hempstead Harbor.

b. Land uses and covertypes on the project site.

Land use or Covertype	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces	16.17	16.17	0
• Forested	0		
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)	0		
• Agricultural (includes active orchards, field, greenhouse etc.)	0		
• Surface water features (lakes, ponds, streams, rivers, etc.)	0		
• Wetlands (freshwater or tidal)	0		
• Non-vegetated (bare rock, earth or fill)	0		
• Other Describe: _____	0		



c. Is the project site presently used by members of the community for public recreation? ☐ Yes ☒ No  
 i. If Yes: explain: \_\_\_\_\_

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? ☐ Yes ☒ No  
 If Yes:  
 i. Identify Facilities: \_\_\_\_\_  
 \_\_\_\_\_

e. Does the project site contain an existing dam? ☐ Yes ☒ No  
 If Yes:  
 i. Dimensions of the dam and impoundment:  
     • Dam height: \_\_\_\_\_ feet  
     • Dam length: \_\_\_\_\_ feet  
     • Surface area: \_\_\_\_\_ acres  
     • Volume impounded: \_\_\_\_\_ gallons OR acre-feet  
 ii. Dam's existing hazard classification: \_\_\_\_\_  
 iii. Provide date and summarize results of last inspection: \_\_\_\_\_  
 \_\_\_\_\_

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? ☒ Yes ☐ No  
 If Yes:  
 i. Has the facility been formally closed? ☒ Yes ☐ No  
     • If yes, cite sources/documentation: See Phase I Environmental Assessment by EMG Corp. dated [November 21, 2016]  
 ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:  
     The Port Washington Landfill, located approximately 1,500 feet north of the Project, was closed in 1983.  
 iii. Describe any development constraints due to the prior solid waste activities: \_\_\_\_\_  
     None known.

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? ☐ Yes ☒ No  
 If Yes:  
 i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred: \_\_\_\_\_  
 \_\_\_\_\_

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? ☒ Yes ☐ No  
 If Yes:  
 i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: ☐ Yes ☐ No  
     ☒ Yes - Spills Incidents database Provide DEC ID number(s): \_\_\_\_\_  
     ☐ Yes - Environmental Site Remediation database Provide DEC ID number(s): \_\_\_\_\_  
     ☐ Neither database  
 ii. If site has been subject of RCRA corrective activities, describe control measures: \_\_\_\_\_  
 \_\_\_\_\_  
 iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? ☒ Yes ☐ No  
 If yes, provide DEC ID number(s): \_\_\_\_\_  
 iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):  
The PW Landfill site was used as a sand & gravel mining operation in the 1980s, later as a disposal area for construction debris (concrete, wood and miscellaneous solid wastes), and then as the Landfill from 1973 to 1983. The Landfill resulted in an off-site soil gas plume composed of methane & VOCs. It was remediated with capping of the Landfill, a gas migration control system and a groundwater containment extraction and treatment system.

v. Is the project site subject to an institutional control limiting property uses? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
<ul style="list-style-type: none"> <li>• If yes, DEC site ID number: _____</li> <li>• Describe the type of institutional control (e.g., deed restriction or easement): _____</li> <li>• Describe any use limitations: _____</li> <li>• Describe any engineering controls: _____</li> <li>• Will the project affect the institutional or engineering controls in place? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span></li> <li>• Explain: _____</li> </ul>	
<b>E.2. Natural Resources On or Near Project Site</b>	
a. What is the average depth to bedrock on the project site? _____ <u>TBD</u> feet	
b. Are there bedrock outcroppings on the project site? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
If Yes, what proportion of the site is comprised of bedrock outcroppings? _____ %	
c. Predominant soil type(s) present on project site: <u>TBD</u> _____ %	
_____ %	
_____ %	
d. What is the average depth to the water table on the project site? Average: _____ <u>TBD</u> feet	
e. Drainage status of project site soils: <input type="checkbox"/> Well Drained: _____ % of site	
<input type="checkbox"/> Moderately Well Drained: _____ % of site	
<input type="checkbox"/> Poorly Drained _____ % of site	
f. Approximate proportion of proposed action site with slopes: <input checked="" type="checkbox"/> 0-10%: _____ 100 % of site	
<input checked="" type="checkbox"/> 10-15%: _____ % of site	
<input type="checkbox"/> 15% or greater: _____ % of site	
g. Are there any unique geologic features on the project site? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
If Yes, describe: _____	
h. Surface water features.	
i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
ii. Do any wetlands or other waterbodies adjoin the project site? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
If Yes to either i or ii, continue. If No, skip to E.2.i.	
iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>	
iv. For each identified regulated wetland and waterbody on the project site, provide the following information:	
<ul style="list-style-type: none"> <li>• Streams: Name _____ Classification _____</li> <li>• Lakes or Ponds: Name _____ Classification _____</li> <li>• Wetlands: Name _____ Approximate Size _____</li> <li>• Wetland No. (if regulated by DEC) _____</li> </ul>	
v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>	
If yes, name of impaired water body/bodies and basis for listing as impaired: _____	
i. Is the project site in a designated Floodway? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
j. Is the project site in the 100 year Floodplain? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
k. Is the project site in the 500 year Floodplain? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	
If Yes:	
i. Name of aquifer: _____	

<p>m. Identify the predominant wildlife species that occupy or use the project site: _____          Suburban wildlife _____          _____</p>	
<p>n. Does the project site contain a designated significant natural community? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Describe the habitat/community (composition, function, and basis for designation): _____</p> <p>ii. Source(s) of description or evaluation: _____</p> <p>iii. Extent of community/habitat:</p> <ul style="list-style-type: none"> <li>• Currently: _____ acres</li> <li>• Following completion of project as proposed: _____ acres</li> <li>• Gain or loss (indicate + or -): _____ acres</li> </ul>	
<p>o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p>	
<p>p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p>	
<p>q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If yes, give a brief description of how the proposed action may affect that use: _____</p>	
<p><b>E.3. Designated Public Resources On or Near Project Site</b></p>	
<p>a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes, provide county plus district name/number: _____</p>	
<p>b. Are agricultural lands consisting of highly productive soils present? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>i. If Yes: acreage(s) on project site: _____</p> <p>ii. Source(s) of soil rating(s): _____</p>	
<p>c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature</p> <p>ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____</p> <p>_____</p>	
<p>d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span></p> <p>If Yes:</p> <p>i. CEA name: _____</p> <p>ii. Basis for designation: _____</p> <p>iii. Designating agency and date: _____</p>	

e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the State or National Register of Historic Places?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes: i. Nature of historic/archaeological resource: <input type="checkbox"/> Archaeological Site <input type="checkbox"/> Historic Building or District ii. Name: _____ iii. Brief description of attributes on which listing is based: _____	
f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
g. Have additional archaeological or historic site(s) or resources been identified on the project site? If Yes: i. Describe possible resource(s): _____ ii. Basis for identification: _____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? <span style="float: right;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</span> If Yes: i. Identify resource: North Hempstead Beach Park ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): local park iii. Distance between project and resource: 1.5 miles	
i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If Yes: i. Identify the name of the river and its designation: _____ ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>	

#### F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

#### G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name Richard K. Kim Date 2/15/2017  
 Signature Richard K. Kim Title CEO

Schedule H

**FORM NYS-45-MN**

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

[attached hereto]



**OTHER ATTACHMENTS****INFORMATION FOR EACH PROPOSED USER OF THE PROJECT****A. USER #1:**Name: Kiss Nail Products, Inc., a New York corporationAddress: 57 Seaview Boulevard, Port Washington, NY 11010Fax: 516-299-5282NY State Dept. of  
Labor Reg #: 10-81549-1 Federal Employer ID #: 15-072605NAICS Code #: 423990Website: www.kissusa.comName of CEO or  
Authorized Representative Certifying Application: Richard K. Kim, Esq.Title of Officer: CFO and General CounselPhone Number: 516-625-9292 E-Mail: cfo@kissusa.com**B. BUSINESS TYPE (Check applicable status. Complete blanks as necessary):**Sole Proprietorship ☐ General Partnership ☐ Limited Partnership ☐Limited Liability Company ☐ Privately Held Corporation ☒Publicly Held Corporation ☐ Exchange listed on Not-for-Profit Corporation ☐Income taxed as: Subchapter S ☒ Subchapter C ☐  
501(c)(3) Corporation ☐ Partnership ☐State and Year of Incorporation/Organization: New York/1991Qualified to do Business in New York: Yes ☐ No ☐ N/A ☒

C. USER COUNSEL:

Firm name: Farrell Fritz, P.C.  
Address: 1320 RXR Plaza  
Uniondale, NY 11556  
Primary  
Contact: Peter L. Curry, Esq.  
Phone: 516-227-772  
Fax: 516-336-2208  
E-Mail: pcurry@farrellfritz.com

D. Principal stockholders, members or partners, if any (i.e., owners of 10% or more of equity/voting rights in User):

Name	Percentage owned
<u>Yong Jin Chang</u>	<u>70%</u>
<u>The Hae Jin Chang 1998 Irrevocable Trust</u>	<u>10%</u>
<u>The Joseph Chang 1998 Irrevocable Trust</u>	<u>10%</u>
<u>Yong Jin Chang Family 2007 Trust F/B/O John Chang</u>	<u>10%</u>

E. If any of the persons described in the response to the preceding Question, or a group of said persons, owns more than a 50% interest in the User, list all other entities which are related to the User by virtue of such persons having more than a 50% interest in such entities:

25 Harbor Park Drive Realty LLC, 57 Seaview Realty Associates, LLC, Ivy Enterprises, Inc., AST Systems, LLC and 3 Seaview Realty LLC

F. Is the User related to any other entity by reason of more than 50% common ownership? If YES, indicate name of related entity and relationship:

YES     

NO X

G. List parent corporation, sister corporations and subsidiaries, if any:

25 Harbor Park Drive Realty LLC, 57 Seaview Realty Associates, LLC, Ivy Enterprises, Inc., AST Systems, LLC and 3 Seaview Realty LLC (Sister Corporations)

- H. Has the User (or any parent company, subsidiary, affiliate or related entity or person) been involved in, applied for or benefited by any prior industrial development financing in the municipality in which this Project is located, whether by the Agency or another issuer, or in a contiguous municipality? ("Municipality" herein means city, town or village, or, if the Project is not in an incorporated city or village, Nassau County.) If YES, describe:

YES X

NO     

Ivy Enterprises, Inc. 2013 Project - Nassau County Industrial Development Agency

57 Seaview Realty Associates, LLC 2004 Project - Nassau County Industrial Development Agency

1 Harbor Park Realty Associates, LLC/J.C. Solution, Inc. 1997 Project - Nassau County Industrial Development Agency

2 Harbor Park Realty Associates, LLC 1996 Project - Nassau County Industrial Development Agency

- I. Is the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities involved in any litigation or aware of any threatened litigation that would have a material adverse effect on the User's financial condition or the financial condition of said principal(s)? If YES, attach details at Schedule I.

YES     

NO X

- J. Has the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, ever been involved, as debtor, in bankruptcy, creditors rights or receivership proceedings or sought protection from creditors? If YES, attach details at Schedule I.

YES     

NO X

- K. Has the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities, ever been convicted of any felony or misdemeanor (other than minor traffic offenses), or have any such related persons or principal(s) held positions or ownership interests in any firm or corporation that has been convicted of a felony or misdemeanor (other than minor traffic offenses), or are any of the foregoing the subject of a pending criminal proceeding or investigation? If YES, attach details at Schedule I.

YES ☐NO ☒

- L. Has the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, been cited for (or is there a pending proceeding or investigation with respect to) a civil violation of federal, state or local laws or regulations with respect to labor practices, hazardous wastes, environmental pollution, taxation, or other operating practices? If YES, attach details at Schedule I.

YES ☐NO ☒

- M. Is the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, delinquent or have any of the foregoing persons or entities been delinquent on any New York State, federal or local tax obligations within the past five (5) years? If YES, attach details at Schedule I.

YES ☐NO ☒

- N. Complete the following information for principals (including, in the case of corporations, officers and members of the board of directors and, in the case of limited liability company, members and managers) of the User:

<u>Name</u>	<u>Title</u>	<u>Other Business Affiliations</u>
<u>Yon Jin Chang</u>	<u>CEO</u>	
<u>Richard K Kim</u>	<u>CFO and General Counsel</u>	
<u>                    </u>	<u>                    </u>	<u>                    </u>
<u>                    </u>	<u>                    </u>	<u>                    </u>

Do any of the foregoing principals hold elected or appointive positions with New York State, any political division of New York State or any other governmental agency? If YES, attach details at Schedule I.

YES ☐NO ☒

Are any of the foregoing principals employed by any federal, state or local municipality or any agency, authority, department, board, or commission thereof or any other governmental or quasi-governmental organization?

YES ☐NO ☒

- O. Operation at existing location(s) (Complete separate Section O for each existing location).



Same locations as Applicant.

- P. Has the User considered moving to another state or another location within New York State? If YES, explain circumstances.

YES X

NO    

User would be forced to move portions of its business off of Long Island due to its rapid corporate growth. Kiss Nail Products, Inc. has already established a California location due to a lack of warehouse capacity on Long Island.

- Q. Does any one supplier or customer account for over 50% of User's annual purchases or sales, respectively? If YES, attach name and contact information for supplier and/or customer, as applicable:

YES    

NO X

- R. Does the User (including any related entity or person) or any principal(s) of the User or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, have any contractual or other relationship with the Agency or the County of Nassau? If YES, attach details at Schedule I.

YES    

NO X

- S. Nature of User's business (e.g., description of goods to be sold, products manufactured, assembled or processed, services rendered):

Kiss Nail Products, Inc. is the largest distributor of nail care products (including artificial fingernails, nail kits, nail polish, nail treatments, nail files, nail glue and nail brushes), eyelashes and color cosmetic products in the U.S. mass market, distributing these products in 90 different countries around the world.

- A. USFR #2:

Name: AST Systems, LLC, a New York limited liability company

Address: c/o Kiss Nail Products, Inc., 57 Seaview Boulevard, Port Washington, NY 11010

Fax: 516-299-5282

NY State Dept. of Labor Reg. # 47-62509-7 Federal Employer ID # 00-22510



NAICS Code #: 423990

Website: www.kissusa.com

Name of CEO or  
Authorized Representative Certifying Application: Richard K. Kim, Esq.

Title of Officer: CFO and General Counsel

Phone Number: 516-625-9292 E-Mail: cfo@kissusa.com

B. BUSINESS TYPE (Check applicable status. Complete blanks as necessary):

Sole Proprietorship ☐ General Partnership ☐ Limited Partnership ☐

Limited Liability Company ☒ Privately Held Corporation ☐

Publicly Held Corporation ☐ Exchange listed on

Not-for-Profit Corporation ☐

Income taxed as: Subchapter S ☒ Subchapter C ☐  
501(c)(3) Corporation ☐ Partnership ☐

State and Year of Incorporation/Organization: New York/2005

Qualified to do Business in New York: Yes ☐ No ☐ N/A ☒

C. USER COUNSEL:

Firm name: Farrell Fritz, P.C.

Address: 1320 RXR Plaza  
Uniondale, NY 11556

Primary  
Contact: Peter L. Curry, Esq.

Phone: 516-227-772

Fax: 516-336-2208

E-Mail: pcurry@farrellfritz.com

D. Principal stockholders, members or partners, if any (i.e., owners of 10% or more of equity/voting rights in User):

Name	Percentage owned
------	------------------

Yong Jin Chang 70%

Yong Jin Chang Family 2007 10%  
Trust F/B/O Hae Jin Chang

Yong Jin Chang Family 2007 10%  
Trust F/B/O Joseph Chang

Yong Jin Chang Family 2007 10%  
Trust F/B/O John Chang

E. If any of the persons described in the response to the preceding Question, or a group of said persons, owns more than a 50% interest in the User, list all other entities which are related to the User by virtue of such persons having more than a 50% interest in such entities:

Kiss Nail Products, Inc., 25 Harbor Park Drive Realty LLC, 57 Seaview Realty  
Associates, LLC, Ivy Enterprises, Inc., and 3 Seaview Realty LLC

F. Is the User related to any other entity by reason of more than 50% common ownership?  
If YES, indicate name of related entity and relationship:

YES     

NO   X  

\_\_\_\_\_  
\_\_\_\_\_

G. List parent corporation, sister corporations and subsidiaries, if any:

Kiss Nail Products, Inc., 25 Harbor Park Drive Realty LLC, 57 Seaview Realty  
Associates, LLC, Ivy Enterprises, Inc., and 3 Seaview Realty LLC  
(Sister Corporations)

H. Has the User (or any parent company, subsidiary, affiliate or related entity or person) been involved in, applied for or benefited by any prior industrial development financing in the municipality in which this Project is located, whether by the Agency or another issuer, or in a contiguous municipality? ("Municipality" herein means city, town or village, or, if the Project is not in an incorporated city or village, Nassau County.) If YES, describe:

YES   X  

NO     

Ivy Enterprises, Inc. 2013 Project - Nassau County Industrial Development Agency  
57 Seaview Realty Associates, LLC 2004 Project - Nassau County Industrial Development Agency

1 Harbor Park Realty Associates, LLC/J.C. Solution, Inc. 1997 Project - Nassau County Industrial Development Agency

2 Harbor Park Realty Associates, LLC 1996 Project - Nassau County Industrial Development Agency

- I. Is the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities involved in any litigation or aware of any threatened litigation that would have a material adverse effect on the User's financial condition or the financial condition of said principal(s)? If YES, attach details at Schedule I.

YES ☐

NO ☒

- J. Has the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, ever been involved, as debtor, in bankruptcy, creditors rights or receivership proceedings or sought protection from creditors? If YES, attach details at Schedule I.

YES ☐

NO ☒

- K. Has the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities, ever been convicted of any felony or misdemeanor (other than minor traffic offenses), or have any such related persons or principal(s) held positions or ownership interests in any firm or corporation that has been convicted of a felony or misdemeanor (other than minor traffic offenses), or are any of the foregoing the subject of a pending criminal proceeding or investigation? If YES, attach details at Schedule I.

YES ☐

NO ☒

- L. Has the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, been cited for (or is there a pending proceeding or investigation with respect to) a civil violation of federal, state or local laws or regulations with respect to labor practices, hazardous wastes, environmental pollution, taxation, or other operating practices? If YES, attach details at Schedule I.

YES ☐

NO ☒

- M. Is the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, delinquent or have any

of the foregoing persons or entities been delinquent on any New York State, federal or local tax obligations within the past five (5) years? If YES, attach details at Schedule I.

YES ☐

NO ☒

N. Complete the following information for principals (including, in the case of corporations, officers and members of the board of directors and, in the case of limited liability company, members and managers) of the User:

Name	Title	Other Business Affiliations
Yon Jin Chang	Managing Member	
Richard K Kim	CEO and General Counsel	

Do any of the foregoing principals hold elected or appointive positions with New York State, any political division of New York State or any other governmental agency? If YES, attach details at Schedule I.

YES ☐

NO ☒

Are any of the foregoing principals employed by any federal, state or local municipality or any agency, authority, department, board, or commission thereof or any other governmental or quasi-governmental organization?

YES ☐

NO ☒

O. Operation at existing location(s) (Complete separate Section O for each existing location):

Same locations as Applicant.

P. Has the User considered moving to another state or another location within New York State? If YES, explain circumstances.

YES ☒

NO ☐

User would be forced to move portions of its business off of Long Island due to its rapid corporate growth. Kiss Nail Products, Inc. has already established a California location due to a lack of warehouse capacity on Long Island.

Q. Does any one supplier or customer account for over 50% of User's annual purchases or sales, respectively? If YES, attach name and contact information for supplier and/or customer, as applicable.



YES ☐

NO ☒

- R. Does the User (including any related entity or person) or any principal(s) of the User or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, have any contractual or other relationship with the Agency or the County of Nassau? If YES, attach details at Schedule I.

YES ☐

NO ☒

- S. Nature of User's business (e.g., description of goods to be sold, products manufactured, assembled or processed, services rendered):

AST Systems, LLC distributes high quality hair appliances and eyelashes to salon professionals.

A. USER #3:

Name: Jvy Enterprises, Inc., a New York corporation

Address: c/o Kiss Nail Products, Inc., 57 Seaview Boulevard, Port Washington, NY 11010

Fax: 516-299-5282

NY State Dept. of

Labor Reg #: 45-29656-5

Federal Employer ID #: [REDACTED]

NAICS Code #: 423990

Website: www.kissusa.com

Name of CEO or

Authorized Representative Certifying Application: Richard K. Kim, Esq.

Title of Officer: CFO and General Counsel

Phone Number: 516-625-9292

E-Mail: cfo@kissusa.com

- B. BUSINESS TYPE (Check applicable status. Complete blanks as necessary):

Sole Proprietorship ☐ General Partnership ☐ Limited Partnership ☐

Limited Liability Company ☐ Privately Held Corporation ☒



Publicly Held Corporation ☐ Exchange listed on \_\_\_\_\_

Not-for-Profit Corporation ☐

Income taxed as: Subchapter S ☒ Subchapter C ☐  
501(c)(3) Corporation ☐ Partnership ☐

State and Year of Incorporation/Organization: New York/1999

Qualified to do Business in New York: Yes ☐ No ☐ N/A ☒

C. USER COUNSEL:

Firm name: Farrell Fritz, P.C.

Address: 1320 RXR Plaza  
Uniondale, NY 11556

Primary Contact: Peter L. Curry, Esq.  
Phone: 516-227-772  
Fax: 516-336-2208  
E-Mail: pcurry@farrellfritz.com

D. Principal stockholders, members or partners, if any (i.e., owners of 10% or more of equity/voting rights in User):

Name	Percentage owned
<u>Hee Ja Chang (Yang)</u>	<u>70%</u>
<u>Yong Jin Chang Family 2007</u> <u>Trust F/B/O Hae Jin Chang</u>	<u>10%</u>
<u>Yong Jin Chang Family 2007</u> <u>Trust F/B/O Joseph Chang</u>	<u>10%</u>
<u>Yong Jin Chang Family 2007</u> <u>Trust F/B/O John Chang</u>	<u>10%</u>

E. If any of the persons described in the response to the preceding Question, or a group of said persons, owns more than a 50% interest in the User, list all other entities which are related to the User by virtue of such persons having more than a 50% interest in such entities:

Kiss Nail Products, Inc., 25 Harbor Park Drive Realty LLC, 57 Seaview Realty  
Associates, LLC, AST Systems, LLC and 3 Seaview Realty LLC

F. Is the User related to any other entity by reason of more than 50% common ownership?  
If YES, indicate name of related entity and relationship:

YES ☐

NO ☒

G. List parent corporation, sister corporations and subsidiaries, if any:

Kiss Nail Products, Inc., 25 Harbor Park Drive Realty LLC, 57 Seaview Realty  
Associates, LLC, ASI Systems, LLC and 3 Seaview Realty LLC  
(Sister Corporations)

H. Has the User (or any parent company, subsidiary, affiliate or related entity or person) been involved in, applied for or benefited by any prior industrial development financing in the municipality in which this Project is located, whether by the Agency or another issuer, or in a contiguous municipality? ("Municipality" herein means city, town or village, or, if the Project is not in an incorporated city or village, Nassau County.) If YES, describe:

YES ☒

NO ☐

Ivy Enterprises, Inc. 2013 Project - Nassau County Industrial Development Agency

57 Seaview Realty Associates, LLC 2004 Project - Nassau County Industrial Development Agency

1 Harbor Park Realty Associates, LLC J.C. Solution, Inc. 1997 Project - Nassau County Industrial Development Agency

2 Harbor Park Realty Associates, LLC 1996 Project - Nassau County Industrial Development Agency

I. Is the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities involved in any litigation or aware of any threatened litigation that would have a material adverse effect on the User's financial condition or the financial condition of said principal(s)? If YES, attach details at Schedule I.

YES ☐

NO ☒

J. Has the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, ever been involved, as debtor, in bankruptcy, creditors rights or receivership proceedings or sought protection from creditors? If YES, attach details at Schedule I.

YES ☐NO ☒

- K. Has the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities, ever been convicted of any felony or misdemeanor (other than minor traffic offenses), or have any such related persons or principal(s) held positions or ownership interests in any firm or corporation that has been convicted of a felony or misdemeanor (other than minor traffic offenses), or are any of the foregoing the subject of a pending criminal proceeding or investigation? If YES, attach details at Schedule I.

YES ☐NO ☒

- L. Has the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, been cited for (or is there a pending proceeding or investigation with respect to) a civil violation of federal, state or local laws or regulations with respect to labor practices, hazardous wastes, environmental pollution, taxation, or other operating practices? If YES, attach details at Schedule I.

YES ☐NO ☒

- M. Is the User (or any parent company, subsidiary, affiliate or related entity or person) or any principal(s) of the User or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, delinquent or have any of the foregoing persons or entities been delinquent on any New York State, federal or local tax obligations within the past five (5) years? If YES, attach details at Schedule I.

YES ☐NO ☒

- N. Complete the following information for principals (including, in the case of corporations, officers and members of the board of directors and, in the case of limited liability company, members and managers) of the User

Name	Title	Other Business Affiliations
Hee Ja Chang (Yang)	CEO	
Richard K Kim	CFO and General Counsel	

Do any of the foregoing principals hold elected or appointive positions with New York State, any political division of New York State or any other governmental agency? If YES, attach details at Schedule I.

YES ☐

NO ☒

Are any of the foregoing principals employed by any federal, state or local municipality or any agency, authority, department, board, or commission thereof or any other governmental or quasi-governmental organization?

YES ☐

NO ☒

- O. Operation at existing location(s) (Complete separate Section O for each existing location):

Same locations as Applicant.

- P. Has the User considered moving to another state or another location within New York State? If YES, explain circumstances.

YES ☒

NO ☐

User would be forced to move portions of its business off of Long Island due to its rapid corporate growth. Kiss Nail Products, Inc. has already established a California location due to a lack of warehouse capacity on Long Island.

- Q. Does any one supplier or customer account for over 50% of User's annual purchases or sales, respectively? If YES, attach name and contact information for supplier and/or customer, as applicable:

YES ☐

NO ☒

- R. Does the User (including any related entity or person) or any principal(s) of the User or its related entities, or any other business or concern with which such entities, persons or principal(s) have been connected, have any contractual or other relationship with the Agency or the County of Nassau? If YES, attach details at Schedule I.

YES ☐

NO ☒

- S. Nature of User's business (e.g., description of goods to be sold, products manufactured, assembled or processed, services rendered):

Ivy Enterprises, Inc. distributes nail care products, hair appliances, eyelashes, hair chemicals (dyes) and color cosmetics to beauty supply stores.

USER #4:

Name: Pall Corporation, a New York corporation  
**This user is submitting a separate application.**

Attachment A to Schedule I – Copy of Contract of Sale  
[attached hereto]



**PURCHASE AND SALE AGREEMENT,**  
**DATED AS OF** November 2, 2016,

**BETWEEN**

**PALL CORPORATION,**  
**AS SELLER,**

**AND**

**25 HARBOR PARK DRIVE REALTY LLC,**  
**AS PURCHASER,**

**WITH RESPECT TO**  
**25 Harbor Park Drive**  
**Port Washington, New York**

**County: Nassau**  
**Section: 6**  
**Block: 87**  
**Lots: 15 A & B, 16 A & B**

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I PURCHASE AND SALE.....	1
Section 1.01.    Property Included in Sale .....	1
Section 1.02.    Property Excluded From Sale .....	2
Section 1.03.    Permitted Exceptions .....	2
Section 1.04.    Property to be Conveyed Vacant and "As Is" .....	2
ARTICLE II PURCHASE PRICE.....	3
Section 2.01.    Purchase Price.....	3
Section 2.02.    Deposit.....	3
Section 2.03.    Interest on Deposit.....	3
Section 2.04.    Independent Contract Consideration .....	3
Section 2.05.    Payment of Purchase Price .....	3
ARTICLE III PROPERTY CONDITION .....	3
Section 3.01.    No Seller Representations or Warranties.....	3
Section 3.02.    No Reliance by Purchaser on Seller Information .....	4
Section 3.03.    Purchaser To Conduct Its Own Investigations .....	4
Section 3.04.    Purchaser to Assume Risk .....	4
Section 3.05.    Effect and Survival of Seller Disclaimers .....	5
Section 3.06.    Due Diligence .....	5
Section 3.07.    Environmental Objection.....	7
ARTICLE IV TITLE AND SURVEY .....	8
Section 4.01.    Title Examination; Title Commitment; Title Policy.....	8
Section 4.02.    Survey .....	9
Section 4.03.    Title Objections; Cure of Title Objections; Purchaser's Right of Termination .....	9
Section 4.04.    Amendments to Title Commitment/Revisions to Survey .....	10
Section 4.05.    Violations.....	10
ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER.....	11
Section 5.01.    Representations and Warranties .....	11
Section 5.02.    Disclaimers Regarding Seller's Representations and Warranties .....	12
ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PURCHASER.....	12
Section 6.01.    Representations and Warranties .....	12
ARTICLE VII COVENANTS OF SELLER .....	13
Section 7.01.    Covenants of Seller.....	13
ARTICLE VIII ECONOMIC INCENTIVES.....	13
Section 8.01.    Business Incentives.....	13
Section 8.02.    Nassau County Industrial Development Agency.....	13

ARTICLE IX ESCROW AND CLOSING.....	15
Section 9.01.    Time and Place .....	15
Section 9.02.    Documents to be Delivered by Seller .....	15
Section 9.03.    Documents to be Delivered by Purchaser .....	16
Section 9.04.    Credits, Prorations and Other Adjustments .....	17
Section 9.05.    Transfer Taxes and Sales Taxes .....	18
Section 9.06.    Closing Costs .....	19
Section 9.07.    Conditions Precedent to Obligation of Purchaser to Close .....	19
Section 9.08.    Conditions Precedent to Obligation of Seller to Close .....	20
Section 9.09.    Closing of Escrow .....	20
Section 9.10.    Discharge of Seller's Obligations.....	21
ARTICLE X RISK OF LOSS.....	21
Section 10.01.    Major Loss.....	21
Section 10.02.    Minor Loss.....	22
Section 10.03.    Uniform Vendor and Purchaser Risk Act.....	22
ARTICLE XI DEFAULT .....	22
Section 11.01.    Default by Seller.....	22
Section 11.02.    Default by Purchaser .....	23
Section 11.03.    Cure Period.....	23
Section 11.04.    Prevailing Party. ....	23
ARTICLE XII MISCELLANEOUS.....	24
Section 12.01.    Assignment of Agreement.....	24
Section 12.02.    Notices.....	24
Section 12.03.    Section 1031 Tax Deferred Exchange .....	25
Section 12.04.    Source of Purchaser's Funds .....	26
Section 12.05.    No Recordation.....	26
Section 12.06.    Broker. ....	26
Section 12.07.    Calculation of Time Periods.....	26
Section 12.08.    Construction of Ambiguities .....	26
Section 12.09.    Survival.....	26
Section 12.10.    Modifications and Amendments of Agreement.....	27
Section 12.11.    Waivers.....	27
Section 12.12.    Integration.....	27
Section 12.13.    Severability.....	27
Section 12.14.    Further Assurances .....	27
Section 12.15.    Governing Law .....	27
Section 12.16.    Consent to Jurisdiction .....	27
Section 12.17.    Waiver of Trial by Jury .....	27
Section 12.18.    Successors and Assigns .....	28
Section 12.19.    Counterparts.....	28
Section 12.20.    Confidentiality of Agreement/Public Disclosure of Sale .....	28
ARTICLE XIII ESCROW .....	28
Section 13.01.    Escrow Deposit.....	28

Section 13.02.	Escrow Payments.....	29
Section 13.03.	Escrow Agent .....	29
Section 13.04.	Escrow Agent Liability.....	29
Section 13.05.	Escrow Agent as Seller's Attorney.....	30
Section 13.06.	No Personal Liability.....	30
Section 13.07.	Reliance on Material.....	30
ARTICLE XIV LEASE AGREEMENT .....		30
Section 14.01.	Seller's Continued Occupancy of the Property .....	30

**SCHEDULES:**

Schedule A	Legal Description of Land
Schedule B	List of Personal Property
Schedule C	List of Service Contracts
Schedule D	List of Permitted Exceptions

**EXHIBITS:**

Exhibit A	Form of Deed
Exhibit B	Form of Bill of Sale
Exhibit C	Form of Assignment and Assumption of Intangible Property
Exhibit D	Form of FIRPTA Certificate
Exhibit E	Lease

## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (this "Agreement"), dated as of November 2, 2016 entered into by and between PALL CORPORATION, a New York corporation having an office at 25 Harbor Park Drive, Port Washington, New York 11050, as seller ("Seller"), and 25 HARBOR PARK DRIVE REALTY LLC, a New York limited liability company having an address at 57 Seaview Blvd., Port Washington, NY, 11050, as purchaser ("Purchaser").

### RECITALS

Seller is the owner of certain Property (as hereinafter defined).

Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase all of Seller's right, title and interest in and to the Property from Seller, on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### ARTICLE I

#### PURCHASE AND SALE

**Section 1.01. Property Included in Sale.** Subject to the terms and conditions hereinafter set forth, Seller agrees to sell and convey, and Purchaser agrees to purchase, the following:

(a) all of Seller's right, title and interest in and to those certain tracts or parcels of land situated in the Hamlet of Port Washington, Town of North Hempstead, County of Nassau, State of New York which are more particularly bounded and described on Schedule A attached hereto, having a street address of 25 Harbor Park Drive and a Tax Map reference as Section 6, Block 87 and Lots 15 A & B, 16 A & B together with all and singular rights and appurtenances pertaining to such property, including any right, title and interest of Seller in and to adjacent streets, alleys, rights-of-way, easements, strips and gores (the property described in this Section 1.01(a) being hereinafter referred to collectively as the "Land");

(b) all of Seller's right, title and interest in and to the buildings, structures, fixtures and other improvements on the Land, (the property described in this Section 1.01(b) being hereinafter referred to collectively as the "Improvements");

(c) all of Seller's right, title and interest in and to all tangible personal property on the Land and/or within the Improvements listed on Schedule B attached hereto, being personal property used exclusively in connection with the operation, management, leasing and/or maintenance of the Land and/or the Improvements (the property described in this Section 1.01(c) being hereinafter referred to collectively as the "Personal Property"); and



(d) all of Seller's right, title and interest in and to (i) all assignable agreements and contracts listed on Schedule C attached hereto relating to the operation, management, leasing and/or maintenance of the Land and/or the Improvements and/or the Personal Property which will extend beyond the date of the Closing (as hereinafter defined) (collectively, the "Service Contracts"); (ii) all of Seller's right, title and interest in and to all assignable existing warranties and guaranties (express or implied) issued to Seller in connection with the Improvements and/or the Personal Property; (iii) all building permits and other approvals for the construction and operation of the Improvements (collectively, the "Permits"); and (iv) all operations manuals relating to the Improvements, and Personal Property (collectively, the "Manuals") (the Service Contracts, warranties and guaranties, and Manuals described in this Section 1.01(d) being hereinafter referred to collectively as the "Intangible Property").

The Land, the Improvements, the Personal Property, and the Intangible Property are hereinafter referred to collectively as the "Property," but the term "Property" shall not include the Excluded Property (as hereinafter defined).

**Section 1.02. Property Excluded From Sale.** The following is excluded from the sale and shall remain the sole and exclusive property of Seller (collectively, the "Excluded Property");

- (a) Non-transferable deposits such as utility deposits;
- (b) All personal property not included in Schedule B, including but not limited to, all art and Pall memorabilia;
- (c) Insurance policies covering the Property; and
- (d) Any other information or materials that are reasonably considered by Seller to be proprietary in nature (including, without limitation, operational materials, business plans and reports, computer software of any kind, training manuals, legal manuals, security and loss prevention materials and the like).

**Section 1.03. Permitted Exceptions.** The Property shall be conveyed to Purchaser at the Closing (as hereinafter defined) subject to all matters listed on Schedule D attached hereto, being those matters affecting title to the Property which Purchaser has agreed to accept title subject to, without any adjustment to the Purchase Price (collectively, the "Permitted Exceptions").

**Section 1.04. Property to be Conveyed Vacant and "As Is".** PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING SELLER SHALL CONVEY TO PURCHASER, AND PURCHASER SHALL ACCEPT, THE PROPERTY VACANT (SUBJECT TO THE PROVISIONS OF ARTICLE 14 HEREOF) IN ITS "AS IS, WHERE IS, WITH ALL FAULTS" CONDITION, AS IT EXISTS AS OF THE DATE HEREOF, SUBJECT TO THE PROVISIONS OF ARTICLE 10 HEREOF AND REASONABLE WEAR AND TEAR BETWEEN THE DATE HEREOF AND CLOSING EXCEPTED, AND WITHOUT ANY REDUCTION IN OR CREDIT OR ALLOWANCE AGAINST THE PURCHASE PRICE (HEREINAFTER DEFINED) OR CLAIM OF ANY KIND BY REASON OF ANY

FURTHER DETERIORATION THERETO SUBSEQUENT TO THE DATE HEREOF CAUSED BY ORDINARY WEAR AND TEAR, BY THE PRESENTLY EXISTING PHYSICAL CONDITION OR STATE OF REPAIR OF SUCH FIXTURES AND IMPROVEMENTS, OR OTHERWISE.

## ARTICLE II

### PURCHASE PRICE

**Section 2.01. Purchase Price.** The purchase price to be paid by Purchaser for the Property is THIRTY MILLION DOLLARS (\$30,000,000) (the "Purchase Price"). No part of the Purchase Price is being paid for Personal Property.

**Section 2.02. Deposit.** Upon the full execution of this Agreement (the "Effective Date"), Purchaser shall deposit with Nixon Peabody LLP, as escrow agent (the "Escrow Agent"), a deposit in the sum of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00 (the "Deposit"), in good funds by wire transfer of immediately available federal funds to a bank account designated by the Escrow Agent. The Escrow Agent shall hold the Deposit in accordance with the terms and provisions of Article 13 hereof (the "Escrow Instructions"). The Deposit is non-refundable (except as otherwise provided herein) and shall be applied toward payment of the Purchase Price if the transaction closes, or returned to Purchaser if this Agreement is terminated and Purchaser is entitled to the same hereunder, or otherwise paid to Seller if this Agreement is terminated or fails to close for any reason.

**Section 2.03. Interest on Deposit.** Any interest earned on the Deposit (it being understood that the Deposit shall be put in a separate interest bearing account) shall become part of the Deposit and shall be distributed in accordance with the terms of this Agreement but shall not be applied against the Purchase Price.

**Section 2.04. Independent Contract Consideration.** In addition to the Deposit, Purchaser shall, concurrently with its execution hereof, deliver to Seller a check in the amount of \$100, which amount Seller and Purchaser expressly acknowledge and agree has been bargained for as consideration for Seller's execution and delivery of this Agreement. Such sum is in addition to and independent of any other consideration or payment provided for in this Agreement and is non-refundable in all events.

**Section 2.05. Payment of Purchase Price** The Purchase Price, as increased or decreased by the credits, prorations and other adjustments required hereunder, shall be payable to Seller in full on the Closing Date (as hereinafter defined) in good funds by wire transfer of immediately available federal funds to a bank account designated by Seller to Purchaser in writing prior to the Closing.

## ARTICLE III

### PROPERTY CONDITION

**Section 3.01. No Seller Representations or Warranties.** Seller makes no representation or warranty of any kind as to the truth, accuracy or completeness of any

4829-6396-9083.4

materials, data or information delivered by Seller to Purchaser in connection with the transactions contemplated hereby. PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES THAT ALL MATERIALS, DATA AND INFORMATION DELIVERED BY SELLER TO PURCHASER IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY ARE PROVIDED TO PURCHASER AS A CONVENIENCE ONLY AND THAT ANY RELIANCE ON OR USE OF SUCH MATERIALS, DATA OR INFORMATION BY PURCHASER SHALL BE AT THE SOLE RISK OF PURCHASER, EXCEPT AS MAY OTHERWISE BE EXPRESSLY STATED HEREIN TO THE CONTRARY. Without limiting the generality of the foregoing provisions, Purchaser expressly acknowledges and agrees that (a) any environmental or other report with respect to the Property which is delivered by Seller to Purchaser in connection with the transactions contemplated hereby shall be for general informational purposes only, (b) Purchaser shall not have any right to rely on any such report delivered by Seller to Purchaser, but rather will rely on its own inspections and investigations of the Property and any reports commissioned by Purchaser with respect thereto, and (c) neither Seller, nor any affiliate of Seller, nor the person or entity which prepared any such report delivered by Seller to Purchaser shall have any liability to Purchaser for any inaccuracy in or omission from any such report.

**Section 3.02. No Reliance by Purchaser on Seller Information.** PURCHASER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON AND WILL NOT RELY ON, AND SELLER SHALL NOT BE LIABLE FOR OR BE BOUND BY, ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, GUARANTIES, STATEMENTS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, PROPERTY INFORMATION PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS MAY OTHERWISE BE EXPRESSLY STATED HEREIN TO THE CONTRARY.

**Section 3.03. Purchaser To Conduct Its Own Investigations.** PURCHASER ACKNOWLEDGES THAT IT WILL CONDUCT ANY AND ALL INVESTIGATIONS OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS IT DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS SUBSTANCES ON OR RELEASED OR DISCHARGED FROM THE PROPERTY AND AGREES TO RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS EMPLOYEES OR AGENTS WITH RESPECT THERETO, EXCEPT AS MAY OTHERWISE BE EXPRESSLY STATED HEREIN TO THE CONTRARY.

**Section 3.04. Purchaser to Assume Risk.** UPON THE CLOSING PURCHASER SHALL ASSUME THE FULL RISK THAT ADVERSE MATTERS, INCLUDING, WITHOUT LIMITATION, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS OF THE PROPERTY, MAY NOT

4829-6396-9083.4

HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS, AND PURCHASER, UPON THE CLOSING, SHALL BE DEEMED TO HAVE UNCONDITIONALLY AND IRREVOCABLY WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S MEMBERS, MANAGERS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS) OF AND FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS) OF EACH AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND/OR SELLER'S MEMBERS, MANAGERS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND/OR AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR ADVERSE PHYSICAL OR ENVIRONMENTAL CONDITIONS OF THE PROPERTY, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL LAWS, ZONING ORDINANCES AND BUILDING CODES) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. PURCHASER AGREES THAT SHOULD THE REPAIR OF ANY CONSTRUCTION DEFECTS AND/OR ANY CLEANUP, REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY BE REQUIRED AFTER THE DATE OF THE CLOSING, SUCH REPAIRS AND/OR CLEAN-UP, REMOVAL OR REMEDIATION SHALL BE THE SOLE RESPONSIBILITY OF PURCHASER AND SHALL BE PERFORMED AT ITS SOLE COST AND EXPENSE.

**Section 3.05. Effect and Survival of Seller Disclaimers.** Seller and Purchaser expressly acknowledge and agree that the compensation to be paid to Seller for the Property has been adjusted to take into account that the Property is being sold subject to the provisions of this Article 3. Seller and Purchaser agree that the provisions of this Article 3 shall survive the Closing or any earlier termination of this Agreement.

**Section 3.06. Due Diligence**

(a) Subject to the terms and conditions of this Section 3.06, Purchaser, and its agents and representatives, shall have the privilege, opportunity and right during a period commencing on the Effective Date and expiring at 5:00 p.m. on the date which is forty five (45) days after the Effective Date (the "Due Diligence Period"), of entering upon the Property, subject to Section 3.06(c) below, in order to perform a Phase I environmental investigation (the "Studies"). Seller and Purchaser shall each be responsible for their own costs incurred during the Due Diligence Period and prior to Closing. Seller agrees to reasonably cooperate with Purchaser's efforts to obtain information regarding the Property from public sources to the extent Seller's permission is required to obtain such information, provided that Seller shall incur no expense in so doing. If recommended by the Phase I study, Purchaser may perform a Phase II study provided that any intrusive sampling or other work proposed to be conducted by or on behalf of Purchaser, including, but not limited to, intrusive sampling of groundwater, surface water, soil or soil sediment, shall be subject to acceptable statements of work, test plans and



4829-6396-9083.4

entry conditions reasonably acceptable to Seller. Seller agrees to accept or reject any proposed statements of work, test plans and entry conditions within five (5) business days of written notice thereof and if rejecting such proposed statements or work, test plans and entry conditions, Seller shall provide a reasonably detailed explanation for its rejection. If a Phase II study is to be performed Purchaser shall notify Seller in writing at least three (3) days prior to the expiration of the Due Diligence Period, and upon such written notice the Due Diligence Period shall be extended for an additional period of thirty (30) days for the purposes of conducting the Phase II study only.

(b) Purchaser agrees to conduct the Studies in a manner which shall minimize interference with the operations and activities on or about the Property. Purchaser shall inform Seller at least three (3) business days prior to the planned access of the Property. Such notice ("Access Notice"), which may be written or oral, shall identify the specific persons and entities planning to access the Property and the specific activities that each such person or entity plans to perform thereon. Access shall only be granted on weekdays during normal business hours.

(c) Purchaser and Seller hereby agree to keep confidential any information regarding the Property obtained in the course of conducting the Studies and agree further not to disclose any such information to government entities or representatives or any other person or entity, other than their respective attorneys and consultants, without the other party's prior written consent, subject to any legal obligation either may have to divulge such information. This Section 3.06(c) shall survive Closing, or any other termination of this Agreement.

(d) Purchaser and/or its agents and representatives or contractors performing any of the Studies, shall maintain during the Due Diligence Period comprehensive general liability insurance in the amount of no less than \$3,000,000 per occurrence and Seller shall be named an additional insured thereon. Purchaser shall provide to Seller prior to entry on the Property a certificate of insurance evidencing such insurance coverage.

(e) Purchaser does and shall hereby indemnify and hold harmless Seller, its directors, officers, shareholders, employees, agents, successors and assigns, against all losses, liabilities, obligations, claims, damages, penalties, fines, actual costs and expenses (including, without limitation, reasonable attorneys' and consultants' fees) and actual costs of litigation, suits, judgments, liens, and encumbrances, including third party claims, arising from the acts or omissions of Purchaser, its agents, employees, contractors/subcontractors, licensees, invitees and/or representatives, or any or all of them, under this Section 3.06, whenever made or incurred, and this indemnity shall survive Closing, or any other termination of this Agreement.

(f) Purchaser shall, at its sole cost and expense, promptly, after all Studies are conducted except in case of emergency, repair any damage caused to the Property and/or Seller's personal property by reason of the Studies and restore the Property to its condition immediately prior to such damage. In the event that Seller's personal property cannot be repaired (i.e. if, as a result of such damage, such property cannot be properly and safely used for its intended purpose as reasonably determined by Seller), Purchaser shall replace such personal property. Purchaser's failure to comply with this Section 3.06(f) shall be a material default under this Agreement. If Purchaser fails to commence and diligently pursue a cure of such default within ten (10) days of receipt of written notice by Seller, then Seller shall have the right, but not the obligation, to



4829-6396-9083.4

perform such repair(s) and/or restoration and, in such event, Purchaser shall immediately pay Seller for all costs reasonably incurred by Seller in performing same.

(g) Purchaser agrees to provide to Seller within five (5) days of Seller's request therefor, copies of all environmental reports, audits, sampling data, analytical data and other documents, reports or correspondence resulting from the Studies.

**Section 3.07. Environmental Objection**

(a) Should the Studies identify any environmental condition(s) that is required by applicable federal, state, local or administrative laws, rules, or regulations to remediate ("**Environmental Objection**"), then Purchaser shall notify Seller in writing ("**Purchaser's Notice**") as soon as reasonably possible but no later than 5:00 P.M. on the last day of the Due Diligence Period of such Environmental Objection and include with such notice a written certification confirming the existence of such Environmental Objection and the reasonably estimated cost to remediate or correct same from Purchaser's environmental consultant. Purchaser's failure to give to Seller on or before 5:00 P.M. on the last day of the Due Diligence Period (time being of the essence) Purchaser's Notice of an Environmental Objection shall be deemed a waiver by Purchaser of its right to raise any Environmental Objection and this Agreement shall continue in full force and effect.

(b) Seller shall have ten (10) business days following Seller's receipt of Purchaser's Notice to dispute the findings contained in Purchaser's Notice ("**Seller's Response**"). If, within ten (10) business days thereafter, Seller and Purchaser cannot agree on the nature and extent of the Environmental Objection, if any, then Seller and Purchaser shall select a mutually agreeable independent environmental consulting company (but not Purchaser's existing consultant) to define the nature and extent of the Environmental Objection and estimate the cost to remediate the Environmental Objection, and said consultant's determination shall be final and binding on Seller and Purchaser ("**Consultant Response**").

(c) If the cost to remediate or correct the foregoing Environmental Objection as finally determined pursuant to subsection 3.07(b) above is estimated to exceed in the aggregate the Purchase Price, Purchaser may elect to terminate this Agreement by providing written notice to Seller within ten (10) business days after receipt by Seller and Purchaser of the Consultant Response whereupon this Agreement shall be deemed canceled and thereafter neither party shall have any further rights, obligations or liabilities hereunder, except that the Deposit shall be promptly refunded to Purchaser by Escrow Agent. If Purchaser does not elect to terminate this Agreement pursuant to the immediately preceding sentence, or if the cost to remediate or correct the foregoing Environmental Objection as finally determined pursuant to subsection 3.07(b) above is estimated to cost in the aggregate less than the Purchase Price, then Seller may elect in its sole discretion by written notice to Purchaser, at Seller's cost and expense subject to the provisions herein, to perform such work as is reasonably necessary to cure and remediate said Environmental Objection in compliance with applicable federal, state, local or administrative laws, rules, and regulations ("**Environmental Work**"); but Seller shall in no event be required to expend amounts in excess of the Purchase Price to effect and complete such Environmental Work. If Seller does not elect to undertake the Environmental Work, this Agreement shall be deemed canceled and thereafter neither party shall have any further rights,

4829-6396-9083.4

obligations or liabilities hereunder, except that the Deposit shall be promptly refunded to Purchaser by Escrow Agent.

(d) If Seller elects to perform the Environmental Work and the Environmental Work cannot be completed by the Closing Date, then Seller shall undertake to complete all remaining Environmental Work post-closing and shall deposit with Escrow Agent at the Closing a sum equal to one hundred ten percent (110%) of the estimated cost to Seller to complete the Environmental Work not to exceed the Purchase Price, less amounts, if any, previously expended by Seller to undertake the Environmental Work ("Environmental Escrow"), and said Environmental Escrow shall be available to Seller for the purpose of completing the Environmental Work pursuant to a commercially reasonable, mutually acceptable post-closing Escrow Agreement to be entered into by Seller and Purchaser at the Closing. The Environmental Escrow represents an estimate on, and not a cap on, Seller's responsibility to complete the Environmental Work, and Seller shall be responsible for all of the costs thereof. Seller's obligations shall expire upon the receipt of either: (1) a written statement by a governmental body with jurisdiction over the Environmental Objection to the effect that the Environmental Work has been fully implemented or achieved or that no further action is required, or if no governmental body will provide such statement, then (2) a written confirmation statement of a reputable environmental firm, mutually acceptable to Seller and Purchaser, executed by a senior officer thereof, to the same effect.

(e) After the Closing Date and upon prior reasonable notice to Purchaser, Seller or its agents or designees shall have the right to enter the Property for purposes of completing the aforesaid Environmental Work as contemplated by the parties under this Agreement, with provisions and requirements comparable to those contained in subsections (b), (d), (e), and (f) of Section 3.06 to be deemed applicable to and shall be binding upon Seller to the extent and for so long as Seller is performing post-Closing Environmental Work in and about the Property.

#### ARTICLE IV

#### TITLE AND SURVEY

**Section 4.01. Title Examination; Title Commitment; Title Policy.** Purchaser shall have until the last day of the Due Diligence Period to examine title to the Land and Improvements provided, however, that Purchaser shall not have or be deemed to have any right to cancel this Agreement in connection with such title examination except to the extent expressly provided for herein in Section 4.03. Purchaser may, during the Due Diligence Period, at Purchaser's sole cost and expense, obtain from any reputable licensed title company (the "Title Company") a title insurance commitment covering the Land and Improvements (the "Title Commitment"), showing all matters affecting title to the Land and Improvements and binding the Title Company to issue at the Closing an Owner's Policy of Title Insurance in the full amount of the Purchase Price (the "Title Policy"). Purchaser shall deliver to Seller and the Surveyor (as hereinafter defined), a copy of the Title Commitment, including the full text of each of the title exceptions referred to therein.

**Section 4.02. Survey.** Purchaser may, during the Due Diligence Period, at Purchaser's sole cost and expense, employ a reputable surveyor or surveying firm (the "Surveyor"), licensed by the State of New York to survey the Land and prepare and deliver to Purchaser, Seller and the Title Company a map of an instrument survey of the Land (the "Purchaser's Survey"), reflecting the total area of the Land and the location of all the Improvements thereon, all recorded easements and encroachments, if any, located thereon and all building and set back lines and other matters of record with respect thereto.

**Section 4.03. Title Objections; Cure of Title Objections; Purchaser's Right of Termination.**

(a) Purchaser shall have until the expiration of the Due Diligence Period, **TIME BEING OF THE ESSENCE** with respect to such date, to give written notice to Seller of such objections as Purchaser may have to any exceptions to title disclosed in the Title Commitment and/or any survey exceptions shown on the Purchaser's Survey other than the Permitted Exceptions (a "Title Objection Notice"). Notwithstanding anything herein to the contrary, Purchaser may only object to those matters which are not Permitted Exceptions and which are not caused by or arising from the acts or omissions of Purchaser pursuant to this Agreement and the investigations of Purchaser in connection herewith. Any such exceptions to title disclosed in the Title Commitment and any survey exceptions shown on the Purchaser's Survey to which Purchaser does not object by timely written notice shall be deemed to be Permitted Exceptions hereunder.

(b) In the event that Purchaser gives Seller a timely Title Objection Notice, Seller shall have the right, but not the obligation (except as may otherwise be expressly provided to the contrary herein), to attempt to remove, satisfy or otherwise cure the matters objected to. Within fifteen (15) days after receipt of a timely Title Objection Notice, Seller shall give written notice to Purchaser, informing Purchaser of Seller's election with respect to such exceptions. If Seller elects to attempt to cure any matter objected to, Seller shall be entitled to one or more reasonable adjournments of the Closing to attempt such cure, but Seller shall not be obligated to expend any sums, commence any lawsuits or take any other action in order to cure the same, other than to satisfy mortgages, judgments and other liens which can be satisfied by the payment of money. If Seller fails to give written notice of its elections with respect to such exceptions, within such fifteen (15) day period, Seller shall be deemed to have elected not to attempt to cure the matters objected to.

(c) If Seller elects or is deemed to have elected not to cure any title or survey exceptions objected to by Purchaser or if, after electing to attempt to cure such exceptions, Seller determines that it is unwilling or unable to remove, satisfy or otherwise cure such exceptions, Purchaser's sole remedy hereunder in such event shall be either: (i) to accept title to the Property subject to such exceptions as if Purchaser had not objected thereto and without reduction of the Purchase Price, or (ii) to terminate this Agreement, and neither party hereto shall have any further rights, obligations or liabilities with respect to the other hereunder, except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement.

(d) To terminate this Agreement pursuant to this Section 4.03, Purchaser must give written notice to Seller of its election to terminate not later than ten (10) days after receipt of written notice from Seller of its election not to attempt to cure any title and/or survey exception or of Seller's determination, having previously elected to attempt to cure such exception, that it is unable or unwilling to do so, **TIME BEING OF THE ESSENCE**, with respect to such dates. If Purchaser fails to give Seller timely notice of its election to terminate, Purchaser shall not have the right to terminate this Agreement under this Section 4.03, such exception shall be deemed to be a Permitted Exception hereunder, and Purchaser, subject to the provisions of Sections 9.07, 10.01 and 11.01 hereof, shall be bound to proceed to the Closing and consummate the transactions contemplated hereby pursuant to the terms of this Agreement.

(e) Anything contained herein to the contrary notwithstanding, Purchaser shall not be entitled to object to, and shall be deemed to have approved, any liens, encumbrances or other title exceptions (and the same shall not constitute objections to title but shall be deemed to constitute Permitted Exceptions) against which the Title Company is willing to provide affirmative insurance (without additional cost to Purchaser unless Seller elects to pay such additional cost) that the same will not be collected out of or enforced against the Property. Further, if the Title Company is unwilling to provide affirmative insurance as aforesaid and there is a title insurance company licensed to do business in New York which has been selected by Seller who would be willing to do same, Purchaser shall use such title company and proceed with the Closing.

**Section 4.04. Amendments to Title Commitment/Revisions to Survey.** All exceptions to title first raised by the Title Company in any amendments to the Title Commitment and all survey exceptions first raised by the Surveyor in any revisions to the Purchaser's Survey issued after the expiration of the Due Diligence Period, except for Material Exceptions (as hereinafter defined), shall be deemed to be Permitted Exceptions. As used herein, the term "**Material Exception**" shall mean any right or claim of a third party to fee title to the Property, any lien or encumbrance against the Property not otherwise permitted hereunder, any new physical structure placed upon the Property, or any other matter not otherwise permitted under this Agreement which would materially and adversely interfere with the permitted use and operation of the Property. Purchaser shall have the right to object to any Material Exception first raised by the Title Company in any amendments to the Title Commitment or by the Surveyor in any revisions to the Purchaser's Survey issued after the expiration of the Due Diligence Period by giving Seller a Title Objection Notice within ten (10) days after the issuance of any such amendment or revision, as the case may be. If Purchaser does not object to any Material Exception first raised in an amendment to the Title Commitment or revision to the Purchaser's Survey issued after the expiration of the Due Diligence Period by giving Seller a timely Title Objection Notice as herein provided, such Material Exception shall be deemed to be a Permitted Exception hereunder. In the event that Purchaser gives Seller a timely Title Objection Notice of any Material Exception as herein provided, the provisions of Section 4.03 hereof shall apply with respect thereto as if set forth herein in full.

**Section 4.05. Violations.** Seller shall have no obligation to pay any fines or penalties or remove or cure violations issued by any governmental agency or authority prior to the Effective Date, whether such violations are of record or not and Purchaser shall take the Property subject to all such violations without reduction in the Purchase Price. With respect



to violations issued on and after the Effective Date Seller shall pay all fines and penalties for such violations and remove or cure violations which can be readily cured without repair, replacement, alteration or other physical improvement to the Property.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLER

**Section 5.01. Representations and Warranties.** Seller represents and warrants to Purchaser that as of the Effective Date:

- (a) Seller is a duly incorporated and in good standing under the laws of the State of New York;
- (b) Seller has all requisite power, capacity and authority to enter into this Agreement and the other transaction documents described herein (collectively, the "Transaction Documents") and to perform all of its obligations hereunder and thereunder;
- (c) The person signing this Agreement on behalf of Seller is authorized to do so;
- (d) This Agreement and each of the other Transaction Documents constitutes a valid and binding obligation of Seller enforceable against Seller in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and general principles of equity (regardless of whether such enforcement is sought in a proceeding in equity or at law);
- (e) Neither the execution or delivery nor the performance by Seller of this Agreement or any of the other Transaction Documents to which it is a party will conflict with, or will result in a breach of, or will constitute a default under, (i) Seller's organizational or operating documents, (ii) any judgment, statute, rule, order, decree, writ, injunction or regulation of any court or other governmental authority, or (iii) any agreement or instrument by which Seller or its properties may be bound;
- (f) Seller is not a "foreign person," as such term is defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act;
- (g) Seller has not dealt with any broker, agent, finder or similar person or entity in connection with the transactions contemplated by this Agreement, except as set forth in Section 12.06 hereof;
- (h) This Agreement has been approved by Seller's Board of Directors or shareholders if such approval is required under Seller's operating documents;
- (i) There is no action, suit, arbitration, unsatisfied order or judgment, or to Seller's knowledge, government investigation or proceeding pending against Seller which, if adversely determined, could individually or in the aggregate, materially interfere with the consummation by Seller of the transactions contemplated by this Agreement; and



#829-6396-9083.4

(j) Seller has not received any written notice of any federal, state or local municipal violations affecting the Property.

(k) Disclaimers Regarding Seller's Representations and Warranties. EXCEPT AS MAY OTHERWISE BE EXPRESSLY STATED HEREIN TO THE CONTRARY, PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITIONS, UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR ANY OTHER DATA OR INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO PURCHASER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY.

#### ARTICLE VI

#### REPRESENTATIONS AND WARRANTIES OF PURCHASER

**Section 6.01. Representations and Warranties.** Purchaser represents and warrants to Seller that as of the Effective Date:

(a) Purchaser is duly incorporated and in good standing under the laws of the State of New York;

(b) Purchaser has all requisite power, capacity and authority to enter into this Agreement and the other Transaction Documents and to perform all of its obligations hereunder and thereunder;

(c) The person signing this Agreement on behalf of Purchaser is authorized to do so;

(d) This Agreement and each of the other Transaction Documents constitutes the valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or other law affecting creditors' rights generally and general principles of equity (regardless of whether such enforcement is sought in a proceeding in equity or at law);

(e) No approval, consent, order or authorization of, or designation, registration or declaration with, any governmental authority, is required in connection with the valid execution and delivery of, and compliance with, this Agreement or any of the other Transaction Documents by Purchaser;

#829-6396-9083.4

(f) Neither the execution or delivery nor the performance by Purchaser of this Agreement or any of the other Transaction Documents to which it is a party will conflict with, or will result in a breach of, or will constitute a default under, (i) Purchaser's organizational or operating documents, (ii) any judgment, statute, rule, order, decree, writ, injunction or regulation of any court or other governmental authority, or (iii) any agreement or instrument by which Purchaser or its properties may be bound;

(g) Purchaser has not dealt with any broker, finder or similar person or entity in connection with the transactions contemplated by this Agreement, except as set forth in Section 12.06 hereof; and

(h) There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Purchaser which, if adversely determined, could, individually or in the aggregate, materially interfere with the consummation by Purchaser of the transactions contemplated by this Agreement.

## **ARTICLE VII**

### **COVENANTS OF SELLER**

**Section 7.01. Covenants of Seller.** Seller hereby covenants with Purchaser that from the Effective Date until the date of the Closing or earlier termination of this Agreement, Seller shall use commercially reasonable efforts to operate, insure and maintain the Property in a manner generally consistent with the manner in which Seller has operated, insured and maintained the Property prior to the Effective Date.

## **ARTICLE VIII**

### **ECONOMIC INCENTIVES**

#### **Section 8.01. Business Incentives.**

The Parties agree that the receipt of certain state and local tax and business incentives (hereinafter "**Business Incentives**") is a material inducement to the Parties entering into this Agreement and the Lease. The Business Incentives may take the form of waivers of repayment obligations, grants, Payment in Lieu of Tax Agreements ("**PILOT**"), utility reductions, tax credits and abatements or exemptions from taxes offered from the State of New York, the County of Nassau and various political subdivisions or agencies thereof. The Parties agree that the NCIDA Benefits (as hereinafter defined) are intended to benefit both Seller and Purchaser in proportion relative to their respective interest in the Demised Premises and Retained Premises, and that other Business Incentives, including but not limited to those offered from the State of New York, which Seller applies for are intended to accrue to the benefit of Seller only. The Parties agree to reasonably cooperate in the pursuit of the Business Incentives pursuant to the terms hereof. The Parties' obligations under this Agreement and the Lease are expressly conditioned upon the Parties' receipt of Business Incentives that are satisfactory, respectively, to the Purchaser and Seller, in their sole discretion.

#### **Section 8.02. Nassau County Industrial Development Agency.**

(a) Specifically, in the case of benefits to be procured from the Nassau County Industrial Development Agency ("**NCIDA**") Purchaser agrees to be the formal applicant for a PILOT Agreement, Mortgage Recording Tax Abatement, and Sales Tax Exemption for this transaction ("**NCIDA Benefits**") for the benefit of both (i) Seller with respect to the Demised Premises (as defined in Article 14 below), and (ii) Purchaser with respect to the portion of the Building that is not leased to Seller (the "**Retained Premises**"), whether such benefits are granted pursuant to a tri-party PILOT Agreement or separate PILOT Agreements for each of the Demised Premises and the Retained Premises. Similarly, both Seller and Purchaser shall be identified as "users" of any Sales Tax Exemption whether such benefits are granted pursuant to one sales tax exemption letter or separate sales tax exemption letters. The application expenses and NCIDA fees to secure such NCIDA benefits shall be the responsibility of the Purchaser. Purchaser shall, in good faith and with diligence comply with all of the following obligations (collectively, the "**NCIDA Obligations**"):

i. On or before ten (10) days after the Effective Date, Purchaser shall submit to the NCIDA a draft application for NCIDA Benefits (the "**Application**"), and shall thereafter meet with the NCIDA Transactions Committee (the "**Transaction Committee**") at the earliest date that such committee schedules a meeting. Purchaser shall deliver to Seller a copy of Purchaser's draft Application simultaneously with the submission thereof, and shall keep Seller informed of Purchaser's discussions with NCIDA staff and the Transaction Committee.

ii. Within five (5) days after appearing before the Transactions Committee and receiving its consent to submit a formal Application, Purchaser shall submit to the NCIDA all application fees and a truthful, accurate and complete application, and any information and supporting documents reasonably requested by NCIDA, or as otherwise necessary for processing an application for the NCIDA Benefits. Purchaser shall deliver to Seller a copy of Purchaser's application simultaneously with the submission thereof, and shall thereafter promptly deliver to Seller copies of any and all correspondence from and to NCIDA. Seller agrees to reasonably cooperate with Purchaser in connection with the delivery of any documentation and any other application requirements of NCIDA, provided that Seller shall not be obligated to expend any sums (other than de minimis administrative expenses) or incur any liability in connection therewith.

iii. Purchaser shall promptly comply with all reasonable requirements of NCIDA to obtain a Final Inducement and Approval (as hereinafter defined) for the NCIDA Benefits on or before December 31, 2016 ("**NCIDA Contingency Date**"). As used herein, "Final Inducement and Approval" means written resolution of the NCIDA to enter into a "straight lease transaction" with Purchaser and Seller to provide the NCIDA Benefits ("**NCIDA Contingency**").

iv. Purchaser shall provide Seller with a copy of the Final Inducement and Approval (or evidence of the rejection thereof) promptly after receipt.

v. Thereafter, Purchaser and Seller agree to execute such documents, agreements and/or undertakings as the NCIDA shall reasonably require to close on the NCIDA Benefits, including but not limited to, the PILOT Agreement and the NCIDA Lease (the "**NCIDA Closing Documents**") and shall deliver such financial information and other information as the NCIDA shall reasonably request, but Purchaser shall pay any and all fees charged by the NCIDA and its counsel as shall be imposed thereby in connection with the NCIDA Benefits. Each party hereto shall be responsible for any "clawback" or recapture of benefits obligations relating to the employment and other covenants of performance that such party shall make in the NCIDA Closing Documents.

(b) If the NCIDA fails to issue a Final Inducement and Approval that is satisfactory to each party in their sole discretion on or prior to the NCIDA Contingency Date, Purchaser and/or Seller shall have the right to terminate this Agreement by written notice delivered to the other Party at any time after the NCIDA Contingency Date (unless extended as described below), whereupon this Agreement will be deemed terminated and thereafter neither Party will have any further rights against, or obligations or liabilities to, the other by reason of this Agreement, except that the Deposit, together with all interest accrued thereon, will be refunded to Purchaser and except for the representations, covenants, and indemnities (if any) herein that are expressly stated to survive termination of this Agreement. However, in the event that the NCIDA has not issued the Final Inducement and Approval by the NCIDA Contingency Date, Purchaser and Seller each shall be entitled to one or more extensions of the NCIDA Contingency Date for up to a total of sixty (60) days, on written notice to the other Party.

(c) Nothing contained herein is intended to prohibit Seller or Purchaser from applying, either separately or in conjunction with the other party, to the NCIDA or any other State or local authority for Business Incentives, which right each party hereby expressly reserves.

## **ARTICLE IX**

### **ESCROW AND CLOSING**

**Section 9.01. Time and Place.** The consummation of the transactions contemplated hereby (the "**Closing**") shall occur on or about the first business day after the date which is five (5) days after the later to occur of (i) the last day of the Due Diligence Period, or (ii) satisfaction of the NCIDA Contingency (the "**Scheduled Closing Date**"), at the offices of Seller's counsel or the counsel for the NCIDA or any lender from which Purchaser may seek financing. The actual date of the Closing shall be the "**Closing Date**". On or before the Closing Date, Seller shall perform the obligations set forth in Section 9.02 hereof, and Purchaser shall perform the obligations set forth in Section 9.03 hereof, the performance of which obligations shall be concurrent conditions.

**Section 9.02. Documents to be Delivered by Seller.** At or prior to the Closing, Seller or its counsel shall deliver or cause to be delivered to the Title Company in escrow each of the following documents (collectively, the "**Seller Closing Documents**"), each of which shall have been duly executed and, when required, acknowledged by Seller and/or any

4829-6396-9083.4

other signatories thereto, and each of which shall be reasonably satisfactory to Purchaser and its counsel:

(a) A Bargain and Sale Deed With Covenants Against Grantor's Acts in the form annexed hereto as Exhibit A (the "Deed"), conveying the Land and the Improvements to Purchaser, subject only to the Permitted Exceptions;

(b) A New York State Department of Taxation and Finance Combined Real Estate Transfer Tax Return and Credit Line Mortgage Certificate (TP-584) for the Deed (the "TP-584");

(c) A Real Property Transfer Report (RP-5217) for the Deed (the "RP-5217");

(d) A Bill of Sale in the form attached hereto as Exhibit B (the "Bill of Sale"), conveying the Personal Property to Purchaser without warranty of title or use and without warranty, express or implied, as to merchantability and fitness of the Personal Property for any particular purpose;

(e) An assignment and assumption agreement with respect to the Intangible Property in the form attached hereto as Exhibit C (the "Assignment and Assumption of Intangible Property"), assigning Seller's right, title and interest in and to the Intangible Property, to the extent assignable, to Purchaser;

(f) A certificate stating that Seller is not a "foreign person," as such term is defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act, in the form attached hereto as Exhibit D (the "FIRPTA Certificate");

(g) Any affidavit of title, customarily requested by New York title companies in form and substance reasonably acceptable to Seller;

(h) Such documents as the Title Company may reasonably require as to the authority of Seller to sell the Property and the authority of the person or persons executing documents on behalf of Seller;

(i) A closing statement setting forth all credits, prorations and other adjustments required hereunder;

(j) A duly executed lease in the form attached hereto as Exhibit E (the "Lease"); and

(k) Such additional documents as shall be required by this Agreement to consummate the transactions contemplated by this Agreement.

**Section 9.03. Documents to be Delivered by Purchaser.** At or prior to the Closing, Purchaser or its counsel shall deliver or cause to be delivered to the Title Company in escrow each of the following documents (collectively, the "Purchaser Closing Documents"), each of which shall have been duly executed and, when required, acknowledged



4829-6396-9083.4

by Purchaser and/or any other signatories thereto, and each of which shall be reasonably satisfactory to Seller and its counsel:

- (a) Counterparts of the Assignment and Assumption of Intangible Property;
- (b) Such documents as the Title Company may reasonably require as to the authority of Purchaser to purchase the Property and the authority of the person or persons executing documents on behalf of Purchaser;
- (c) The balance of the Purchase Price, as increased or decreased by the credits, prorations and other adjustments required hereunder, in good funds by wire transfer of immediately available federal funds to a bank account designated by Seller to Purchaser in writing prior to the Closing, it being agreed that at the Closing the parties shall direct the Escrow Agent to apply the Deposit towards payment of the Purchase Price;
- (d) The TP-584 and RP-5217;
- (e) A duly executed counterpart of the Lease; and
- (f) Such additional documents as shall be required by this Agreement to consummate the transactions contemplated by this Agreement.

**Section 9.04. Credits, Prorations and Other Adjustments.**

- (a) The following shall be apportioned with respect to the Property as of 12:01 a.m. on the Closing Date, as if Purchaser were vested with title to the Property during the entire day upon which the Closing occurs: (i) gas, electricity and other utility charges for which Seller is liable, if any, such charges to be apportioned at the Closing on the basis of the most recent meter reading occurring prior to the Closing; and (ii) any other operating expenses or other items pertaining to the Property which are customarily prorated between a seller and a purchaser in the area in which the Property is located.
- (b) If permitted to be transferred to Purchaser and Seller transfers said deposits to Purchaser at Closing, Purchaser shall credit to the account of Seller all refundable cash or other deposits posted with utility companies serving the Property, or, at Seller's option, Seller shall be entitled to receive and retain such refundable cash or other deposits.
- (c) It is the intention of the parties that real estate taxes and assessments, including payment-in-lieu-of tax payments, shall be apportioned on the Closing Date and prorated based upon the amounts actually paid which relate to the period of ownership. The parties contemplate that, pursuant to Article VIII hereof, the PILOT that exists as of the Effective Date hereof ("Existing PILOT") shall be terminated on or prior to the Closing Date, and a new or amended PILOT ("New PILOT") shall be effective as of the Closing Date. The parties agree that Seller shall receive the benefit of any refund or credit issued by NCIDA arising from any payment-in-lieu-of tax payments paid by or on behalf of Seller at or prior to the Closing Date pursuant to the Existing PILOT ("IDA Overpayment").
- (d) Seller shall receive the entire advantage of any discounts for the prepayment by it of any taxes, water rates or sewer rents.

4829-6396-9083.4

(e) As to gas, electricity and other utility charges referred to in Section 9.04(a)(ii) hereof, Seller may, on notice to Purchaser, elect to pay one or more of all of said items accrued to the date hereinabove fixed for apportionment directly to the person or entity entitled thereto before Closing (with written proof to Purchaser), and, to the extent Seller so elects, such item shall not be apportioned hereunder, and Seller's obligation to pay such item directly in such case shall survive the Closing.

(f) Purchaser agrees to purchase from Seller, at Seller's cost, and pay for at the Closing, the fuel stored on the Property and any supplies which are in unopened containers on the Property at the time of the Closing, at the price charged by Seller's supplier, including any applicable sales tax.

(g) It is the intent of the parties that all items specifically covered by this Section 9.04 that are subject to apportionment hereunder shall result in Seller receiving all of the economic benefits and burdens of the Property in respect of such items with respect to the period prior to the date of the Closing and Purchaser receiving all of the economic benefits and burdens of the Property in respect of such items with respect to the period beginning on and after the date of the Closing, except, in either case, as is otherwise expressly provided herein. If the computation of the aforementioned apportionments shows that a net amount is owed by Seller to Purchaser, such amount shall be credited against the Purchase Price payable by Purchaser at the Closing. If such computation shows that a net amount is owed by Purchaser to Seller, such amount shall be added to the Purchase Price payable by Purchaser at the Closing.

(h) Either party shall be entitled to a post-Closing adjustment for any incorrect proration or adjustment; provided that written notice thereof is given to the other party within one (1) year after the date of the Closing.

(i) Any unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon to a date not less than three days following the date of the Closing, and any other liens and encumbrances which Seller is obligated to pay and discharge, may be paid out of the proceeds of the monies payable at the Closing if Seller delivers to the Title Company at or prior to the Closing official bills for such taxes, assessments, water charges, sewer rents, interest and penalties and instruments in recordable form sufficient to discharge any other liens and encumbrances of record. Upon request made a reasonable time before the Closing, Purchaser shall provide at the Closing separate certified checks of Purchaser or official bank checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance.

(j) The provisions of this Section 9.04 shall survive the Closing for a period of one (1) year.

**Section 9.05. Transfer Taxes And Sales Taxes.** Seller shall be responsible for paying the real estate transfer tax (the "Transfer Tax"), if any, due under Article 31 of the New York Tax Law (the "Transfer Tax Law") applicable to the sale of Seller's interest in the Land and the Improvements and shall execute, acknowledge and deliver such further documents, including tax returns, as may be necessary to comply with the Transfer Tax Law insofar as it relates to the sale of Seller's interest in the Land and the Improvements.

4829-6396-9083.4

Purchaser shall be responsible for paying the sales tax (the "Sale Tax") due under Article 28 of the New York Tax Law (the "Sales Tax Law") applicable to the sale of Seller's interest in the Personal Property and shall make any other payments and execute, acknowledge and deliver such further documents, including tax returns, as may be necessary to comply with the Sales Tax Law insofar as it related to the purchase of Seller's interest in the Personal Property. The obligations of parties under this Section 9.05 shall survive the Closing until the expiration of the applicable statute of limitations.

**Section 9.06. Closing Costs.** Seller shall pay the fees of any counsel representing it in connection with this transaction. Purchaser shall pay (a) the fee for the title examination and the Title Commitment and the premium for the Title Policy, (b) the cost of preparing the Purchaser's Survey, if any, (c) the fees for recording the Deed, filing the RP-5217 and filing the TP-584 and (d) the fees of any counsel representing it in connection with this transaction. All other costs and expenses incident to this transaction and the Closing shall be paid by the party incurring same.

**Section 9.07. Conditions Precedent to Obligation of Purchaser to Close.** The obligation of Purchaser to consummate the transactions hereunder shall be subject to the fulfillment on or before the date of the Closing of all of the following conditions, any or all of which may be waived by Purchaser in its sole discretion:

(a) Seller shall have delivered to Purchaser all of the items required to be delivered to Purchaser pursuant to the terms of this Agreement, including, without limitation, those provided for in Section 9.02 hercof;

(b) All of the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the date of the Closing;

(c) Possession of the Property shall have been delivered to Purchaser, subject to the Permitted Exceptions and the Lease; and

(d) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the date of the Closing.

In the event that any of the foregoing conditions is not fulfilled or waived by Purchaser on or before the Closing, Purchaser shall have the right to terminate this Agreement by giving written notice of termination to Seller within ten (10) days after the date on which the Closing was to have occurred, **TIME BEING OF THE ESSENCE** with respect to Purchaser's obligation to deliver notice by such date. If Purchaser gives timely notice of termination, this Agreement shall terminate, and neither party shall have any further rights, obligations or liabilities with respect to the other hereunder, except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. If Purchaser fails to give Seller a timely notice of termination, and subject to Purchaser's rights under Section 11.01 hereof, Purchaser shall be deemed to have elected to proceed with the Closing, and said unfulfilled condition shall be deemed to have been waived by Purchaser.

#829-6396-9083.4

**Section 9.08. Conditions Precedent to Obligation of Seller to Close.**

The obligation of Seller to consummate the transactions hereunder shall be subject to the fulfillment on or before the date of the Closing of all of the following conditions, any or all of which may be waived by Seller in its sole discretion:

(a) Purchaser shall have delivered to Seller all of the items required to be delivered to Seller pursuant to the terms of this Agreement, including, without limitation, those provided for in Section 9.03 hereof;

(b) All of the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the date of the Closing;

(c) Seller shall have received the Purchase Price, as adjusted pursuant to and payable in the manner provided for in this Agreement; and

(d) Purchaser shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Purchaser as of the date of Closing.

In the event that any of the foregoing conditions is not fulfilled or waived by Seller on or before the Closing, Seller shall have the right to terminate this Agreement by giving written notice of termination to Purchaser within ten (10) days after the date on which the Closing was to have occurred, TIME BEING OF THE ESSENCE with respect to Seller's obligation to deliver notice by such date. If Seller gives Purchaser timely notice of termination, this Agreement shall terminate, the parties shall direct the Escrow Agent to pay the Deposit to Seller, and neither party shall have any further rights, obligations or liabilities with respect to the other hereunder, except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. If Seller fails to give Purchaser a timely notice of termination, then Seller shall be deemed to have elected to proceed with the Closing, and said unfulfilled condition shall be deemed to have been waived by Seller.

**Section 9.09. Closing of Escrow.** The Title Company, upon satisfaction of the conditions set forth therein (which shall in all respects be consistent with the terms and conditions of this Agreement), and receipt by Title Company or Seller of the balance of the Purchase Price, shall be instructed to carry out the following instructions upon closing of escrow:

(a) Causing the Deed to be duly recorded in the Nassau County Clerk's Office;

(b) Paying or causing to be paid the Transfer Tax and all recording and filing fees or expenses necessary in connection with the recordings described in Section 9.09(a) hereof;

(c) Issuing or causing to be issued to Purchaser the Title Policy, which policy may be in the form of a title report, marked-up and initialed by an officer or duly authorized agent of the Title Company to serve as an interim Title Policy pending delivery of the final Title Policy to Purchaser;

4829-6396-9083.4

(d) Delivering to Purchaser an executed copy of the Bill of Sale, an executed counterpart of the Assignment and Assumption of Intangible Property, the FIRPTA Certificate, the title affidavits, and a copy of the closing statement;

(e) Delivering to Seller an executed counterpart of the Assignment and Assumption of Intangible Property, the title affidavits and a copy of the closing statement;

(f) Taking such other actions as may be reasonably required by Seller or Purchaser.

**Section 9.10. Discharge of Seller's Obligations.** The acceptance of the Deed by Purchaser shall be deemed to be a full performance and discharge of every representation and warranty made by Seller herein and every covenant and obligation on the part of Seller to be performed pursuant to the provisions of this Agreement, except those which are herein specifically stated to survive the Closing. Seller shall be entitled to occupy the Property from and after the Closing pursuant to the Lease Agreement set forth in Article 14 below and such occupancy by Seller pursuant to the Lease Agreement shall not reduce Seller's rights hereunder or increase Seller's obligations hereunder nor shall same be deemed to be a failure by Seller to have satisfied its obligation to transfer the Property to Purchaser at Closing

## **ARTICLE X**

### **RISK OF LOSS**

**Section 10.01. Major Loss.** In the event of loss or damage to the Property which is a Major Loss (as hereinafter defined), either party may terminate this Agreement by giving written notice of termination to the other party, and neither party shall have any further rights, obligations or liabilities to the other hereunder, except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. As used herein, the term "**Major Loss**" shall mean: (a) loss or damage to the Property or any portion thereof such that the cost of repairing or restoring the Property to a condition substantially identical to that of the Property prior to the event of damage would be, in the opinion of an architect selected by Seller, equal to or greater than \$2,000,000.00, and (b) any loss due to a permanent condemnation of more than 7.5% of the square footage of the Improvements and which materially impairs the current use of or any means of access to the Property. If neither party elects to terminate this Agreement within ten (10) days after Seller sends Purchaser written notice of the occurrence of a Major Loss, then Purchaser and Seller shall be deemed to have elected to proceed with the Closing, in which event Seller shall, at its option, either (a) perform any necessary repairs to the Property, or (b) assign to Purchaser all of Seller's right, title and interest in and to any claims and proceeds Seller may have with respect to any casualty insurance policies or condemnation awards relating to the Property and pay Purchaser the amount of any deductible under Seller's casualty insurance policy or credit such amount against the Purchase Price. If Seller elects to perform repairs to the Property, it shall use reasonable efforts to substantially complete such repairs promptly, and it shall be entitled to a reasonable adjournment of the Closing of up to, but not beyond, the one hundred eightieth (180<sup>th</sup>) day following the date for the Closing set forth in Section 9.01 hereof in order to allow for the



4829-6396-9083.4

completion of such repairs. Upon the Closing, full risk of loss with respect to the Property shall pass to Purchaser.

**Section 10.02. Minor Loss.** In the event of loss or damage to the Property which is not a Major Loss, this Agreement shall remain in full force and effect; provided that Seller performs any necessary repairs to the Property or, if in the opinion of an architect selected by Seller, the proceeds of Seller's insurance are sufficient to effectuate the repairs, at its option, assigns to Purchaser all of Seller's right, title and interest in and to any claims and proceeds Seller may have with respect to any casualty insurance policies or condemnation awards relating to the Property and pay Purchaser the amount of any deductible under Seller's casualty insurance policy or credit such amount against the Purchase Price. If Seller elects to perform repairs to the Property, Seller shall use reasonable efforts to complete such repairs promptly, and Seller shall be entitled to a reasonable adjournment of the Closing of up to, but not beyond, the one hundred eightieth (180<sup>th</sup>) day following the date for the Closing set forth in Section 9.01 hereof in order to allow for the substantial completion of such repairs. Upon the Closing, full risk of loss with respect to the Property shall pass to Purchaser.

**Section 10.03. Uniform Vendor and Purchaser Risk Act.** The parties agree that Sections 10.01 and 10.02 hereof constitute an express agreement to the contrary for purposes of Section 5-1311 of the New York General Obligations Law (the Uniform Vendor and Purchaser Risk Act).

## **ARTICLE XI**

### **DEFAULT**

**Section 11.01. Default by Seller.** If Seller fails to close in accordance with the terms of this Agreement for any reason other than Purchaser's default hereunder or the permitted termination of this Agreement by Seller or Purchaser as herein expressly provided, Purchaser shall be entitled, as its sole remedy, to elect one of the following remedies: (a) to terminate this Agreement, receive the cost of any survey and release Seller from any and all further liability to Purchaser hereunder, or (b) to enforce specific performance of Seller's obligations hereunder. Purchaser must bring an action against Seller for specific performance in a court having jurisdiction in the county and state in which the Property is located on or before thirty (30) days after the date upon which the Closing occurred or was to have occurred. With respect to Purchaser's obligation to bring an action against Seller for specific performance within such thirty (30) day period, **TIME IS OF THE ESSENCE**, and if Purchaser fails to do so in a timely manner, then such failure shall be deemed to be (a) a full, complete and irrevocable waiver by Purchaser of any right to bring an action against Seller for specific performance hereunder and (b) an election by Purchaser to terminate this Agreement. **UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE TO PURCHASER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), WARRANTY, EITHER EXPRESS OR IMPLIED, OR ANY OTHER LEGAL THEORY FOR, AND PURCHASER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO RECOVER FROM SELLER, DAMAGES OF ANY KIND IF SELLER FAILS TO PERFORM ANY OF ITS COVENANTS OR OBLIGATIONS HEREUNDER. PURCHASER EXPRESSLY WAIVES THE RIGHT TO RECOVER**

FROM SELLER ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, SPECULATIVE, EXEMPLARY, OR PUNITIVE DAMAGES. THIS WAIVER IS GIVEN BY PURCHASER KNOWINGLY AND VOLUNTARILY AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH SUCH RIGHT WOULD OTHERWISE ACCRUE. SELLER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS WAIVER IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY PURCHASER. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT TO SELLER AND FORMS AN INTEGRAL PART OF THE CONSIDERATION FOR SELLER ENTERING INTO THIS AGREEMENT.

**Section 11.02. Default by Purchaser.** If Purchaser fails to perform any of its obligations under this Agreement for any reason other than Seller's default or the permitted termination of this Agreement (other than its obligations under the Confidentiality Agreement) by either Seller or Purchaser as herein expressly provided, Seller shall be entitled, as its sole remedy, to terminate this Agreement and receive the Deposit as liquidated damages for the breach of this Agreement, it being agreed between the parties hereto that the actual damages to Seller in the event of such breach are impractical to ascertain and the amount of the Deposit is a reasonable estimate thereof. The foregoing liquidated damages provision shall not apply to Purchaser's obligations under the Confidentiality Agreement, nor its indemnity obligations including pursuant to Section 12.06, nor shall Purchaser be entitled to credit or offset the Deposit or any portion thereof against any damages suffered by Seller by reason of Purchaser's default with respect thereto. Seller shall be entitled to seek an injunction restraining Purchaser and/or its representatives from disclosing, in whole or in part, any of the Property materials in violation of their obligations under the Confidentiality Agreement and to pursue any other available remedy at law or in equity by reason of any such breach or threatened breach by Purchaser. The right of specific performance made available to Purchaser under Section 11.01 hereof but not to Seller under this Section 11.02 shall not render this Agreement invalid by reason of lack of mutuality.

**Section 11.03. Cure Period.** In no event shall Seller or Purchaser be deemed to be in default of any of their respective covenants or obligations under this Agreement unless and until the non-defaulting party shall have given notice to the defaulting party of its alleged default, and the defaulting party shall have failed to remedy such default within ten (10) days thereafter, or if such default is not reasonably susceptible of cure within such ten (10) day period, the defaulting party promptly commences and diligently prosecutes such cure within such additional period of time not to exceed thirty (30) days; provided, however, that the foregoing cure periods (i) shall not apply to any breach by Purchaser and/or its representatives of their obligations under the Confidentiality Agreement and (ii) shall not in any way extend the obligation of Purchaser to close on the Closing Date.

**Section 11.04. Prevailing Party.**

If any action, suit or proceeding is commenced under or in connection with this Agreement, the losing party shall pay to the prevailing party, and the prevailing party shall be entitled to an award for (i) attorneys' fees, court costs and other litigation expenses incurred by the prevailing party in connection with such action, suit or proceeding; and (ii) interest on the amount recovered from the due date to the date of payment at the prime or base rate of Citibank

#829-6396-9083.4

(or its successor) in effect at the due date (or, if not a business day, then at the first business day thereafter), plus three (3) percentage points per annum.

## **ARTICLE XII**

### **MISCELLANEOUS**

**Section 12.01. Assignment of Agreement.** Purchaser may not assign its rights under this Agreement or transfer, directly or indirectly, any stock, partnership, membership or other ownership interest in Purchaser without first obtaining Seller's prior written consent, which consent may be given or withheld, with or without conditions, in Seller's sole and absolute discretion. **PURCHASER ACKNOWLEDGES AND AGREES THAT THE ASSIGNMENT OF ANY OF ITS RIGHTS UNDER THIS AGREEMENT OR THE TRANSFER, DIRECTLY OR INDIRECTLY, OF ANY STOCK, PARTNERSHIP, MEMBERSHIP OR OTHER OWNERSHIP INTEREST IN PURCHASER WITHOUT SELLER'S PRIOR WRITTEN CONSENT, SHALL BE NULL AND VOID AND OF NO FORCE OR EFFECT AND SHALL CONSTITUTE A MATERIAL DEFAULT BY PURCHASER UNDER THIS AGREEMENT.** Purchaser shall give Seller prior written notice of any proposed assignment of this Agreement or any proposed transfer, directly or indirectly, of any stock, partnership, membership or other ownership interest in Purchaser. Such notice shall identify the proposed assignee or transferee and the constituent individuals and/or entities thereof and such further information with respect to the proposed assignee or transferee and the constituent individuals and/or entities thereof as Seller may request. Seller's consent to any such assignment or transfer, if given, shall not constitute a waiver of the necessity for such consent to any subsequent assignment or transfer and shall not relieve Purchaser of any of its obligations under this Agreement.

### **Section 12.02. Notices.**

(a) Any notice or other communication that is required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given (i) when deposited in the mail, postage prepaid for certified mail, return receipt requested, or (ii) when personally delivered, or (iii) when sent by nationally recognized overnight courier (e.g., Federal Express, United Parcel Service, DHL, etc.), in each case to the parties hereto at the following addresses or at such other address as either party hereto shall hereafter specify by five (5) days prior written notice to the other party given and received in the manner provided in this Section 12.02:

If to Seller:

Pall Corporation  
25 Harbor Park Drive  
Port Washington, NY 11050  
Attention: Adam I. Mandelbaum, Assistant General Counsel  
[Adam.Mandelbaum@pall.com](mailto:Adam.Mandelbaum@pall.com)

4829-6396-9083.4

With a copy to:

Nixon Peabody LLP  
50 Jericho Quadrangle  
Suite 300  
Jericho, NY 11753  
Attention: Denise D. Pursley, Esq.  
[dpursley@nixonpeabody.com](mailto:dpursley@nixonpeabody.com)

If to Purchaser:

c/o Kiss Nail Products, Inc.  
57 Seaview Boulevard  
Port Washington, NY 11010  
Attention: Richard K. Kim, Esq.  
[cfo@kissusa.com](mailto:cfo@kissusa.com)

With a copy to:

Farrell Fritz, P.C.  
1320 RXR Plaza  
Uniondale, NY 11556-1320  
Attention: Peter L. Curry, Esq.  
[pcurry@farrellfritz.com](mailto:pcurry@farrellfritz.com)

(b) A notice shall be deemed to have been duly received (and any time period measured by the giving of notice shall commence) (i) if mailed, on the date of delivery set forth on the return receipt, and (ii) if personally delivered or if sent by overnight courier, on the date of delivery. The inability to make delivery because of changed address of which no notice was given, or rejection or refusal to accept any notice offered for delivery, shall be deemed to be receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept delivery. Any notice may be given by counsel for the party giving same.

**Section 12.03. Section 1031 Tax Deferred Exchange.** Seller or Purchaser may consummate the purchase of the Property as part of a so-called like kind exchange (the "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "Code"); provided that (a) the Closing shall not be delayed or affected by reason of the Exchange, nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to Seller's obligations under this Agreement, (b) Seller shall effect the Exchange through an assignment of its rights under this Agreement to a "qualified intermediary," as such term is defined in U.S. Treasury Regulation 1.1031(k)-1(g)(4)(iii), and (c) Purchaser shall not be required to take an assignment of the purchase agreement for the replacement property or be required to acquire or hold title to any real property for purposes of consummating the Exchange. Purchaser shall not by this agreement or acquiescence to the Exchange (y) have its rights under this Agreement affected or diminished in any manner or (z) be

#829-6396-9083.4

responsible for compliance with or be deemed to have warranted to Seller that the Exchange in fact complies with Section 1031 of the Code.

**Section 12.04. Source of Purchaser's Funds.** Purchaser represents to Seller that Purchaser has available to it unrestricted funds which it may use in its sole discretion to pay the full amount of the Purchase Price and otherwise comply with its other obligations under of this Agreement. Purchaser acknowledges and agrees that its obligations hereunder are not contingent upon Purchaser obtaining financing for the purchase of the Property even if Purchaser seeks to finance the purchase of the Property which it may do in its sole discretion.

**Section 12.05. No Recordation.** Purchaser shall not record any memorandum of the terms hereof or otherwise make this Agreement or its terms of public record, and any breach of this covenant shall entitle Seller to pursue its rights and remedies under Article XI hereof.

**Section 12.06. Broker.**

Each party represents and warrants to the other that there has been no broker or finder engaged in connection with the sale of the Property other than Colliers International LI., Inc. (the "Broker"). Seller agrees to pay the Broker a commission per separate agreement. Each party agrees that should any claim be made for brokerage commissions or finder's fees by any broker or finder, other than the Broker, by, through, under or on account of any acts of said party or its representatives, said party will protect, defend, indemnify and hold the other party harmless from and against any and all loss, liability, cost, damage and expense in connection therewith. The provisions of this Section 12.06 shall survive the Closing.

**Section 12.07. Calculation of Time Periods.** Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State in which the Property is located, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5 p.m., local time.

**Section 12.08. Construction of Ambiguities.** The parties acknowledge that each of them has been represented by counsel of their choice in the negotiation of this Agreement and in connection with the negotiation of the other Transaction Documents and that the terms of this Agreement and the other Transaction Documents are the product of such negotiations. Accordingly, the parties agree that this Agreement and the other Transaction Documents shall be construed without regard to any rule or presumption requiring construction against the party causing same to be drafted.

**Section 12.09. Survival.** Sections 3.01, 3.02, 3.03, 3.04, 3.05, 9.04, 9.05, 12.05, 12.06, 12.16, 12.17 and Article 14 hereof shall survive the delivery of the Deed as provided for herein. All other provisions of this Agreement shall merge with the delivery of the Deed.



4829-6396-9083.4

**Section 12.10. Modifications and Amendments of Agreement.** This Agreement may not be modified or amended except by a writing executed by the party against whom enforcement of such modification or amendment is sought.

**Section 12.11. Waivers.** No right under this Agreement may be waived, except by written instrument executed by the party who is waiving such right. Any waiver of any breach of any provision contained in this Agreement shall not be deemed a waiver of any preceding or succeeding breach of that provision or of any other provision contained in this Agreement. No extension of time for the performance of any obligation or act hereunder shall be deemed to be an extension of the time for performance of any other obligation or act hereunder.

**Section 12.12. Integration.** This Agreement, including the Schedules and Exhibits attached hereto, and the other Transaction Documents contain the entire agreement between the parties in respect of the transactions contemplated hereby, and no oral statements or representations or prior written matter in respect thereof not contained in this Agreement or the other Transaction Documents shall have any force or effect.

**Section 12.13. Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be held or determined to be invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those to which it is held or determined to be invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

**Section 12.14. Further Assurances.** Each party agrees to do, execute, acknowledge and deliver all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required to effectuate the transactions contemplated hereby.

**Section 12.15. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to its conflicts of laws principles.

**Section 12.16. Consent to Jurisdiction.** TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, EACH PARTY HERETO HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN THE STATE OF NEW YORK LOCATED IN NASSAU COUNTY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM PERTAINING TO OR ARISING OUT OF THIS AGREEMENT AND HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN A STATE OR FEDERAL COURT SITTING IN SAID STATE. THE PROVISIONS OF THIS SECTION 12.16 SHALL SURVIVE THE CLOSING.

**Section 12.17. Waiver of Trial by Jury.** TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN

4829-6396-9083.4

ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM PERTAINING TO OR ARISING OUT OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 12.17 SHALL SURVIVE THE CLOSING.

**Section 12.18. Successors and Assigns.** The covenants and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns. Except as may be specifically otherwise provided for herein to the contrary, no person other than the parties hereto shall have any rights hereunder as a third party beneficiary or otherwise. Except as may be otherwise specifically provided in this Agreement to the contrary, Purchaser shall not assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of Seller, to be given or withheld in Seller's sole discretion.

**Section 12.19. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same agreement with the same effect as if both of the parties had signed the same signature page.

**Section 12.20. Confidentiality of Agreement/Public Disclosure of Sale.** BOTH PARTIES AND THEIR RESPECTIVE AGENTS AGREE TO KEEP THE EXISTENCE AND TERMS AND CONDITIONS OF THIS AGREEMENT CONFIDENTIAL EXCEPT AS REQUIRED TO BE DISCLOSED BY LAW OR BY THE NCIDA IN CONNECTION WITH THE APPLICATION FOR NCIDA BENEFITS PURSUANT TO SECTION 8.02 ABOVE, PROVIDED HOWEVER THAT THE FOREGOING SHALL NOT PREVENT EACH PARTY FROM DISCLOSING, SUBJECT TO RECEIPT OF A COMMERCIALLY REASONABLE CONFIDENTIALITY AGREEMENT, THE EXISTENCE AND TERMS AND CONDITIONS OF THIS AGREEMENT TO POTENTIAL LENDERS, PARTNERS, COUNSEL, BROKERS, INVESTORS, ADVISORS AND OTHER PROFESSIONALS EMPLOYED BY PURCHASER. PRIOR TO THE CLOSING, ANY RELEASE TO THE PRESS OR THE MEDIA OF INFORMATION WITH RESPECT TO THE SALE CONTEMPLATED HEREIN OR ANY MATTERS SET FORTH IN THIS AGREEMENT WILL BE MADE ONLY IN THE FORM APPROVED BY PURCHASER AND SELLER AND THEIR RESPECTIVE COUNSEL. NOTWITHSTANDING THE FOREGOING, SELLER AND PURCHASER ARE PERMITTED TO DISCLOSE SUCH CONFIDENTIAL INFORMATION TO THE NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY OR ANY NEW YORK STATE OR NASSAU COUNTY AGENCY IN CONNECTION WITH THE NEGOTIATION OF TAX OR FINANCIAL INCENTIVES.

### **ARTICLE XIII**

#### **ESCROW**

**Section 13.01. Escrow Deposit.** Subject to the provisions of Paragraph 13.02 below, the Deposit shall be the property of and shall be paid over to Seller upon Closing or upon Purchaser's default as provided in Paragraph 11.02 of this Agreement.

**Section 13.02. Escrow Payments.** To obtain a payment from the Deposit, other than at Closing, Seller (the "Requesting Party") shall give to Escrow Agent, a notice ("Escrow Demand Notice") that the Requesting Party is entitled to a payment out of the Deposit. Upon receipt of any such Escrow Demand Notice, Escrow Agent shall promptly deliver a copy of such notice to the other party. If Escrow Agent does not receive a notice from the other party within ten (10) days after such other party's receipt of the copy of the Escrow Demand Notice, then Escrow Agent shall pay over the requested amount from the Deposit to the Requesting Party. If within said ten (10) day period Escrow Agent shall have received a statement from the other party that the Requesting Party is not in accordance with the provisions of this Agreement entitled to the payment of the Deposit requested by the Requesting Party and directing Escrow Agent not to deliver to the Requesting Party the balance of the Deposit, then Escrow Agent shall, at its sole option, either:

(a) Deliver to any court of competent jurisdiction the balance of the Deposit, or

(b) Retain the balance of the Deposit until one of the following events shall have occurred:

(i) there shall have been served upon Escrow Agent an order or judgment duly entered in a court of competent jurisdiction setting forth the manner in which the Deposit is to be paid out in which event Escrow Agent shall deliver the balance of the Deposit as set forth in such order or judgment; or

(ii) Seller and Purchaser shall have delivered to Escrow Agent, a joint statement executed by both Seller and Purchaser setting forth the manner in which the Deposit is to be paid out in which event the Escrow Agent shall, except to the extent provided below, pay the balance of the Deposit as set forth in such statement.

**Section 13.03. Escrow Agent.** The parties acknowledge that Escrow Agent is acting solely as a stakeholder at their request and for their convenience and shall not be deemed to be the agent of either Seller or Purchaser. Escrow Agent shall not be liable to either Seller or Purchaser in connection with its performance as Escrow Agent hereunder other than for its willful misconduct. Seller and Purchaser shall jointly indemnify, defend and hold harmless Escrow Agent from and against any and all damages, losses, liabilities, costs and expenses (including legal fees and disbursements and the costs of enforcing this indemnity) which result from or arise out of or in connection with the escrow (including, without limitation, the collection of any amounts due or payable to Escrow Agent) and any actions of Escrow Agent in connection therewith, other than Escrow Agent's willful misconduct. As between Seller and Purchaser, the party not entitled to the Deposit shall be responsible for all such costs and shall reimburse the party entitled to the Deposit for any such costs paid by such party promptly following written demand therefor.

**Section 13.04. Escrow Agent Liability.** Upon delivery of the balance of the Deposit as provided herein, Escrow Agent shall be relieved of all liability, responsibility or obligation with respect to or arising out of the Deposit.

**Section 13.05. Escrow Agent as Seller's Attorney.** The Purchaser hereby acknowledges and understands that the Escrow Agent is and shall remain the attorney for Seller, and this Escrow Agreement shall not establish an attorney-client-relationship with Purchaser. Accordingly, the Escrow Agent may represent Seller in any disputes between Purchaser and Seller. Purchaser and Seller hereby expressly consent to, and waive any and all claims of conflict of interest arising from, the Escrow Agent's representation of Seller and this Escrow Agreement.

**Section 13.06. No Personal Liability.** Escrow Agent shall have no liability or obligation for loss of all or any part of the Deposit by reason of the insolvency or failure of the institutions of depository with which the Deposit has been escrowed. In no event shall any trustee, officer, director, partner, shareholder, member, agent or employee of Purchaser, Seller or Escrow Agent be personally liable of any of the obligations set forth herein.

**Section 13.07. Reliance on Material.** Escrow Agent shall be entitled to rely on the advice of counsel and on such notices and/or certificates as may be furnished to it without inquiry in to the sufficiency or correctness thereof.

#### **ARTICLE XIV**

#### **LEASE AGREEMENT**

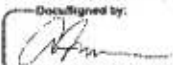
**Section 14.01. Seller's Continued Occupancy of the Property.** At the Closing, Purchaser as landlord, and Seller as tenant, shall execute a lease in the form attached hereto as Exhibit E (the "Lease"), whereby Seller shall lease from Purchaser a portion of the Property, as more particularly described in the Lease (the "Demised Premises"). Pursuant to Article 2 of the Lease, Purchaser, as landlord, is obligated to perform certain Landlord Work (as defined therein) in accordance with the terms, conditions, criteria and provisions set forth in Exhibit C of the Lease. Purchaser may, at Purchaser's sole cost and expense, prior to Closing elect to commence the process to prepare plans and specifications and conduct bids for Landlord Work set forth in Section 1 of Exhibit C of the Lease, in which event Seller, as tenant, agrees to reasonably cooperate with Purchaser in complying with the process set forth in Section 1 of Exhibit C of the Lease, provided, however, that Purchaser shall be proceeding at its own risk and Seller shall have no liability to Purchaser for damages or otherwise in the event the transaction contemplated hereby fails to close for any reason.

[NO FURTHER TEXT ON THIS PAGE; SIGNATURE PAGE FOLLOWS]

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


**SELLER:**

PALL CORPORATION, a New York corporation

By:   
Name: Adam Mandelbaum  
Title: Assistant General Counsel

**PURCHASER:**

25 HARBOR PARK DRIVE REALTY LLC, a  
limited liability company

By:   
Name: Yong Jin Chang  
Title: MANAGING MEMBER

Agreed and Acknowledged as to Articles 13 and 14 by

**ESCROW AGENT:**

NIXON PEABODY LLP

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



Schedule A

Legal Description of Land

(annexed on next page)

EXHIBIT A  
DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being at Port Washington, Town of North Hempstead, County of Nassau and State of New York, known and designated as and by Lot No. 1 and part of Lot No. 6 in Block 87 on a certain map entitled, "Map of Hempstead Harbor Industrial Park, Section No. 1, Port Washington, Town of North Hempstead, Nassau County, New York, December 1968, J.J. Bohn L.S.", and filed in the Office of the Clerk of the County of Nassau on April 29, 1969 as Map No. 8227 and Lots 11, 12, 13 and 14 in Block 87 on a certain map entitled "Map of Hempstead Harbor Industrial Park Section 3, Port Washington, Town of North Hempstead, Nassau County, New York, April 1973, Bohn and Bonacci, P.C., successor to J.J. Bohn, L.S.", and filed in the Office of the Clerk of the County of Nassau on December 22, 1977 as Map No. 8713, which are bounded and described as follows:

BEGINNING at a point on the easterly side of Industrial Park where the same is intersected by the division line between Lots 1 and 2 in Block 87 as shown on the "Map of Hempstead Harbor Industrial Park Section 1";

RUNNING THENCE northerly along the easterly side of Industrial Park Drive the following five (5) courses and distances:

1. north 18 degrees 26 minutes 15 seconds west, 40.00 feet;
2. along the arc of a curve bearing to the right, having a radius of 1,000.00 feet, a distance along the arc of said curve of 436.33 feet (actual distance: 436.10 feet, as shown on said map);
3. north 06 degrees 33 minutes 45 seconds east, 187.71 feet;
4. along the arc of a curve bearing to the left, having a radius of 544.27 feet, a distance along the arc of said curve of 191.09 feet;
5. north 13 degrees 33 minutes 12 seconds west, 213.01 feet to the extreme southerly end of a curve whose radius is 50.00 feet and has a length of 78.54 feet, which connects the easterly side of Industrial Park Drive with the southerly side of Harbor Park Drive;

RUNNING THENCE northeasterly and easterly along said curve, a distance of 78.54 feet to the southerly side of Harbor Park Drive;

RUNNING THENCE southerly and southeasterly along the along the southerly and southwesterly side of Harbor Park Drive the following three (3) courses and distances:

1. north 76 degrees 26 minutes 48 seconds east, 78.50 feet;

4829-6396-9083.4

2. along the arc of a curve bearing to the right, having a radius of 389.75 feet, a distance along the arc of said curve of 332.43 feet;
3. south 54 degrees 41 minutes 04 seconds east, 265.00 feet;

THENCE easterly along the southerly side of Harbor Park Drive along the arc of a circle, bearing to the left, with a radius of 370.00 feet, a distance of 232.48 feet to the westerly terminus of the curve connecting the southerly side of Harbor Park Drive with the westerly side of West Shore Drive;

THENCE easterly and southerly along the arc of said curve bearing to the right, with a radius of 50.00 feet, a distance of 78.54 feet;

THENCE south 00 degrees 41 minutes 04 seconds east along the westerly side of West Shore Drive, 153.12 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east still along the westerly side of West Shore Drive, 218.88 feet;

RUNNING THENCE south 89 degrees 35 minutes 22 seconds west, 295.00 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east, 256.78 feet;

RUNNING THENCE south 89 degrees 35 minutes 22 seconds west, 125.00 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east, 32.89 feet;

RUNNING THENCE south 71 degrees 33 minutes 45 seconds west, 424.78 feet to the easterly side of Industrial Park Drive the point or place of BEGINNING.

05-024001.217747.136

A-2

4829-6396-9083.4

**Schedule B**

**List of Excluded Personal Property**

- All laboratory equipment, fixtures, materials, chemicals, and furniture;
- All furniture and equipment currently located within the Demised Premises and up to 25% of the furniture currently located in the balance of the Building;
- All executive office furniture;
- Conference room furniture currently located in conference rooms 110, 111, & 130;
- All copiers, phones, computers, servers, printers, and other business equipment;
- All audio/visual equipment (other than the equipment serving the Auditorium);
- DI Water system;
- IT Backup generator;
- Hand tools, shop equipment, industrial material handling equipment;
- Hazardous materials racking;
- Security system.

**Schedule C**  
**List of Service Contracts**

1. Cafeteria- Flik (Compass group)
2. Janitorial-MD Building services
3. Security Guard-Universal Protection
4. HVAC PM- Johnson Controls
5. PPC Air Dryers - Industrial Process Solutions
6. Cooling Tower – Tech2O Cooling Towers
7. Elevator Maintenance – OTIS Elevator Maintenance
8. Fire Sprinkler – Maccarone Plumbing, Inc.
9. Grounds Maintenance – Island Greenery
10. Compressed Air and Vacuum Maintenance – Iacono, Inc.
11. Water Treatment Program – Chemtreat
12. Preaction - United Fire Protection Corp.
13. Life Safety Maintenance – Casey Fire Systems, Inc.
14. Generator Maintenance - On Call Power Co., Inc.
15. Fire Alarm Central Station Notification – R. G. A. Security Systems, Inc.
16. Domestic Hot Water Heater Maintenance – Fleet Pump & Service Group, Inc.
17. Boller and Burner Maintenance and Service - Fleet Pump & Service Group, Inc.



**Schedule D**  
**List of Permitted Exceptions**

1. Any and all present and future laws, ordinances, codes, orders, restrictions and regulations, including without limitation, zoning, building and environmental codes, laws and regulations and all other restrictions, requirements, and orders of the State of New York and United States of America, and all boards, bureaus, commissions, departments and bodies of any municipal, borough, state or federal authority now or hereafter having or acquiring jurisdiction over the Property or the use or improvement thereof, including, but not limited to, landmark, historic or wetland designations, provided that same do not prohibit the current use of the Property.
2. The lien of real estate taxes, water charges, sewer rents, vault taxes and unpaid installments of assessments, subject to adjustment, which are not due and payable on or prior to the date of the Closing.
3. Rights of electric, gas, steam, telephone, cable, water and other utility companies to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Property.
4. Encroachments of building walls, foundations, stoops, areas, cellar steps, trim cornices, lintels, window sills, awnings, canopies, ledges, fences, hedges, coping and retaining walls projecting from the Property over any street or highway or over any adjoining property and encroachments of similar elements projecting from adjoining property over the Property, if any.
5. All other covenants, restrictions and easements of record as of the date hereof, howsoever described which are not otherwise described in this Schedule D, provided that same do not prohibit the current use of the Property or contain forfeiture or reverter of title provisions.
6. Variations, if any, between record lot lines and those shown on tax maps and any state of facts that an accurate survey would disclose.
7. Revocability or lack of right to maintain vaults, coal chutes, excavations or sub-surface equipment beyond the line of the Property.

8. UCC Financing Statements filed more than five (5) years prior to the date of the Closing and not renewed or filed against property or equipment no longer located on the Property.
9. Consents by any former owner of the Property for the erection of any structure or structures on, under or above any streets on which the Property abuts.
10. Any lien, encumbrance or lis pendens for which the instrument required to remove said encumbrance of record is delivered on or prior to the Closing Date to the proper party or to the Title Company together with the required recording fee and as to which the Title Company will omit as an exception to Purchaser's title insurance policy.
11. The lien of any assessment which is or may become payable in annual or other periodic installments of which any installment is then a charge or lien, provided that apportionment thereof is made pursuant to the terms of this Agreement.
12. Judgments, bankruptcies or other proceedings against other persons having names the same or similar to that of Seller or its principals, provided that upon request Seller delivers an affidavit showing such judgments, bankruptcies or other proceedings are not against Seller or its principals.
13. Possible lack of any right to maintain vaults or vaulted areas, signs, marquees, canopies, utility hole covers and like installations under the sidewalks and streets abutting the Property.
14. Unpaid inheritance, estate, franchise, income, dissolution, real estate, transfer and other taxes with respect to Seller or any corporation in the chain of title, or any other matters which may be liquidated by sums certain and which may constitute a lien against the Property, provided the Title Company will issue or bind itself to issue to Purchaser a policy of title insurance insuring against the collection of same.
15. Items which are or become Permitted Exceptions pursuant to the terms of this Agreement, including without limitation, Sections 4.03 or 4.04 hereof.
16. The standard pre-printed title exceptions and conditions contained in Purchaser's title report.
17. The Lease Agreement substantially in the form attached hereto as Exhibit E whereby Seller shall lease from Purchaser a portion of the Property, as more particularly described in Article XIV of the Lease.
18. The NCIDA Lease and other documents required to obtain the NCIDA Benefits pursuant to Article VIII.

**EXHIBIT A**

**Form of Deed**

(follows immediately)

**BARGAIN AND SALE  
DEED WITH COVENANT  
AGAINST GRANTOR'S ACTS**

**THIS INDENTURE**, made the \_\_\_\_ day of \_\_\_\_\_, 201\_\_,

**BETWEEN PALL CORPORATION**, as fee owner, having an address at 25 Harbor Park Drive, Port Washington, New York 11050, party of the first part ("**Grantor**"), and \_\_\_\_\_, party of the second part ("**Grantee**").

**WITNESSETH**, that the Grantor, in consideration of **Ten and 00/100 Dollars (\$10.00)** and other valuable consideration paid by the Grantee does hereby grant and release unto the Grantee, the heirs and successors and assigns of the Grantee forever, all that certain plot, piece or parcel of land, with the buildings and improvements therein erected, situate, lying and being as described on Schedule A attached hereto and made a part hereof.

**TOGETHER** with all right, title and interest, if any, of the Grantor in and to any streets and roads abutting the above described premises to the center lines thereof;

**TOGETHER** with the appurtenances, and all the estate and rights of the Grantor in and to said premises;

**SUBJECT** to all covenants, easements, restrictions, reservations and other matters affecting title and to all state of facts an accurate survey would show.

**TO HAVE AND TO HOLD** the premises herein granted unto Grantor, the heirs or successors and assigns of the Grantee forever.

**BEING** and intending to same premises conveyed to Grantor by Deed dated \_\_\_\_\_ and recorded in the Nassau County Clerk's Office on \_\_\_\_\_ in Liber \_\_\_\_ of Deeds, Page \_\_\_\_\_.

Property address: 25 Harbor Park Drive, Port Washington, New York 11050

Tax Mailing Address: \_\_\_\_\_

Section, Block and Lot Nos. \_\_\_\_\_

Tax Account Number: \_\_\_\_\_

**AND** the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

Grantor, in compliance with Section 13 of the Lien Law, covenants that the Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply

Exhibit A

the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the Grantor has duly executed this deed the day and year first above written.

**GRANTOR:**

PALL CORPORATION

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

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2016, 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



Schedule A  
Legal Description  
(annexed on next page)

EXHIBIT A  
DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being at Port Washington, Town of North Hempstead, County of Nassau and State of New York, known and designated as and by Lot No. 1 and part of Lot No. 6 in Block 87 on a certain map entitled, "Map of Hempstead Harbor Industrial Park, Section No. 1, Port Washington, Town of North Hempstead, Nassau County, New York, December 1968, J.J. Bohn L.S.", and filed in the Office of the Clerk of the County of Nassau on April 29, 1969 as Map No. 8227 and Lots 11, 12, 13 and 14 in Block 87 on a certain map entitled "Map of Hempstead Harbor Industrial Park Section 3, Port Washington, Town of North Hempstead, Nassau County, New York, April 1973, Bohn and Bonacci, P.C., successor to J.J. Bohn, L.S.", and filed in the Office of the Clerk of the County of Nassau on December 22, 1977 as Map No. 8713, which are bounded and described as follows:

BEGINNING at a point on the easterly side of Industrial Park where the same is intersected by the division line between Lots 1 and 2 in Block 87 as shown on the "Map of Hempstead Harbor Industrial Park Section 1";

RUNNING THENCE northerly along the easterly side of Industrial Park Drive the following five (5) courses and distances:

1. north 18 degrees 26 minutes 15 seconds west, 40.00 feet;
2. along the arc of a curve bearing to the right, having a radius of 1,000.00 feet, a distance along the arc of said curve of 436.33 feet (actual distance: 436.10 feet, as shown on said map);
3. north 06 degrees 33 minutes 45 seconds east, 187.71 feet;
4. along the arc of a curve bearing to the left, having a radius of 544.27 feet, a distance along the arc of said curve of 191.09 feet;
5. north 13 degrees 33 minutes 12 seconds west, 213.01 feet to the extreme southerly end of a curve whose radius is 50.00 feet and has a length of 78.54 feet, which connects the easterly side of Industrial Park Drive with the southerly side of Harbor Park Drive;

RUNNING THENCE northeasterly and easterly along said curve, a distance of 78.54 feet to the southerly side of Harbor Park Drive;

RUNNING THENCE westerly and southeasterly along the along the southerly and southwesterly side of Harbor Park Drive the following three (3) courses and distances:

1. north 76 degrees 26 minutes 48 seconds east, 78.50 feet;

2. along the arc of a curve bearing to the right, having a radius of 389.75 feet, a distance along the arc of said curve of 332.43 feet;
3. south 54 degrees 41 minutes 04 seconds east, 265.00 feet;

THENCE easterly along the southerly side of Harbor Park Drive along the arc of a circle, bearing to the left, with a radius of 370.00 feet, a distance of 232.48 feet to the westerly terminus of the curve connecting the southerly side of Harbor Park Drive with the westerly side of West Shore Drive;

THENCE easterly and southerly along the arc of said curve bearing to the right, with a radius of 50.00 feet, a distance of 78.54 feet;

THENCE south 00 degrees 41 minutes 04 seconds east along the westerly side of West Shore Drive, 153.12 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east still along the westerly side of West Shore Drive, 218.88 feet;

RUNNING THENCE south 89 degrees 35 minutes 22 seconds west, 295.00 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east, 256.78 feet;

RUNNING THENCE south 89 degrees 35 minutes 22 seconds west, 125.00 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east, 32.89 feet;

RUNNING THENCE south 71 degrees 33 minutes 45 seconds west, 424.78 feet to the easterly side of Industrial Park Drive the point or place of BEGINNING.

TO

SECTION: 6  
BLOCK: 87  
LOTS: 15 A&B, 16 A&B  
COUNTY  
STREET ADDRESS

RETURN BY MAIL TO:

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

**EXHIBIT B**

**Form of Bill of Sale**

(follows immediately)



## BILL OF SALE

Seller, PALL CORPORATION, a New York corporation, in consideration of Ten and No/100 Dollars (\$10.00), receipt of which is hereby acknowledged, does hereby sell, assign, transfer and set over to Purchaser, \_\_\_\_\_, the following described personal property, to wit:

All of Seller's right, title and interest, if any, in and to any and all fixtures, machinery, equipment, supplies and other articles of personal property attached or appurtenant to or used in connection with the land and building located at 25 Harbor Park Drive, Port Washington, Town of North Hempstead, County of Nassau, State of New York, which real estate is legally described on Exhibit "A" attached hereto and made a part (the "Premises"), but excluding cash, cash equivalents, securities, bank accounts and funds of the Seller, the business records of Seller, any fixtures, furniture, furnishings, equipment or personal property, if any, of tenants occupying the improvements situated on the real estate, and fixtures, equipment, and machines, if any, leased by Seller under any agreements (all of the property and interests herein before described and not excluded are hereinafter collectively referred to as the "Personal Property").

This transfer is made without representation, warranty or guaranty, express or implied, by Seller, or recourse against Seller, of any kind whatsoever, except as may be set forth in that certain Purchase and Sale Agreement dated \_\_\_\_\_ by and between Seller and Purchaser.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed and delivered by its duly authorized representative as of the date first set forth above.

**PALL CORPORATION**

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

Exhibit B

EXHIBIT A  
DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being at Port Washington, Town of North Hempstead, County of Nassau and State of New York, known and designated as and by Lot No. 1 and part of Lot No. 6 in Block 87 on a certain map entitled, "Map of Hempstead Harbor Industrial Park, Section No. 1, Port Washington, Town of North Hempstead, Nassau County, New York, December 1968, J.J. Bohn L.S.", and filed in the Office of the Clerk of the County of Nassau on April 29, 1969 as Map No. 8227 and Lots 11, 12, 13 and 14 in Block 87 on a certain map entitled "Map of Hempstead Harbor Industrial Park Section 3, Port Washington, Town of North Hempstead, Nassau County, New York, April 1973, Bohn and Bonacci, P.C., successor to J.J. Bohn, L.S.", and filed in the Office of the Clerk of the County of Nassau on December 22, 1977 as Map No. 8713, which are bounded and described as follows:

BEGINNING at a point on the easterly side of Industrial Park where the same is intersected by the division line between Lots 1 and 2 in Block 87 as shown on the "Map of Hempstead Harbor Industrial Park Section 1";

RUNNING THENCE northerly along the easterly side of Industrial Park Drive the following five (5) courses and distances:

1. north 18 degrees 26 minutes 15 seconds west, 40.00 feet;
2. along the arc of a curve bearing to the right, having a radius of 1,000.00 feet, a distance along the arc of said curve of 436.33 feet (actual distance: 436.10 feet, as shown on said map);
3. north 06 degrees 33 minutes 45 seconds east, 187.71 feet;
4. along the arc of a curve bearing to the left, having a radius of 544.27 feet, a distance along the arc of said curve of 191.09 feet;
5. north 13 degrees 33 minutes 12 seconds west, 213.01 feet to the extreme southerly end of a curve whose radius is 50.00 feet and has a length of 78.54 feet, which connects the easterly side of Industrial Park Drive with the southerly side of Harbor Park Drive;

RUNNING THENCE northeasterly and easterly along said curve, a distance of 78.54 feet to the southerly side of Harbor Park Drive;

RUNNING THENCE southerly and southeasterly along the along the southerly and southwesterly side of Harbor Park Drive the following three (3) courses and distances:

1. north 76 degrees 26 minutes 48 seconds east, 78.50 feet;

2. along the arc of a curve bearing to the right, having a radius of 389.75 feet, a distance along the arc of said curve of 332.43 feet;

3. south 54 degrees 43 minutes 04 seconds east, 265.00 feet;

THENCE easterly along the southerly side of Harbor Park Drive along the arc of a circle, bearing to the left, with a radius of 370.00 feet, a distance of 232.48 feet to the westerly terminus of the curve connecting the southerly side of Harbor Park Drive with the westerly side of West Shore Drive;

THENCE easterly and southerly along the arc of said curve bearing to the right, with a radius of 50.00 feet, a distance of 78.54 feet;

THENCE south 00 degrees 41 minutes 04 seconds east along the westerly side of West Shore Drive, 153.12 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east still along the westerly side of West Shore Drive, 218.88 feet;

RUNNING THENCE south 89 degrees 35 minutes 22 seconds west, 295.00 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east, 256.78 feet;

RUNNING THENCE south 89 degrees 35 minutes 22 seconds west, 125.00 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east, 32.89 feet;

RUNNING THENCE south 71 degrees 33 minutes 45 seconds west, 424.78 feet to the easterly side of Industrial Park Drive the point or place of BEGINNING.

**EXHIBIT C**

**Form of Assignment and Assumption of Intangible Property**

(follows immediately)

**ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PROPERTY**

ASSIGNMENT made this \_\_\_\_\_ day of \_\_\_\_\_ (the "Date of this Instrument") by and between PALL CORPORATION, a New York corporation (the "Assignor") and \_\_\_\_\_, a \_\_\_\_\_ limited liability company (the "Assignee").

Reference is made to the land with the buildings and improvements thereon located at 25 Harbor Park Drive, Port Washington, New York as more particularly described in Exhibit A attached hereto (the "Real Property"). Assignor is conveying the Real Property to Assignee by a Deed of even date herewith to be recorded in the Nassau County Clerk's Office.

In connection with such conveyance, Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby assigns, grants, conveys and transfers to Assignee, to the extent that the same exist and are transferable, all of Assignor's right, title and interest (if any) in (i) any governmental permits, entitlements, licenses and approvals issued in connection with the Real Property, excluding all healthcare operating licenses, and (ii) any warranties and guarantees received in connection with any work or services performed at the Real Property (collectively, the "Intangible Property").

To have and to hold the Intangible Property unto Assignee, its successors and assigns, forever.

Assignee hereby assumes any and all obligations of Assignor under the Intangible Property.

This instrument shall be binding upon Assignor and its successors and assigns and inure to the benefit of Assignee and its successors and assigns.

Notwithstanding anything to the contrary set forth herein, this instrument (and the foregoing assignment, grant, conveyance and transfer of the Intangible Property) is executed (and made) by Assignor without any representation, warranty or recourse whatsoever.

This instrument shall be construed in accordance with the laws of the State of New York.

[No further text on this page. Signature page follows.]

Exhibit C



IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

**ASSIGNOR:**

PALL CORPORATION,  
a New York corporation

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

**ASSIGNEE:**

\_\_\_\_\_,  
a \_\_\_\_\_ limited liability company

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

EXHIBIT A  
DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being at Port Washington, Town of North Hempstead, County of Nassau and State of New York, known and designated as and by Lot No. 1 and part of Lot No. 6 in Block 87 on a certain map entitled, "Map of Hempstead Harbor Industrial Park, Section No. 1, Port Washington, Town of North Hempstead, Nassau County, New York, December 1968, J.J. Bohn L.S.", and filed in the Office of the Clerk of the County of Nassau on April 29, 1969 as Map No. 8227 and Lots 11, 12, 13 and 14 in Block 87 on a certain map entitled "Map of Hempstead Harbor Industrial Park Section 1, Port Washington, Town of North Hempstead, Nassau County, New York, April 1973, Bohn and Bonacci, P.C., successor to J.J. Bohn, L.S.", and filed in the Office of the Clerk of the County of Nassau on December 22, 1977 as Map No. 8713, which are bounded and described as follows:

BEGINNING at a point on the easterly side of Industrial Park where the same is intersected by the division line between Lots 1 and 2 in Block 87 as shown on the "Map of Hempstead Harbor Industrial Park Section 1";

RUNNING THENCE northerly along the easterly side of Industrial Park Drive the following five (5) courses and distances:

1. north 18 degrees 26 minutes 15 seconds west, 40.00 feet;
2. along the arc of a curve bearing to the right, having a radius of 1,000.00 feet, a distance along the arc of said curve of 436.33 feet (actual distance: 436.10 feet, as shown on said map);
3. north 06 degrees 33 minutes 45 seconds east, 187.71 feet;
4. along the arc of a curve bearing to the left, having a radius of 544.27 feet, a distance along the arc of said curve of 191.09 feet;
5. north 13 degrees 33 minutes 12 seconds west, 213.01 feet to the extreme southerly end of a curve whose radius is 50.00 feet and has a length of 78.54 feet, which connects the easterly side of Industrial Park Drive with the southerly side of Harbor Park Drive;

RUNNING THENCE northeasterly and easterly along said curve, a distance of 78.54 feet to the southerly side of Harbor Park Drive;

RUNNING THENCE southerly and southeasterly along the southerly and southwesterly side of Harbor Park Drive the following three (3) courses and distances:

1. north 75 degrees 26 minutes 48 seconds east, 78.50 feet;

2. along the arc of a curve bearing to the right, having a radius of 389.75 feet, a distance along the arc of said curve of 332.43 feet;
3. south 54 degrees 41 minutes 04 seconds east, 265.00 feet;

THENCE easterly along the southerly side of Harbor Park Drive along the arc of a circle, bearing to the left, with a radius of 370.00 feet, a distance of 232.48 feet to the westerly terminus of the curve connecting the southerly side of Harbor Park Drive with the westerly side of West Shore Drive;

THENCE easterly and southerly along the arc of said curve bearing to the right, with a radius of 50.00 feet, a distance of 78.54 feet;

THENCE south 00 degrees 41 minutes 04 seconds east along the westerly side of West Shore Drive, 153.12 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east still along the westerly side of West Shore Drive, 218.88 feet;

RUNNING THENCE south 89 degrees 35 minutes 22 seconds west, 295.00 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east, 256.78 feet;

RUNNING THENCE south 89 degrees 35 minutes 22 seconds west, 125.00 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east, 32.89 feet;

RUNNING THENCE south 71 degrees 33 minutes 45 seconds west, 424.78 feet to the easterly side of Industrial Park Drive the point or place of BEGINNING.

**EXHIBIT D**

**Form of FIRPTA Certificate**

(follows immediately)

## FIRPTA CERTIFICATE

### SELLER'S CERTIFICATION OF NON-FOREIGN STATUS

This statement is provided in accordance with Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and the Treasury Regulations promulgated thereunder, which provide that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person, and the owner of a disregarded entity will be considered the transferor of the property and not the disregarded entity.

To inform \_\_\_\_\_, ("Buyer"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended (collectively, the "Code"), will not be required for transfer of certain real property to Buyer by PALL CORPORATION, a New York corporation (the "Seller"), the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);

2. Seller's U.S. taxpayer identification number is as follows: \_\_\_\_\_. Seller is not a "disregarded entity" as defined in 26 CFR Section 1.1445-2(b)(2)(iii).

3. Seller's office address is as follows:

25 Harbor Park Drive  
Port Washington, New York

Seller understands that this Certification may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment, or both.

Seller understands that Buyer is relying on this Certification in determining whether withholding is required upon said transfer.

Under penalty of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

Exhibit D



Date: \_\_\_\_\_, \_\_\_\_\_.

**PALL CORPORATION,**  
a New York corporation

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

Name:

Title:

**EXHIBIT E**  
**LEASE**  
**(ATTACHED)**

AGREEMENT OF LEASE

Between

**25 HARBOR PARK DRIVE REALTY LLC**

Landlord,

And

**PALL CORPORATION**

Tenant,

Dated: \_\_\_\_\_, 2016

PREMISES

**25 Harbor Park Drive, Port Washington, New York**

Exhibit E

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1    DEMISED PREMISES; RENT .....	3
1.01    Term; Extension and Cancellation.....	3
1.02    Fixed Rent.....	4
1.03    Additional Rent.....	5
ARTICLE 2    CONDITION OF DEMISED PREMISES .....	5
2.01    No Representations / AS-IS, WHERE-IS.....	5
ARTICLE 3    SERVICES.....	5
3.01    Services .....	5
ARTICLE 4    REAL ESTATE TAXES .....	6
4.01    Definitions.....	6
4.02    Payment.....	6
4.03    Proration.....	7
4.04    Tax Proceedings.....	7
ARTICLE 5    USE.....	7
5.01    Permitted Uses.....	7
5.02    Prohibitions.....	8
5.03    Permits.....	8
ARTICLE 6    ALTERATIONS AND INSTALLATIONS .....	8
6.01    Consent; Performance.....	8
6.02    Mechanic's Liens.....	9
6.03    Alteration and Improvements.....	9
ARTICLE 7    REPAIRS .....	10
7.01    Obligations of Tenant.....	10
7.02    Obligations of Landlord.....	10
7.03    No Allowance.....	10
7.04    Cure.....	11
ARTICLE 8    REQUIREMENTS OF LAW .....	11
8.01    Compliance By Parties.....	11
ARTICLE 9    INSURANCE; LOSS REIMBURSEMENT; LIABILITY; INDEMNITY .....	9

9.01	Tenant's Acts.....	11
9.02	Landlord's Liability.....	12
9.03	Property Insurance.....	12
9.04	Liability Insurance.....	12
9.05	Tenant Indemnity.....	13
9.06	Landlord Indemnity.....	13
ARTICLE 10	DAMAGE BY FIRE OR OTHER CAUSE.....	14
10.01	Notice to Landlord.....	14
10.02	Termination or Restoration.....	14
10.03	Payment of Proceeds.....	15
10.04	Release and Waiver of Subrogation.....	15
ARTICLE 11	ASSIGNMENT AND SUBLETTING.....	15
11.01	Landlord Consent.....	15
ARTICLE 12	SIGNAGE.....	16
ARTICLE 13	CONDEMNATION.....	16
13.01	Total and Partial Condemnation.....	16
13.02	Apportionment of Rent.....	17
13.03	Condemnation Award.....	17
13.04	Restoration.....	17
13.05	Temporary Taking.....	17
ARTICLE 14	ACCESS TO DEMISED PREMISES.....	17
14.01	Repairs by Landlord.....	17
14.02	Prospective Tenants.....	18
14.03	Environmental Investigation and Remediation.....	18
ARTICLE 15	CONDITIONS OF LIMITATION.....	18
15.01	Bankruptcy.....	18
15.02	Other Events of Default.....	19
ARTICLE 16	RE-ENTRY BY LANDLORD; INJUNCTION.....	20
16.01	Reentry.....	20
16.02	Injunction.....	20
16.03	Waiver of Redemption.....	20
ARTICLE 17	DAMAGES.....	20



17.01	Measure of Damages.....	20
17.02	Legal Proceedings.....	21
ARTICLE 18	LANDLORD'S RIGHT TO PERFORM TENANT'S OBLIGATIONS .....	21
18.01	Cure.....	21
ARTICLE 19	QUIET ENJOYMENT.....	21
19.01	Covenant.....	21
ARTICLE 20	SUBORDINATION, ATTORNMENT, NON-DISTURBANCE, ETC.....	22
20.01	Subordination.....	22
20.02	No Right of Termination.....	22
20.03	Lease Modifications.....	22
20.04	Attornment.....	22
20.05	Nondisturbance Agreement .....	22
ARTICLE 21	INVALIDITY OF PROVISION.....	23
21.01	Invalidity.....	23
ARTICLE 22	BROKERAGE.....	23
22.01	Tenant's and Landlord's Obligation.....	23
ARTICLE 23	ENVIRONMENTAL.....	23
23.01	Tenant's Obligations.....	23
23.02	Landlord's Obligations.....	24
23.03	Remediation.....	24
23.04	Definition.....	24
ARTICLE 24	CERTIFICATE OF TENANT .....	24
24.01	Estoppel.....	24
ARTICLE 25	LEGAL PROCEEDINGS AND WAIVER OF JURY TRIAL .....	25
25.01	Jury Trial Waiver.....	25
ARTICLE 26	SURRENDER OF DEMISED PREMISES.....	25
26.01	Surrender.....	25
26.02	Holdover.....	25
ARTICLE 27	CONSENTS AND APPROVALS.....	26
27.01	Reasonable Time.....	26
ARTICLE 28	NOTICES.....	26
28.01	Method and Address.....	26

ARTICLE 29	NO WAIVER.....	26
29.01	No Waiver.....	26
ARTICLE 30	LANDLORD DEFAULT .....	27
30.01	Landlord.....	27
ARTICLE 31	INABILITY TO PERFORM .....	27
31.01	Unavoidable Delay.....	27
ARTICLE 32	NO ORAL MODIFICATION.....	28
32.01	Amendment.....	28
ARTICLE 33	NON-LIABILITY .....	28
33.01	Landlord Liability.....	28
ARTICLE 34	MISCELLANEOUS .....	28
34.01	Governing Law.....	28
34.02	Independent Covenants.....	28
34.03	Gender.....	28
34.04	Captions.....	29
34.05	Legal Proceedings.....	29
34.06	No Consequential Damages.....	29
34.07	Counterparts.....	29
SIGNATURE PAGE .....		30

**EXHIBITS:**

- A. Description of Land
- A-1. Site Plan
- B. Demised Premises
- C. Work Letter
- D. Cleaning Specifications
- E. Cafeteria

AGREEMENT OF LEASE made as of this \_\_\_\_ day of \_\_\_\_\_, 2016  
("Commencement Date") between 25 HARBOR PARK DRIVE REALTY LLC, a  
\_\_\_\_\_ having an address at 57 Seaview Blvd, Port Washington, NY, 11050  
(hereinafter referred to as "Landlord"); and PALL CORPORATION, a New York corporation  
with offices at 25 Harbor Park Drive, Port Washington, New York (hereinafter referred to as  
"Tenant").

WITNESSETH

WHEREAS, Landlord and Tenant have entered into that certain Purchase and Sale Agreement dated \_\_\_\_\_, 2016 by and between Tenant, as Seller, and Landlord, as Purchaser (the "Agreement of Sale"); and

WHEREAS, the Purchase and Sale Agreement provides for the sale of certain real property more particularly described in Exhibit A annexed hereto and made a part hereof, together with the improvements situated thereon, located at 25 Harbor Park Drive, Port Washington, in the Town of North Hempstead, Nassau County, New York; and

WHEREAS, in connection with the sale of the Property (as hereinafter defined), and pursuant to Section 14 of the Purchase and Sale Agreement, Tenant has agreed to lease back from Landlord a portion of the Property more particularly described herein on the terms and conditions set forth herein.

NOW, THEREFORE, parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, trustees, successors and assigns, hereby covenant as follows:

Definitions

In addition to the other terms elsewhere defined in this Lease, the following terms whenever used in this Lease shall have the meanings set forth in this Reference Page.

"Brokers": Colliers International LI, Inc.

"Building": Two (2) story building located at 25 Harbor Park Drive, Port Washington, New York, consisting of approximately 272,142 rentable square feet.

"Building Systems": Building Systems shall mean and include such heating, ventilating and air-conditioning systems, generators, and such elevators, water, sewerage, toilet, plumbing, sprinkler, electric, wiring and mechanical systems, now or hereafter installed in the Building, and the fixtures, equipment and appurtenances thereof, and all other mechanical devices, fixtures, equipment, appurtenances and systems in the Building.

"Business Days": All days except Sundays and days observed by the Federal or New York State governments as legal holidays.

**"Business Hours"** shall mean 7:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday.

**"Commencement Date"**: The date on which this Lease Agreement is fully executed and delivered.

**"Expiration Date"**: The last day of the calendar month in which the tenth (10th) anniversary of the Lease Commencement Date occurs, or such earlier or later date on which such term may be canceled, terminated or extended pursuant to any of the conditions or covenants of this Lease, including Section 1.02, or pursuant to law.

**"Demised Premises" or "Premises"**: Approximately 90,000 usable square feet in the Building as shown on the plan or plans annexed hereto and made a part hereof as Exhibit B consisting of office space ("Office Premises") and laboratory premises with ancillary office space ("Laboratory Premises"), together with all fixtures, equipment, improvements, installations and appurtenances which at the commencement of or during the Term of this Lease are attached thereto. For purposes of this Lease, "rentable square feet" shall be calculated as follows: the usable square footage will be determined by measuring the Demised Premises from the inside edge of all exterior walls of the Demised Premises to the center line of the interior demising walls. The usable square footage number will be divided by .90 (applying the 10% common area loss factor). Prior to the Commencement Date, the number of rentable square feet of the Demised Premises shall be verified by a mutually acceptable architect or engineer in accordance with the forgoing sentence. In the event that such verification results in a determination that the rentable square feet of the Demised Premises differs from the square feet of the Demised Premises set forth above, Landlord and Tenant shall execute an amendment to this Lease modifying all amounts, percentages and figures appearing or referred to in this Lease to conform to such corrected square footage (including Fixed Rent).

**"Fixed Rent"**: The fixed rent set forth in Section 1.03.

**"Land"**: The real property known as Section 6, Block 87, Lots 15 A&B, 16 A&B on the Nassau County Tax Map, more particularly described on Exhibit A attached hereto and made a part hereof, together with all driveways, roadways and outdoor parking areas located thereon.

**"Parking Facilities"**: The parking lots presently located on the Land and more particularly shown on the site plan attached hereto and made a part hereof as Exhibit A-1 (the "Site Plan").

**"Permitted Use"**: As set forth in Article 5.

**"Property"**: The Land, the Building, the Parking Facilities, and all driveways, roadways and other areas located on the Land.

**"Rent Commencement Date"**: Upon Substantial Completion of Landlord's Work (as those terms are defined in Exhibit C).

**"Swing Space"**: That portion of the Building outside of the Demised Premises that is used by Tenant during construction of the Demised Premises to minimize interruption of

Tenant's business. Location of the Swing Space to be designated by Tenant, subject to Landlord's reasonable approval, prior to the commencement of Landlord's Work.

**"Term"**: Period from the Commencement Date to the applicable Expiration Date, as such Expiration Date may be extended pursuant to Section 1.02.

## ARTICLE I

### DEMISED PREMISES; RENT

#### 1.01 Demised Premises; Common Facilities; Parking.

(a) Landlord hereby leases to Tenant, and Tenant hereby hires from Landlord, exclusive use of the Demised Premises, together with the right to use in common with other lessees of the Building, their invitees, customers and employees, those public areas of the Common Facilities as hereinafter defined. Tenant, its invitees, customers and employees shall have, as appurtenant to the Demised Premises and without additional charge, the non-exclusive right to use in common with others, subject to the terms and conditions of this Lease: (i) the conference facilities and auditorium located in the Building (the **"Building Conference Facilities"**) provided same is available in accordance with the following sentence; (ii) the fitness center located in the Building (the **"Fitness Center"**); (iii) the cafeteria located in the Building (the **"Cafeteria"**); and (iv) the lobby, common corridors, elevators, restrooms, loading docks, Parking Facilities, and other areas of the Property which are available for the joint use of all tenants of the Building (such areas described in clauses (i)-(iv) are herein collectively called the **"Common Facilities"**). Tenant acknowledges that other tenants in the Building shall have similar rights and agree that when the Building Conference Facilities are needed by Tenant it shall give Landlord a minimum of 24 hours advance notice and if the Building Conference Facilities have not been previously reserved, Tenant shall have the exclusive use of same for the requested period. With regard to use of the Fitness Center, before anyone can use same, they must sign a reasonable release form exonerating Landlord for any liability for use of such facility unless due to Landlord or Landlord's agents or employees grossly negligent or willful misconduct, and waive any right to bring an action for personal injury resulting from use of the Fitness Center or its equipment unless due to Landlord or Landlord's agents' or employees' gross negligence or willful misconduct.

(b) Landlord shall, without additional charge to Tenant, provide and maintain for the non-exclusive use of Tenant's employees and invitees, parking areas sufficient to accommodate at least two fifty hundred (250) standard size automobiles in the Parking Facilities in the location as shown on the Site Plan attached hereto. Landlord agrees that twenty five (25) of the aforesaid spaces shall be marked by Landlord as for Tenant's exclusive use. In addition, Tenant shall be entitled to ten (10) visitor parking spaces as shown on the Site Plan. If Tenant encounters a problem with the availability of parking spaces, Landlord will, upon written notice from Tenant (i) at Tenant's request use commercially reasonable methods to enforce Tenant's rights to parking spaces under this Lease, including providing written notice to tenants in the Building and stickering misparked cars, and (ii) otherwise attempt in good faith to resolve any

dispute over parking at the Property if the dispute is between the tenants of the Building or with parties trespassing on the Property.

#### 1.02 Term and Extension Term

(a) The initial term of this Lease (the "Initial Term") shall be for a period of approximately ten (10) years commencing on the Commencement Date and expiring on the Expiration Date. If the Rent Commencement Date occurs on any day other than the first day of a calendar month, then the Rent will be prorated for the first partial month and the Initial Term will expire on the last day of the calendar month in which occurs the tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date. The Initial Term and each exercised Extension Terms are collectively referred to as the "Term".

(b) Landlord hereby grants to Tenant two (2) options to extend the Term of the Lease for a period of five (5) years each. The first five (5) year option period (the "First Option Period") shall commence on the date (the "First Extension Term Commencement Date") next succeeding the Expiration Date and shall expire on the date (the "First Extension Term Expiration Date") which is the day preceding the fifth (5<sup>th</sup>) anniversary of the First Extension Term Commencement Date. The second five (5) year option period (the "Second Option Period") shall commence on the date (the "Second Extension Term Commencement Date") next succeeding the First Extension Term Expiration Date and shall expire on the date (the "Second Extension Term Expiration Date") which is the day preceding the fifth (5<sup>th</sup>) anniversary of the Second Extension Term Commencement Date. As used herein, the term "Extension Option" shall mean the First Option Period or the Second Option Period, as the context may require, and the terms "Extension Term" shall mean the First Option Period or the Second Option Period, as the context may require. To exercise the Extension Option, Tenant shall provide Landlord with written notice ("Extension Notice") of its election to extend the Term of the Lease no later than twelve (12) months prior to the Expiration Date or the First Extension Term Expiration Date, as the case may be (the "Notice Date"). The renewal of this Lease shall be upon the same terms and conditions of this Lease, except that the annual Fixed Rent for the first Lease Year of the Extension Term shall be the equal to one hundred two (102%) Percent of the Fixed Rent applicable to the tenth (10<sup>th</sup>) Lease Year or the fifteenth (15<sup>th</sup>) Lease Year, as applicable, which rent shall increase annually in accordance with Section 1.04, commencing on the first anniversary of the Extension Term and continuing on each anniversary of the Extension Term.

1.03 Fixed Rent. Subject to the Rent Abatement (as hereinafter defined), commencing on the Rent Commencement Date through and including the day immediately preceding the first (1<sup>st</sup>) anniversary of the Rent Commencement Date, Tenant shall pay to Landlord fixed rent ("Fixed Rent") in an amount equal to FOURTEEN and 00/100 Dollars (\$14.00) per rentable square foot per annum payable in equal monthly installments in advance on the first day of each and every calendar month. Should the Rent Commencement Date fall on any other day than the first day of a month, the Fixed Rent for such month shall be pro-rated on a per diem basis, and Tenant shall pay the amount thereof for such partial month on the Rent Commencement Date. Should the Expiration Date fall on any other day than the last day of a month, the Fixed Rent for such month shall be pro-rated on a per diem basis. Notwithstanding anything to the contrary contained herein, Tenant shall have no obligation to pay the monthly installments of Fixed Rent



becoming due during the period from the Commencement Date through and including the day which is the six (6) month anniversary of the Rent Commencement Date (the "Abatement Period").

1.04 Fixed Rent Escalations. On each anniversary of the Rent Commencement Date, the Fixed Rent payable by Tenant shall be increased in an amount equal to the product of the prior year's Fixed Rent multiplied by a number equal to the percentage increase in the CPI over a 12 month period, calculated by using the most recently published CPI and the CPI published 12 months earlier, subject to the following:

- (a) Annual Fixed Rent increases shall not exceed 2%.
- (b) The applicable CPI index is: Consumer Price Index for All Urban Consumers (CPI-U), U. S. City Average-All Items, published by the Bureau of Labor Statistics of the United States Department of Labor.
- (c) In on any Rent Commencement anniversary, the CPI has decreased for the prior 12 month period, the Fixed Rent will remain the same as the Fixed Rent for the prior 12 month period.
- (d) If such index shall cease to be published, there shall be substituted therefore a price index (or combination of indices, with such adjustments as may be required to afford compatibility), published by the Bureau of Labor Statistics or its successor government agency, which is intended to be representative of substantially similar changes in the cost of living.
- (e) Landlord and Tenant acknowledge the annual increases to the Fixed Rent reflected above are in lieu of Tenant's payment of traditional operating expenses (e.g. maintenance, repair and replacements to the Property, landscaping, snow removal, pest control, management fees, employee salaries and benefits, etc.).

1.05 Additional Rent. All sums (other than Fixed Rent) payable hereunder shall be deemed Additional Rent, and together with Fixed Rent shall be included in the term "Rent" and shall be payable without setoff or deduction whatsoever, except as may be occasioned by the occurrence of any event permitting a deduction from or abatement of rent as specifically set forth in Articles 7, 10 and 13. Fixed Rent and Additional Rent shall be paid in lawful money of the United States by good and sufficient check (subject to collection) or wire transfer drawn to Landlord's order on a bank which is a member of the New York Clearinghouse Association or a successor thereto. Said checks shall be sent to Landlord at the office of Landlord or to such other party or parties and/or at such other address(es) as Landlord shall designate by written notice to Tenant. Wire transfer shall be made to such lawful accounts as Landlord shall designate to Tenant by written notice.

1.06 Bad Check Charge. If Rent is paid by check, same will be subject to collection. If any check is not honored for payment, for whatever reason, Tenant agrees to immediately pay an amount equal to the amount of said check by certified, bank check, money order, EFT, or wire transfer, together with the sum of Twenty-Five and 00/100 (\$25.00) Dollars to defray Landlord's expenses as a result of the dishonored check. If any further checks of Tenant shall not be

honored for payment, then the charge for each of such checks shall be Forty and 00/100 (\$40.00) Dollars, and all further payments on account of Rent shall be made by certified check, money order, teller issued check EFT, or wire transfer.

1.07 Late Rent Charge. If Rent is not received on or before the FIFTH day of any given month, and such failure continues for five (5) days following receipt of written notice from Landlord, Landlord may charge a late charge of five percent (5%) of the Rent past due. These charges shall be considered additional rent and shall be collectible in the month incurred with the same remedies as available in the event of non-payment of Rent. The provisions of this paragraph shall in no way limit Landlord's remedies and rights in the event of non-payment of Rent.

1.08 Partial Payment. No payment by Tenant or receipt by Landlord of an amount less than the full monthly Rent then due including additional rent shall be considered to be other than on account of the agreed Rent, nor shall any endorsement or other written matter on any check or in any letter accompanying such payment of Rent affect the terms of this Lease or be considered a release of Tenant's obligations and Landlord may accept such payment without prejudice of any of its rights.

## ARTICLE 2

### CONDITION OF DEMISED PREMISES

2.01 Landlord's Work. Tenant hereby accepts the Demised Premises as suitable for Tenant's intended use and as being in good operating order, condition and repair, "AS IS", subject to the Substantial Completion of Landlord's Work (as those terms are defined in Exhibit C hereof). Promptly after the Commencement Date, Landlord shall commence performing the Landlord's Work in accordance with the terms, conditions, criteria and provisions set forth in Exhibit C. Landlord and Tenant hereby agree to and shall be bound by the terms, conditions and provisions of Exhibit C. Tenant acknowledges and agrees that neither Landlord nor any of Landlord's agents, representatives or employees has made any representations as to the suitability, fitness or condition of the Premises for the conduct of Tenant's business or for any other purpose.

2.02 Swing Space. Notwithstanding anything to the contrary contained herein, Tenant shall have the right to use and occupy the Swing Space for Tenant's Permitted Use for a period of five (5) months beginning immediately on the Effective Date, and that such use by Tenant of the Swing Space shall be at no cost to Tenant and pursuant to a license from Landlord during such period of occupancy, except that Tenant shall pay the actual cost of electricity furnished solely to the Swing Space as measured by an electric meter or sub-meter servicing the Swing Space, or if the Swing Space is not separately metered then Tenant shall pay to Landlord the actual cost of electricity for the Building until the earlier to occur of (x) the occupancy of any part of the Building by Landlord or a third party, and (y) the installation of an electric meter or sub-meter to service the Swing Space, upon which event Tenant shall pay to Landlord monthly as additional rent the sum of Three and 25/100 Dollars (\$3.25) per square foot per annum for such electric service to the Swing Space or the actual cost of electricity for the Swing Space as measured by such meter.

2.03 Partial Occupancy. As portions of the Demised Premises are Substantially Completed Tenant may occupy and commence operations in such Substantially Completed portions of the Demised Premises notwithstanding that the remainder of the Demised Premises are not Substantially Completed, subject to the terms and conditions of this Lease and to all applicable federal, state and local laws, regulations and requirements.

### ARTICLE 3

#### SERVICES

3.01 Services. Landlord agrees to provide during the Term the services listed in this Article 3, the cost of which are included in the Fixed Rent except as otherwise expressly provided in this Article 3.

(a) Water and Sewer. Landlord shall furnish adequate hot and cold running water and sewer service to the Demised Premises for drinking, lavatory and cleaning purposes.

(b) Janitor Service. Landlord shall cause the office areas of the Demised Premises and the restrooms (whether located within the Demised Premises or outside the Demised Premises) to be cleaned in accordance with the schedule attached hereto as Exhibit D. Landlord shall provide janitor service in and about the office areas of the Premises and the Building at the end of each Monday, Tuesday, Wednesday and Thursday, and at Landlord's option, at the end of either Sunday or Friday. Landlord shall further provide carpet cleaning in the Common Facilities and window cleaning at such times as Landlord, in its reasonable opinion, considers that such cleaning is necessary to maintain a Class A office building, but in no event less than quarterly. Landlord shall provide all bathroom supplies. Tenant shall be responsible for cleaning in the laboratory areas of the Demised Premises.

(c) Dumpster. Landlord shall provide a dumpster at the Property of sufficient size to accommodate waste from all tenants within the building at no additional cost to Tenant. Landlord may install a compacting system to service the Building. If so installed, Tenant shall use said system and the dumpster shall be removed. In addition, Tenant shall have the right to use an area of the Property to be determined by Tenant outside of the Building subject to Landlord's reasonable approval and the approval of the Town of North Hempstead and any other applicable governmental agency for Tenant's exclusive use to store Hazardous Materials (as defined in Article 23). Tenant shall use dumpster for disposal of office type waste only and agrees that no hazardous lab waste of any sort shall be placed within said dumpster.

(d) Elevator Service. Landlord shall maintain the presently existing one (1) passenger elevator and one (1) freight elevator in the Building. These elevators shall be available twenty-four (24) hours a day, seven (7) days a week except for normal maintenance periods or mechanical fault, in which case Landlord will use its best efforts to restore elevator service as soon as possible.

(e) Security. Tenant shall have twenty-four (24) hour access to the Building seven (7) days per week. Tenant shall have the right to use the existing card access system at the Building and shall program the access cards issued to Tenant's employees to allow access to the

Building, Common Facilities, and the Demised Premises. All other access cards issued by Landlord to other tenants in the Building shall be programmed by Landlord to restrict access to the Demised Premises. Landlord shall provide an on-site security guard at the Building during Business Hours. Landlord shall have no liability to Tenant, its employees, agents, invitees or licensees for losses due to theft or burglary, or for damage done by unauthorized persons on the Premises and neither shall Landlord be required to insure against any such losses. Tenant shall reasonably cooperate in Landlord's efforts to maintain security in the Building and shall follow all reasonable regulations promulgated by Landlord with respect thereto.

(f) Electricity or other Utilities. Landlord shall arrange with the public utility company servicing the Building for electric service and other utilities at the Demised Premises. Landlord, at its sole cost and expense, will as part of Landlord's Work arrange for the installation of an electric meter or sub-meter to measure the consumption of electricity for lights and plugs and any dedicated HVAC systems used solely at the Demised Premises. Tenant shall pay the actual cost of electricity furnished solely to the Demised Premises as measured by such electric meter or sub-meter without any mark-up or administrative charge by Landlord. Tenant's use of electric energy in the Demised Premises shall not exceed six (6) watts per usable square foot connected load, without Landlord's prior consent which shall not be unreasonably withheld, based upon availability of electric energy in the Building. If Landlord fails to install the aforesaid meter or sub-meter prior to the Commencement Date, Tenant shall pay to Landlord monthly as additional rent the sum of Three and 25/100 Dollars (\$3.25) per square foot per annum for such electric service.

(g) Building Systems. Landlord shall maintain in good condition and repair the Building Systems, and shall furnish heat, ventilating and air-conditioning in and to the Demised Premises as may be required for the reasonable comfortable occupancy of the Demised Premises during Business Hours. If Tenant shall require heat or air-conditioning service at any other time, Landlord shall furnish such service for such times ("Overtime Hours") upon not less than twenty-four (24) hours advance notice from Tenant. Tenant shall pay to Landlord \$150.00 per hour per floor for heat, ventilating and air-conditioning during Overtime Hours as Additional Rent, within thirty (30) days after Landlord bills Tenant therefor, which bills shall be rendered not more often than monthly. Landlord shall at all times keep and maintain in good condition and repair the generator servicing the Building, including maintaining an annual service contract with a reputable licensed company. Tenant's laboratory and IT equipment shall remain connected to the Building's generator and Tenant shall have the right to connect all or a part of its office area to the generator at its sole cost and expense.

(h) Cafeteria. A food service cafeteria will be operated in accordance with the provisions of Exhibit E in the existing Cafeteria in the Building.

#### ARTICLE 4

##### REAL ESTATE TAXES

4.01 **Tax Escalation.** For the purpose of this Lease:

(a) The term "**Taxes**" shall mean the real estate taxes, assessments and special assessments imposed upon the Property by any federal, state, municipal or other governments or governmental bodies or authorities, and any payment in lieu of taxes pursuant to any Payment-In-Lieu-Of-Tax Agreement or similar agreement ("**PILOT**") in effect. For purposes of establishing the Taxes for the Base Tax Year and any subsequent Tax Year during which the Property is subject to a PILOT agreement, such sum shall be the PILOT payments then in effect. Notwithstanding the above, Taxes shall not include (1) inheritance taxes, gift taxes, transfer taxes, franchise taxes or net income taxes, and (2) late charges and penalties payable in connection with Taxes. If any assessment is paid by Landlord in installments, then only the installments required to be paid by Landlord in a given Tax Year shall be included in Taxes for such Tax Year. If, by law, any assessment may be paid in installments but Landlord chooses not to pay same in installments, then, for the purposes of determining the Taxes for a given Tax Year: (i) such assessment shall be deemed to have been payable in the maximum number of installments permitted by law, and (ii) there shall be included in Taxes for each Tax Year the installments of such assessment that would have been payable during such Tax Year had Landlord elected to pay such assessment in the maximum number of installments, together with any interest thereon that would be payable during such Tax Year.

(b) "**Base Tax Year**" shall mean the later of (A) (i) for School Taxes the real estate fiscal tax year of 2016/2017, and (ii) for General Taxes the calendar year of 2017 or (b) the first twelve (12) months of PILOT payments to be paid pursuant to the PILOT agreement in effect as of the Commencement Date.

(c) "**Base Tax Rate**" shall mean the Taxes, as finally determined, for the Base Tax Year.

(d) "**Tax Year**" shall mean the period of twelve (12) calendar months beginning on January 1 of the year in which the Term commences, and each succeeding twelve (12) month period.

(e) "**Tenant's Proportionate Share**" shall be calculated by dividing the Building rentable square feet (272,142 rentable square feet) by the Premises rentable square feet as finally determined pursuant to the terms of this Lease.

(f) "**Tenant's Projected Share of Taxes**" shall mean the Tax Payment (as hereinafter defined), if any, payable by Tenant, after the Base Tax Year, for the immediately prior Tax Year divided by twelve (12) and payable monthly by Tenant to Landlord as additional rent.

4.02 If the Taxes for any Tax Year shall be more than the Base Tax Rate, Tenant shall pay, as additional rent for such Tax Year, an amount (the "**Tax Payment**") equal to Tenant's Proportionate Share of the amount by which the Taxes for such Tax Year are greater than the Base Tax Rate. The Tax Payment and the Base Tax Rate shall be appropriately prorated, if necessary, to correspond with that portion of a Tax Year occurring within the term of this Lease. The Tax Payment shall be payable by Tenant within thirty (30) days after receipt of a demand from Landlord therefor (such demand being a "**Tax Statement**"). The Tax Statement shall be accompanied by a copy of the tax bill or notice of assessment for the Tax Year in respect of



which a Tax Payment is being demanded, together with Landlord's computation of the Tax Payment.

4.03 Commencing with the first Tax Year for which Landlord shall be entitled to receive a Tax Payment, Tenant shall pay to Landlord Tenant's Projected Share of Taxes. Upon each date that a Tax Payment or an installment on account thereof shall be due from Tenant pursuant to the terms of Section 4.02 hereof, Landlord shall apply the aggregate of the installments of Tenant's Projected Share of Taxes then on account with Landlord against the Tax Payment or installment thereof then due from Tenant. In the event that such aggregate amount shall be insufficient to discharge such Tax Payment or installment, Landlord shall so notify Tenant in the Tax Statement, and the amount of Tenant's payment obligation with respect to such Tax Payment or installment pursuant to Section 4.02 shall be equal to the amount of the insufficiency. If, however, such aggregate amount shall be greater than the Tax Payment or installment, Landlord shall either (a) pay the amount of excess directly to Tenant concurrently with the giving of the Tax Statement, or (b) permit Tenant to credit the amount of such excess against the next payment of Tenant's Projected Share of Taxes due hereunder.

4.04 If Landlord shall receive a refund of the Taxes for any Tax Year after the Base Tax Year, Landlord shall either pay to Tenant or permit Tenant to credit against subsequent payments under this Lease an amount equal to Tenant's Proportionate Share of the net refund, provided, however, that such payment or credit to Tenant shall in no event exceed Tenant's Tax Payment paid for such Tax Year.

## ARTICLE 5

### USE

5.01 Permitted Uses. Tenant shall use and occupy the Demised Premises as a research, development, manufacturing and testing facility for its business consistent with prior practice and for general and administrative office activities related thereto and for no other purpose.

5.02 Prohibitions. Tenant shall not use or permit the use of the Demised Premises or any part thereof in any way that would violate any of the covenants, agreements, terms, provisions and conditions of this Lease or for any unlawful purposes or in any unlawful manner or in violation of the Certificate of Occupancy for the Demised Premises or any restrictive covenants affecting the Building as of the Commencement Date, provided such restrictive covenants do not prevent the existing use.

5.03 Permits. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business in the Demised Premises or any part thereof, Tenant at its expense shall procure and maintain and comply with the terms and conditions of such license or permit and, upon request, submit the same to Landlord for inspection.

5.04 Roof. Tenant shall have the right to install, exclusively for its own use, one or more antennas and/or microwave dishes on the roof of the Building; provided that Tenant first obtains all local approvals required for such antennas and/or dishes. Tenant shall install and



maintain such antennas and/or dishes at its sole cost and expense. In the event, as a result of the installation or maintenance of the installation set forth herein, a roof leak develops or roof is damaged in any way, Tenant shall repair said damage and restore the roof to a water tight condition, and if any such leak causes damage to the Building, Tenant shall be responsible for the cost of the repair and restoration to the Building and shall also be liable for any damage to other tenants' property.

## ARTICLE 6

### ALTERATIONS AND INSTALLATIONS

#### 6.01 Consent; Performance.

(a) Without Landlord's prior written consent, Tenant may, from time to time during the term of this Lease, at its sole expense, make alterations, additions, installations, substitutions, improvements and decorations (collectively, "Alteration") in and to the Demised Premises as Tenant may reasonably consider necessary for the conduct of its business therein, provided, however that except for Tenant's Work as defined in Exhibit C, any other alterations that are structural in nature or cost in excess of \$150,000 shall be subject to Landlord's prior consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

(b) All Alterations shall be completed in accordance with all laws, regulations and ordinances promulgated by any appropriate governmental authority and shall become the property of Landlord and part of the Demised Premises immediately upon installation (other than trade fixtures which shall remain the property of Tenant).

(c) Tenant shall, upon Landlord's request, furnish to Landlord copies of all governmental permits and authorizations that may be required in connection with such work. All such governmental permits and authorizations shall be obtained by Tenant at its sole cost and expense, and Tenant shall pay the cost of filing Tenant's plans and specifications with appropriate governmental authorities.

(d) Prior to commencement of any work, Tenant shall, upon Landlord's request, furnish to Landlord certificates of insurance evidencing the existence of (i) workers' compensation insurance covering all persons employed for such work; and (ii) reasonable comprehensive general liability (including contractual liability) and property damage insurance naming Tenant as named insured and Landlord, and if requested by Landlord, Landlord's lender, as an insured with respect to liability arising out of the ownership, maintenance, or use of the Demised Premises while under Lease to the named insured in connection with the named insured's operations, with coverage of at least \$3,000,000 per occurrence for bodily or personal injury (including death) and \$1,000,000 in respect of property damage. Such insurance shall be maintained at all times during the performance of the work and thirty (30) days' prior written notice to Landlord shall be provided in the event of cancellation of such insurance.

6.02 Mechanic's Liens. Any mechanic's lien filed against the Property or the Building for work claimed to have been done for, or materials claimed to have been furnished to,

Tenant shall be bonded or removed and discharged of record by Tenant at its expense within thirty (30) days after such filing or notice to Tenant whichever occurs later, by payment, filing of the bond required by law or otherwise. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, sub-contractor, laborer or materialman for the performance of labor for the furnishing of any materials for any specific improvement, alteration to, or repair of, the Demised Premises or any part thereof.

6.03 Trade Fixtures, Personal Property, Equipment. Tenant shall have the right at any time during the Term to remove any and all trade fixtures, furniture, computers and equipment and machinery used by Tenant for the conduct of its business at the Demised Premises. Tenant may remove non-load bearing demising walls as necessary to remove Tenant's trade fixtures prior to the end of the Term without Landlord's approval, but with prior written notice, which notice shall identify the demolition work to be performed. Landlord shall, within fifteen (15) days of receipt of such notice, advise Tenant in writing whether Tenant shall be obligated to restore the Demised Premises to the condition existing at the Commencement Date. Landlord's failure to so notify Tenant shall be deemed a waiver by Landlord to require such restoration.

## ARTICLE 7

### REPAIRS

7.01 Obligations of Tenant. Tenant shall be responsible for interior repairs and cleaning of the laboratory areas of the Demised Premises only. All other maintenance, repairs and replacements of the Demised Premises, including the office areas, shall be Landlord's responsibility except for any damage caused by Tenant or its invitees. In such case, Tenant shall be responsible to repair and replace the damaged items at Tenant's cost. In no event shall Tenant be obligated to make any repairs or replacements which would be considered to be a capital expenditure under generally acceptable accounting principals.

7.02 Obligations of Landlord. Landlord shall maintain, repair, and manage the Property, including, without limitation, all Building Systems, Common Facilities, Parking Facilities, and other improvements, in a first class manner similar to other Class A office buildings in Nassau County, including but not limited to, cleaning, landscaping and ground maintenance, snow and ice removal and sanding, trash removal, parking lot repairs and maintenance. Landlord shall make all repairs and replacements, structural and otherwise, interior and exterior, as and when needed in or about the Property, except for those repairs for which Tenant is responsible pursuant to any of the provisions of this Lease. Landlord shall also make all repairs and replacements, structural and otherwise, the need for which results from the negligence or willful misconduct of Landlord or its agents, contractors or employees. Landlord covenants and agrees to use its best efforts to minimize interference with Tenant's business operations on the Demised Premises in performing its obligations under this Lease and in the performance of any work in the Building, including but not limited to, not interfering with or disrupting service of the Building Systems to the Demised Premises.

7.03 No Allowance. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business arising from Landlord's making of any repairs, alterations, additions, improvements in or to any portion of the Building or the Demised Premises or in or to fixtures, appurtenances or equipment thereof, unless such repairs materially interfere with Tenant's use of part or all of the Demised Premises, in which case Tenant shall be entitled to an abatement of Fixed Rent to the extent allocable to the affected part of the Demised Premises. Landlord shall exercise reasonable diligence so as to minimize any interference with Tenant's business operations in Landlord's performance of any services, repairs, replacements, or other work under the terms and provisions of this Lease.

7.04 Cure. In the event that either party fails to take appropriate action to discharge its maintenance and repair responsibilities then and in such event after written notice to the other and the expiration of thirty (30) days for non-emergency repairs (but without notice in the case of emergency), in addition to any other remedy hereunder, the party making such notification may make such repair at the other party's reasonable expense.

## ARTICLE 8

### REQUIREMENTS OF LAW

8.01 Compliance By Parties. If Tenant receives any notice of any violation of any law, ordinance, rule, order or regulation applicable to Tenant's operations at the Demised Premises during the Term, Tenant shall give prompt written notice thereof to Landlord. Tenant shall, at its sole cost and expense, comply with all laws, ordinances, rules, orders and regulations of federal, state, county and municipal authorities, and of all insurance bodies, and with any direction of any public officer or officers, pursuant to law, which shall impose any violation, order or duty upon Landlord or Tenant with respect to Tenant's use of the Demised Premises during the Term, except that violations which became of record prior to the Commencement Date are to be governed by the Terms of the Purchase and Sale Agreement or (ii) Landlord's development, redevelopment, repairs, alterations or improvements to the Property, for which Landlord shall be responsible therefor, at its sole cost and expense.

## ARTICLE 9

### INSURANCE; LOSS REIMBURSEMENT; LIABILITY; INDEMNITY

#### 9.01 Tenant's Acts.

(a) Tenant shall not do, permit or suffer to be done any act or thing upon the Demised Premises that would invalidate or be in conflict with New York standard fire insurance policies covering the Building, and fixtures and property therein, or that would increase the rate of fire insurance applicable to the Building to an amount higher than it otherwise would be; and Tenant shall not do nor permit to be done any act or thing upon the Demised Premises that shall or might reasonably be expected to subject Landlord to any liability or responsibility for injury to any person or to property by reason of any business or operation being carried on within the Demised Premises during the Term.

(b) If as a result of any act or omission or violation of this Lease by Tenant or any of its employees, agents, visitors, licensees or subtenants (collectively, "**Tenant's Representatives**"), the rate of fire insurance applicable to the Demised Premises or any other building or buildings at the Property shall be increased in an amount higher than it otherwise would be, Tenant shall pay for all increases of fire insurance premiums so caused. In any action or proceeding wherein Landlord and Tenant are parties, a schedule or "make-up" of rates for the Demised Premises by the body making fire insurance rates for the Demised Premises, shall be presumptive evidence of the facts therein stated and of the several items and charges in the fire insurance rate then applicable to the Demised Premises.

#### 9.02 Landlord's Liability.

(a) Landlord or its agents shall not be liable for any injury or damage to persons or property (including, but not limited to, loss of profits and injury to business) resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any part of the Building, or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of any nature, unless, and then only to the extent, any of the foregoing shall be caused by or due to the gross negligence or willful misconduct of Landlord, its agents, servants or employees (collectively, "**Landlord's Representatives**").

(b) Landlord and Landlord's Representatives shall not be liable for any damage which Tenant may sustain, if at any time any window of the Demised Premises is broken, or temporarily or permanently (restricted to windows on a lot line, if permanently) closed, darkened or bricked up for any reason whatsoever, except only Landlord's arbitrary acts if the result is permanent, and Tenant shall not be entitled to any compensation therefor or abatement of rent or to any release from any of Tenant's obligations under this Lease, nor shall the same constitute an eviction.

9.03 **Property Insurance.** Landlord shall, at its sole cost and expense, obtain on or before the Commencement Date and shall keep in force during the Term hereof, all-risk insurance in an amount equal to the full replacement cost of the Building and all its improvements and betterments, with Landlord as the named insured; and Tenant shall obtain, at its sole cost and expense, insurance covering Tenant's equipment, machinery, furniture, furnishings and other removable personal property and of all fixtures including leasehold improvements and betterments. Such insurance policy or policies shall contain a standard mortgagee clause in favor of Landlord's mortgagee. Landlord may insure the Demised Premises under a blanket policy of insurance.

9.04 **Liability Insurance.** Tenant shall provide on or before the Commencement Date and shall keep in force during the Term hereof a comprehensive general liability insurance policy naming Tenant as named insured and Landlord and its lender and the Nassau County Industrial Development Agency (the "**NCIDA**") as additional insureds with respect to liability arising out of the ownership, maintenance, or use of the Demised Premises during the Term of this Lease, written on an occurrence basis. Such policy shall be written by good and solvent insurance companies licensed to do business in the State of New York, and shall be in such limits as Landlord reasonably may require and which are comparable to limits carried at similarly situated



properties. As of the date of this Lease Landlord reasonably requires limits of liability thereunder of not less than the amount of \$5,000,000 per occurrence, single limit for bodily or personal injury (including death) and property damage. If Tenant shall maintain any liability insurance in excess of the amount required by Landlord hereunder, such insurance shall meet the requirements of this Section. All liability insurance shall contain a contractual indemnity endorsement covering Tenant's obligations under Paragraph 9.05 below. Prior to the time such insurance is first required to be carried by Tenant and thereafter, at least fifteen (15) days prior to the effective date of any such policy, Tenant shall deliver to Landlord either duplicate original of the aforesaid policies or a certificate(s) evidencing such insurance. Said policy shall contain an endorsement that in the event such insurance is canceled, thirty (30) days' prior written notice shall be provided to Landlord.

9.05 Tenant Indemnity. Except to the extent resulting from the negligence, willful misconduct or breach of this Lease by Landlord or its authorized representatives or other tenants of the Building, Tenant agrees to protect, defend (with counsel reasonably acceptable to Landlord) and hold Landlord and Landlord's partners, members, property management company (if other than Landlord), agents, directors, officers, employees and representatives (collectively, the "**Landlord Indemnitees**") harmless and indemnify the Landlord Indemnitees from and against all liabilities, damages, claims, losses, judgments, charges and expenses (including reasonable attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, (i) Tenant's or Tenant's Representatives' use of the Premises and/or Building, (ii) the conduct of Tenant's business in the Premises, (iii) any activity, work or thing done, permitted or suffered by Tenant in or about the Premises, and/or (v) Tenant's failure to perform any covenant or obligation of Tenant under this Lease. Tenant agrees that the obligations of Tenant herein shall survive the expiration or earlier termination of this Lease.

9.06 Landlord Indemnity. Except to the extent resulting from the negligence, willful misconduct or breach of this Lease by Tenant or its authorized representatives or subtenants, Landlord agrees to protect, defend (with counsel reasonably acceptable to Tenant) and hold Tenant and Tenant's partners, members, agents, directors, officers, employees and representative (collectively, the "**Tenant Indemnitees**") harmless and indemnify the Tenant Indemnitees from and against all liabilities, damages, claims, losses, judgments, charges and expenses (including reasonable attorneys' fees, costs of court and expenses necessary in the prosecution or defense of any litigation including the enforcement of this provision) arising from or in any way related to, directly or indirectly, (i) any use or occupancy or activity at the Building or on the Property by or for Landlord or any of its agents, tenants, contractors, employees, invitees or anyone claiming through any of them, (ii) any negligence or willful misconduct on the party of any Landlord Indemnitee, (iii) Landlord's Work, and/or (v) Landlord's failure to perform any covenant or obligation of Landlord under this Lease. Landlord agrees that the obligations of Landlord herein shall survive the expiration or earlier termination of this Lease.

## ARTICLE 10

### DAMAGE BY FIRE OR OTHER CAUSE

10.01 Notice to Landlord. If the Demised Premises or any part thereof shall be damaged by fire or other casualty Tenant shall give immediate notice thereof to Landlord and this Lease shall continue in full force and effect except as hereinafter set forth.

10.02 Termination or Restoration.

(a) If all or more than 10% of the office portion of the Demised Premises or any part of the laboratory space is damaged or rendered untenable by fire or other casualty, Tenant shall have the right to terminate this Lease upon written notice to Landlord given within sixty (60) days after such fire or casualty, specifying a date for the expiration of the Lease, and upon the expiration date specified in such notice the term of this Lease shall expire as fully and completely as if such date were set forth above for the termination of this Lease, and Tenant shall forthwith quit, surrender and vacate the Demised Premises in accordance herewith. Any Rent owing shall be paid up to the date of loss or, if later, the date Tenant ceased operation of its business, and any payments of Rent made by Tenant that were on account of any period subsequent to such date shall be returned to Tenant.

(b) If Tenant does not have the right to terminate or does not elect to terminate this Lease as hereinbefore provided, and provided Landlord has not terminated this Lease under subparagraph (c) below, Landlord shall repair and restore the Demised Premises in a diligent and workmanlike manner to the condition existing immediately prior to the casualty and the Fixed Rent and the Additional Rent payable hereunder for the period beginning on the day following the casualty until such repair and restoration shall be Substantially Completed shall be abated, as allocable to the portion of the Demised Premises rendered untenable. Tenant shall look solely to its own insurance (and not that of Landlord) with respect to its trade fixtures, personal property, furniture and equipment.

(c) If all or part of the Building are damaged or rendered untenable by fire or other casualty, and (i) the estimated cost to restore the Building exceeds One Million and 00/100 Dollars or (ii) less than 60 days will remain in the Term following Landlord's restoration, Landlord and Tenant each shall have the right to terminate this Lease upon written notice to the other given within sixty (60) days after such fire or casualty, specifying a date for the expiration of the Lease, which date shall not be more than thirty (30) days after the giving of such notice, and upon the expiration date specified in such notice the term of this Lease shall expire as fully and completely as if such date were set forth above for the termination of this Lease, and Tenant shall forthwith quit, surrender and vacate the Demised Premises in accordance herewith; provided if Landlord elects to terminate the Lease Tenant shall be given a reasonable period of time to vacate the Demised Premises so as to incur minimal interference with its ongoing business. Any Rent owing shall be paid up to the date of loss or, if later, the date Tenant ceased operation of its business, and any payments of Rent made by Tenant that were on account of any period subsequent to such date shall be returned to Tenant.



10.03 Payment of Proceeds. In the event Tenant or Landlord elects to terminate this Lease, Landlord shall be entitled to retain all insurance proceeds for the Demised Premises, excluding insurance obtained by Tenant for Tenant's trade fixtures and personal property; and Tenant shall be entitled to recover from its own insurance proceeds for the Tenant property.

10.04 Release and Waiver of Subrogation.

(a) Notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant shall each look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Landlord and Tenant each hereby releases and waives all right of recovery against the other or anyone claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. If, and to the extent that, such waiver can be obtained only by the payment of additional premiums, then the party benefiting from the waiver shall pay such additional premium within ten (10) days after written demand or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of claims.

(b) If the waiver cannot be obtained from either Landlord's carrier or Tenant's carrier, then neither party shall be constrained to choose a different carrier to obtain insurance (or, in the alternative, if a different carrier is required, then the party requiring the waiver shall pay the difference in premium from the initial carrier selected to the carrier required to be designated). However, in no event shall any party be required to select an excess or non-licensed carrier in the State of New York or one that has a rating less than AAA Best rating. The provisions of this Article shall be considered an express agreement governing any cause of damage or destruction of the Demised Premises by fire or other casualty, and Section 227 of the Real Property Law of the State of New York, providing for such a contingency in the absence of an express agreement, and any other law of the like import, now or hereafter in force, shall have no application in such case.

## ARTICLE 11

### ASSIGNMENT AND SUBLETTING

11.01 Landlord Consent. Tenant may, upon the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed, assign and/or sublet the Demised Premises or any part thereof. Notwithstanding the foregoing, Tenant shall have the right, without the prior written consent of Landlord, to assign this Lease or sublease all or part of the Premises to a corporation or limited liability company in which Tenant or Danaher Corporation holds an ownership interest greater than fifty percent (50%) and which (a) controls Tenant, is controlled by Tenant, or is under common control with Tenant; or (b) is a successor entity into which or with which Tenant is merged or consolidated or which successor in interest acquires substantially all of Tenant's assets or property. An assignment of this Lease consented to by Landlord shall result in Tenant being fully released from any and all liability accruing

hereunder subsequent to such assignment. No subletting by Tenant shall relieve Tenant of any obligation under this Lease, including, without limitation, Tenant's obligation to pay Rent. Any assignment or sublet in violation hereof shall be null and void.

11.02 Profit. If Landlord gives its consent to any assignment of this Lease or to any sublease, Tenant shall, in consideration therefor, pay to Landlord fifty (50%) percent of the following amounts ("Profit"):

(i) in the case of an assignment, an amount equal to all sums and other considerations paid to Tenant by the assignee solely for such assignment (including, without limitation, sums paid for the sale of Tenant's fixtures, leasehold improvements, equipment, furniture, furnishings or other personal property, but only to the extent located at the Demised Premises, less the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns); and

(ii) in the case of a sublease, any rents, additional charges or other consideration payable under the sublease to Tenant by the subtenant which is in excess of the Fixed Rent and Additional Rent accruing during the term of the sublease in respect of the subleased space (at the rate per square foot payable by Tenant hereunder) pursuant to the terms hereof (including, without limitation, sums paid for the sale or rental of Tenant's fixtures, leasehold improvements, equipment, furniture, furnishings or other personal property, but only if located at the Demised Premises, less, in the case of the sale thereof, the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns, which net unamortized or undepreciated cost shall be deducted from the sums paid in connection with such sale in equal monthly installments over the balance of the term of the sublease).

(iii) Any amount(s) payable by Tenant pursuant to the provisions of this Section 11.02 shall be paid by Tenant to Landlord as and when amounts on account thereof are due or paid by or on behalf of any assignee(s) and/or any sublessee(s) to Tenant or Tenant's designee, and Tenant agrees to promptly advise Landlord thereof and furnish such information with regard thereto as Landlord may reasonably request from time to time.

(iv) There shall be deducted from any receipts of Tenant actual, reasonable expenses incurred by Tenant for (i) any changes, alterations and improvements to the Demised Premises in connection with the transfer, (ii) any free base rent reasonably provided to the transferee in connection with the transfer, (iii) reasonable attorneys' fees incurred in connection with such transfer, (iv) tenant improvement allowance and other reasonable rent concessions, and (v) any reasonable brokerage commissions payable to an unrelated third party, Landlord processing fees and other reasonable charges payable by Tenant in connection with the transfer (collectively, "Tenant's Subleasing Costs"). For purposes of calculating any such effective rent all such concessions shall be amortized on a straight-line basis over the term of the applicable sublease (amortized with an imputed interest of six (6%) percent per annum).

#### 11.03 Landlord's Recapture Right

(i) Each request by Tenant to assign this Lease or sublet all or part of the Demised Premises ("Tenant's A/S Notice") shall be deemed an offer from Tenant to Landlord whereby

Landlord (or Landlord's designee) may, at its option ("Landlord's Option"), (i) terminate this Lease (if the proposed transaction is an assignment or a sublease of all or substantially all of the Demised Premises) or (ii) terminate this Lease with respect to the portion of the Demised Premises that Tenant desires to sublet (the "Leaseback Space") (if the proposed transaction is a sublease of part of the Demised Premises). Landlord's Option may be exercised by Landlord by notice (the "Landlord's Option Notice") to Tenant within twenty (20) days after Landlord's receipt of Tenant's A/S Notice. If Landlord exercises Landlord's Option and sends the Landlord's Option Notice, Tenant shall have the right within five (5) days of Landlord's delivery of the Landlord's Option Notice to rescind its request to assign the Lease or sublet the Demised Premises (or any portion thereof) and the A/S Notice shall be deemed null and void.

(ii) If Landlord exercises Landlord's Option to terminate this Lease in the case where Tenant desires either to assign this Lease or sublet all or substantially all of the Demised Premises, then this Lease shall end and expire on the date that such assignment or sublet was to be effective or commence, as the case may be, and the Fixed Rent and Additional Rent shall be paid and apportioned to such date. If the date that such assignment or sublet was to be effective or commence, as the case may be, has not been fixed, then this Lease shall end and expire on the date specified in the Landlord's Option Notice.

(iii) If Landlord exercises Landlord's Option to terminate this Lease in part in any case where Tenant desires to sublet part of the Demised Premises, then, (i) this Lease shall end and expire with respect to such part of the Demised Premises on the date that the proposed sublease was to commence; (ii) from and after such date the Fixed Rent and Tenant's Proportionate Share shall be adjusted, based upon the proportion that the rentable area of the Demised Premises remaining bears to the total rentable area of the Demised Premises; and (iii) Tenant shall pay to Landlord, as Additional Rent, within thirty (30) days after Landlord's demand therefor, the costs incurred by Landlord in physically separating such part of the Demised Premises from the balance of the Demised Premises and in complying with any laws and/or requirements of any public authorities relating to such separation (except that to the extent that the proposed sublease or term sheet delivered to Landlord with Tenant's A/S Notice expressly provides that the proposed subtenant, at its expense, is obligated to perform such work or make such alterations, Landlord shall pay the cost of such work and alterations). If the date that the proposed sublease was to have commenced has not been fixed, then this Lease shall end and expire with respect to such part of the Demised Premises on the date specified in the Landlord's Option Notice.

## ARTICLE 12

### SIGNAGE

12.01 Tenant's existing exterior Building signage, including monument signs and directional signs, shall remain in place. Tenant may replace such signage so long as such replacement signage is in accordance with code and applicable law. Tenant shall not be obligated to remove such signage at the expiration of the Lease Term. Tenant shall be given its proportionate share of directory space on the Building directory in the lobby of the Building.

## ARTICLE 13

### CONDEMNATION

#### 13.01 Total and Partial Condemnation.

(a) In the event that the whole of the Demised Premises lawfully shall be condemned or taken in any manner for any public or quasi-public use, this Lease and the term and estate hereby granted shall cease and terminate as of the date of vesting title. In the event that only a part of the Demised Premises shall be so condemned or taken, then, effective as of the date of condemnation, the Fixed Rent and the Additional Rent payable hereunder shall be abated in an amount thereof apportioned according to the area of the Demised Premises so condemned or taken. In the event that Landlord receives a notice of condemnation, whether partial or total, Landlord shall within ten (10) business days advise Tenant in writing of the receipt of such notice of condemnation and provide Tenant with a written description of the terms of the condemnation.

(b) In the event that only a part of the Demised Premises shall be so condemned or taken, and the deletion of such portion from the Demised Premises will materially interfere with Tenant's business, then Tenant, at Tenant's option, by delivery of notice in writing to Landlord within thirty (30) days following the date on which it shall have received notice of vesting of title, may terminate this Lease and the term and estate hereby granted as of the date of vesting of title, or if Tenant does not elect to terminate this Lease, as aforesaid, this Lease shall be and shall remain unaffected by such condemnation or taking, except that the Fixed Rent and the Additional Rent payable hereunder shall be abated to the extent hereinbefore provided in this Article.

(c) In the event that only a part of the Demised Premises shall be so condemned or taken, and (i) the estimated cost to restore the Demised Premises exceeds Five Hundred Thousand Dollars (\$500,000) or (ii) less than 60 days will remain in the Term following Landlord's restoration, Landlord shall have the right to terminate this Lease upon written notice to Tenant given within sixty (60) days after notice of such condemnation or taking, specifying a date for the expiration of the Lease, which date shall be the date of the taking, and upon the expiration date the term of this Lease shall expire as fully and completely as if such date were set forth above for the termination of this Lease, and Tenant shall forthwith quit, surrender and vacate the Demised Premises in accordance herewith. Any Rent owing shall be paid up to the date of loss or, if later, the date Tenant ceased operation of its business, and any payments of Rent made by Tenant that were on account of any period subsequent to such date shall be returned to Tenant.

13.02 Apportionment of Rent. In the event of Lease termination as hereinbefore provided, this Lease and the term and estate hereby granted shall expire as of the date of such termination with the same effect as if that were the Expiration Date, and the Fixed Rent and the Additional Rent payable hereunder shall be apportioned as of such date.

13.03 Condemnation Award. In the event of any condemnation, partial condemnation or taking hereinbefore mentioned of all or a part of the Building or the Demised Premises,



Landlord shall be entitled to receive the entire award in the condemnation proceeding, including any award made for the value of the estate vested by this Lease in Tenant, and Tenant hereby expressly assigns to Landlord any and all right, title and interest of Tenant now or hereafter arising in or to any such award or any part thereof, and Tenant shall be entitled to receive no part of such award, except that Tenant shall be entitled to make separate claim for Tenant's fixtures and for moving expenses.

13.04 Restoration. In the event of any taking of less than the whole of the Building that does not result in a termination of this Lease, or in the event of a taking for a temporary use or occupancy of all or any part of the Demised Premises that does not result in a termination of this Lease, Landlord, at its expense, to the extent of any award received by Landlord or Tenant (other than for Tenant's fixtures) from the authority, shall proceed with reasonable diligence to repair, alter and restore the remaining parts of the Building and the Demised Premises to substantially their former condition to the extent that the same may be feasible and so as to constitute a complete and tenable Building and Demised Premises.

13.05 Temporary Taking. In the event there is a temporary interference with substantial access to the Demised Premises for a period in excess of ten (10) continuous days, Landlord agrees that Tenant shall be entitled to file a claim for such interference and receive the benefit of the award to the extent that the award does not represent a repair award for restoration of the structure or grounds of the Building or Demised Premises; provided there shall be no abatement of Rent to the extent the award actually received by Tenant includes an amount as compensation for Rent.

## ARTICLE 14

### ACCESS TO DEMISED PREMISES

14.01 Repairs by Landlord. Subject to compliance with Tenant's security policies and procedures, Landlord or its agents or designees shall have the right to enter the Demised Premises to effect repairs that Landlord is obligated to make to the Demised Premises under the terms of this Lease. Any such entry by Landlord shall be on reasonable written notice given at least 48 hours in advance, except in case of emergency, and at reasonable times during business hours on business days, except in case of emergency. Landlord agrees to make any such repairs to the Demised Premises with due diligence and with minimal interference to Tenant's operations.

14.02 Prospective Tenants. Subject to compliance with Tenant's security policies and procedures, Landlord may, during the last year of the Lease Term exhibit the Demised Premises to prospective tenants, purchasers or lenders. Any such entry by Landlord shall be on reasonable written notice given at least 48 hours in advance. Landlord agrees that any such entry shall be exercised in a manner which shall not materially interfere with Tenant's operations.

14.03 Environmental Investigation and Remediation. Subject to compliance with Tenant's security policies and procedures, and upon reasonable written notice given at least 48 hours in advance, Landlord or its agents or designees shall have the right, to enter the Demised Premises for purposes of conducting any environmental investigation and/or remediation,

provided that Landlord agrees to conduct such activities in a manner which will not materially interfere with Tenant's operations. Landlord does and shall hereby indemnify and hold harmless Tenant, its agents, employees, successors and assigns, from and against all losses, claims, damages, liabilities, penalties, costs, expenses, reasonable attorneys' and accountants' fees, and expenses of litigation, suits, judgments, liens, and encumbrances, including third party claims to the extent relating to injuries to persons or property, caused by the activities of Landlord, its agents, representatives, employees or contractors, or any or all of them at or about the Property during the Term, under this Section 14.03. This indemnity shall survive the expiration or termination of this Lease.

## ARTICLE 15

### CONDITIONS OF LIMITATION

15.01 Each of the following shall constitute a "Tenant Default" under this Lease:

(a) If Tenant fails to pay any Rent when due, except that for the first failure to pay which occurs in any rolling six (6) month period such failure shall become a Tenant Default if such failure continues for a period of five (5) days after notice of such failure is given to Tenant;

(b) If Tenant fails to pay or bond and discharge any lien against the Property for which it is responsible in violation of Section 6.02 hereof within thirty (30) days after receiving notice of the filing of such lien;

(c) If Tenant fails to perform or comply with any other term, provision or covenant of this Lease and such failure continues for a period of ten (10) days after notice of such failure is given to Tenant, in the case of a monetary default, or thirty (30) days after notice of such failure is given to Tenant, in the case of a non-monetary default, except that in the case of a non-monetary default which cannot with diligence and continuity be cured within a period of thirty (30) days, the time within which such default may be cured shall be extended for such period as may be reasonably necessary (but not to exceed ninety (90) days after notice of such default is given to Tenant) to complete the curing of such default; provided that Tenant gives Landlord written notice within said thirty (30) day period of Tenant's intention to cure such default and thereafter promptly commences and completes the curing of such default with diligence and continuity; or

(d) The filing of a petition by or against Tenant (1) in any bankruptcy or other insolvency proceeding, (2) seeking any relief under any debtor relief law, (3) the appointment of a liquidator, receiver, trustee, custodian, or similar official for all or substantially all of Tenant's property or for Tenant's interest in this Lease, or (4) for reorganization or modification of Tenant's capital structure; provided, however, if any such petition is filed against Tenant, then the filing of such petition shall not constitute a Tenant Default unless it is not dismissed within ninety (90) days after the filing thereof or Tenant acquiesces in the filing of such petition.



## ARTICLE 16

### RE-ENTRY BY LANDLORD

16.01 Upon the occurrence of any Tenant Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law, take either of the following actions:

(i) Terminate Tenant's right to possess the Demised Premises without terminating this Lease by giving notice thereof to Tenant, in which event Tenant shall pay to Landlord (A) all Rent accrued hereunder to the date of termination of possession, and (B) all Rent required to be paid by Tenant hereunder during the remainder of the Term, as such Rent becomes due hereunder, reduced by any net sums received by Landlord through the reletting of the Demised Premises during such period. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder. Reentry by Landlord in the Demised Premises shall not affect Tenant's obligations hereunder for the remainder of the Term; rather, Landlord may, from time to time, bring an action against Tenant to collect amounts then due by Tenant, without the necessity of Landlord's waiting until the expiration of the Term. Unless Landlord delivers notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to exclude or dispossess Tenant of the Demised Premises shall be deemed to have been taken under this Section 16.01. If Landlord elects to proceed under this Section 16.01, it may elect to terminate this Lease under Section 16.01 hereof at any time thereafter; or

(ii) Terminate this Lease by giving Tenant notice thereof, in which event Tenant shall pay to Landlord the sum of (A) all Rent accrued hereunder to the date of termination of this Lease, and (B) an amount equal to (I) the total Rent that Tenant would have been required to pay for the remainder of the Term, but for the termination of this Lease, discounted to present value at a per annum rate equal to the rate of interest set forth for U.S. governmental bills (with a maturity date closest to the remaining portion of the Term sold at a discount from face value in units of \$10,000 to \$1,000,000, as published on the date this Lease is terminated by The Wall Street Journal in its listing of "Money Rates" under the heading "Treasury Bills" (or, if no such rate is published, the "Discount Rate" as published on such date under the "Money Rates" listing), minus (II) the then fair market rental value of the Demised Premises for such period, as determined by agreement of the parties similarly discounted, and reduced by any net sums theretofore received by Landlord through the reletting of the Demised Premises.

## ARTICLE 17

### DAMAGES

17.01 Measure of Damages. Upon the occurrence of any Tenant Default and re-entry by Landlord pursuant to Article 16 above, Tenant shall reimburse Landlord for all reasonable costs paid or incurred by Landlord (including court costs and reasonable attorneys' fees and expenses) in (1) obtaining possession of the Demised Premises, (2) removing and storing or disposing of the property of Tenant or any other occupant of the Demised Premises, (3)

repairing, restoring, altering, remodeling or otherwise putting the Demised Premises into condition acceptable to a new tenant, (4) if Tenant is dispossessed of the Demised Premises and this Lease is not terminated, reletting all or any part of the Demised Premises (including cost of tenant finish work, customary brokerage commissions and other costs incidental to such reletting), (5) performing Tenant's obligations hereunder which Tenant failed to perform, and (6) enforcing, or advising Landlord of, its rights and remedies hereunder.

## ARTICLE 18

### LANDLORD'S RIGHT TO PERFORM TENANT'S OBLIGATIONS

18.01 Cure. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any Article of this Lease, (a) Landlord may, but shall not be obligated to, remedy such default for the account of Tenant, immediately and without notice in case of emergency, or in any other case only provided that Tenant shall fail to remedy such default with all reasonable dispatch after Landlord shall have notified Tenant in writing of such default and the applicable grace period for curing such default shall have expired; and (b) if Landlord makes any reasonable expenditures or incurs any obligations or expenses, including, but not limited to, reasonable attorneys' fees in instituting, prosecuting or defending any action or proceeding, such reasonable sums paid or reasonable expenses or obligations incurred, together with interest at the Default Rate until reimbursed, shall be deemed to be Additional Rent hereunder and shall be paid by Tenant to Landlord upon rendition of a bill to Tenant therefor.

## ARTICLE 19

### QUIET ENJOYMENT

19.01 Covenant. Landlord covenants and agrees that, subject to the terms and provisions of this Lease, if, and so long as, Tenant keeps and performs each and every covenant, agreement, term, provision and condition herein contained on the part or on behalf of Tenant to be kept or performed, then Tenant's rights under this Lease shall not be cut off or ended by Landlord before the expiration of the term of this Lease.

## ARTICLE 20

### SUBORDINATION, ATTORNMENT, NON-DISTURBANCE, ETC.

20.01 Subordination. This Lease is subject and subordinate to all ground or underlying leases and to all mortgages which may affect such leases or Land and to all renewals, modifications, consolidations, replacements, and extensions of any such underlying leases and mortgages, provided that Landlord procures and delivers to Tenant a duly executed subordination and non-disturbance agreement ("SNDA") in form and substance customary in the commercial real estate mortgage industry in the New York metropolitan area.

20.02 If Landlord has notified Tenant of the existence of a mortgage covering the Property (a "Mortgage") and the name and address of the holder thereof (the "Mortgagee"),

except as otherwise expressly provided herein, Tenant agrees not to take any of the following actions without the prior written consent of the Mortgagee, which may be given or withheld in its sole discretion: (i) prepay the Fixed Rent for more than one (1) month in advance; (ii) enter into any agreement with Landlord to modify or amend this Lease so as to (1) shorten the Term, (2) decrease the Fixed Rent payable hereunder, (3) accelerate the payment of installments of Fixed Rent to become due hereunder or (4) change the terms of any renewal option contained herein; (iii) consent to the cancellation, surrender or termination of this Lease prior to the expiration date thereof set forth in the Lease, except as expressly provided herein; or (iv) subordinate this Lease to any lien subordinate to the lien of the Mortgage.

20.03 If Landlord has notified Tenant of the existence of a Mortgage and the name and address of the Mortgagee and a Landlord Default occurs, Tenant shall give prompt written notice of such Landlord Default to such Mortgagee, and such Mortgagee shall then have the right (but not the obligation) to cure such Landlord Default within a period of ten (10) days after notice of such Landlord Default is given to such Mortgagee, in the case of a monetary Landlord Default, or thirty (30) days after notice of such Landlord Default is given to such Mortgagee, in the case of a non monetary Landlord Default, except that in the case of a non monetary Landlord Default which cannot with diligence and continuity be cured within a period of thirty (30) days, the time within which such Landlord Default may be cured shall be extended for such period as may be reasonably necessary (but not to exceed ninety (90) days after notice of such Landlord Default is given to such Mortgagee) to complete the curing of such Landlord Default; provided that such Mortgagee gives Tenant written notice within said thirty (30) day period of such Mortgagee's intention to cure such Landlord Default and thereafter promptly commences and completes the curing of such Landlord Default with diligence and continuity. Tenant agrees not to exercise any of its rights or remedies under this Lease with respect to such Landlord Default during such cure period. Performance by such Mortgagee of any covenant or obligation of Landlord under this Lease shall satisfy any conditions of this Lease requiring performance by Landlord. If Tenant has given a Mortgagee notice of and an opportunity to cure a Landlord Default pursuant to this Section 20.03 and such Mortgagee fails or elects not to do so, Tenant shall have the right to exercise any of its rights and remedies under this Lease with respect to such Landlord Default, including, without limitation, curing such Landlord Default and offsetting the cost thereof against the installments of Rent next becoming due under this Lease, or exercising its right to cancel this Lease.

20.04 If the interests of Landlord shall be transferred to and/or owned by a Mortgagee by reason of a judicial sale of the Property in any action, suit or proceeding brought by such Mortgagee to collect the indebtedness secured by a Mortgage or to foreclose a Mortgage or to enforce any of its other rights or remedies under the terms of a Mortgage or otherwise provided by law (each, a "Foreclosure Action"), a power of sale foreclosure, a deed in lieu of foreclosure, or otherwise, Tenant shall be bound to such Mortgagee under all of the terms, covenants and conditions of this Lease for the then remaining balance of the term of this Lease and any renewals or extensions thereof duly exercised by Tenant, with the same force and effect as if such Mortgagee were the original landlord under this Lease, and Tenant will attorn to such Mortgagee as its landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of Tenant or such Mortgagee immediately upon such Mortgagee's succeeding to the interest of Landlord under this Lease; provided, however, that Tenant shall be under no obligation to pay Rent to such Mortgagee until Tenant is notified

by such Mortgagee of such transfer of ownership. The respective rights and obligations of such Mortgagee and Tenant upon such attornment, to the extent of the then remaining balance of the term of this Lease and any renewals or extensions thereof duly exercised by Tenant, shall be the same as those of Landlord and Tenant set forth in this Lease. Landlord hereby consents to said attornment.

20.05 If a Mortgagee shall succeed to the interest of Landlord under this Lease by reason of a judicial sale of the Property in a Foreclosure Action, a power of sale foreclosure, a deed in lieu of foreclosure, or otherwise, such Mortgagee shall be bound to Tenant under all of the terms, covenants and conditions of this Lease; provided, however, that such Mortgagee shall not be:

(a) Liable for any act or omission of any prior landlord under the Lease, including Landlord, which occurred prior to such Mortgagee's succession to title or for any monetary damages incurred by Tenant in connection therewith, unless such act or omission constitutes a Landlord Default, is of a continuing nature, Tenant has notified such Mortgagee of such Landlord Default pursuant to Section 20.03 hereof, and such Mortgagee is curing or has notified Tenant of its intent to cure such Landlord Default in accordance with Section 20.03 hereof;

(b) Subject to any offsets, defenses or counterclaims which Tenant might have against any prior landlord under this Lease, including Landlord, by reason of an event which occurred prior to such Mortgagee's succession to title, unless such event constitutes a Landlord Default, is of a continuing nature, Tenant has notified such Mortgagee of such Landlord Default pursuant to Section 20.03 hereof, and such Mortgagee is curing or has notified Tenant of its intent to cure such Landlord Default in accordance with Section 20.03 hereof; or

(c) Required to complete the Landlord's Work, make any structural repairs to the Building, remove any Hazardous Materials from the Property, repair or restore the Property following a casualty or a taking, or perform any of Landlord's other covenants or obligations under this Lease; provided, however, that if a Mortgagee succeeds to the interest of Landlord under this Lease at a time when Landlord has failed to perform any of its covenants or obligations under this Lease, and Tenant notifies such Mortgagee of such Landlord Default, and such Mortgagee fails or elects not to cure such Landlord Default within the requisite cure period, Tenant may, at its option, (1) perform such covenants or obligations and offset the cost thereof against the installments of Rent next becoming due under this Lease, or (2) cancel this Lease upon thirty (30) days' notice to such Mortgagee.

## ARTICLE 21

### INVALIDITY OF PROVISION

21.01 Invalidity. If any term, covenant, condition or provision of this Lease or the application thereof to any circumstance or to any person, firm or corporation shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Lease or the application thereof to any circumstances or to any person, firm or corporation shall be valid and shall be enforceable to the fullest extent permitted by law.



## ARTICLE 22

### BROKERAGE

22.01 Tenant's and Landlord's Obligation. Landlord and Tenant each covenant, represent and warrant to the other that each has had no dealings or negotiation with any broker or agent other than the Brokers in connection with the consummation of this Lease. Each party covenants and agrees to pay, hold harmless and, indemnify the other from and against any and all cost, expense (including reasonable attorneys fees) and liability in connection with any compensation, commissions or charges claimed by any broker or agent, other than the Brokers, with whom such indemnifying party had dealt. Tenant shall be responsible to pay all commissions which may be due to the Brokers in accordance with the provisions of a separate agreement. The provisions of this Article shall survive the termination, expiration, and cancellation of this Lease.

## ARTICLE 23

### ENVIRONMENTAL

23.01 Tenant's Obligations. Tenant shall not cause or permit any Hazardous Materials (as hereinafter defined) to be brought upon, stored, used, generated, released into the environment or disposed of, on, under, or about the Property, except in compliance with all applicable laws, rules and regulations. Tenant hereby agrees to indemnify, defend, protect and hold harmless Landlord and Landlord's officers, directors, shareholders, partners, members and agents and employees, and their respective successors and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including without limitation, loss or restriction on use of rentable space and any sums paid in settlement of claims, reasonable attorneys' fees, consultant fees and expert fees) which arise from the release of Hazardous Materials on, in or about the Demised Premises which are caused by Tenant or any of Tenant's Representatives during the Term of this Lease. Except as provided in this Section 23.01, Tenant shall not be liable under this Lease for any conditions as and to the extent existing prior to the Term of this Lease even if such conditions were caused or permitted by Tenant prior to the Term of this Lease, it being understood and agreed that, subject as aforesaid, any pre-existing environmental conditions are dealt with under the Agreement of Sale between the parties; provided that Tenant shall be responsible for any material exacerbation in such conditions by Tenant during the Term. Landlord and Tenant acknowledge receipt of a Phase I Report dated \_\_\_\_\_ prepared by \_\_\_\_\_. [UPDATE BASED ON DUE DILIGENCE CONDUCTED UNDER PSA]

23.02 Landlord's Obligations. Landlord shall not cause or permit any Hazardous Materials to be brought upon, stored, used, generated, released into the environment or disposed of, on, under, or about the Property, except in compliance with all applicable laws, rules and regulations. Other than as expressly provided for in Section 23.01, Landlord hereby agrees to indemnify, defend, protect and hold harmless Tenant and Tenant's officers, directors, shareholders, partners, members and agents and employees, and their respective successors and assigns, from any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including without limitation, loss or restriction on use of rentable space and any sums

paid in settlement on claims, reasonable attorneys' fees, consultant fees and expert fees) which arise from the presence of Hazardous Materials on, in or about the Property, which are caused by Landlord or any of Landlord's Representatives during the term of this Lease.

23.03 Remediation. The indemnification by Landlord and Tenant under this Article includes, without limitation, any and all costs incurred in connection with any investigation of site conditions or any clean up, remedial, removal or restoration work required by any Federal, State or Local governmental agency or political subdivision because of the presence of such Hazardous Materials in, on, under or around the Property. The obligations of Landlord and Tenant under this Article shall survive the termination of this Lease.

23.04 Definition. The term "Hazardous Materials" as used in this Lease shall mean and include (a) any hazardous or toxic materials, substances, or wastes which are toxic, ignitable, corrosive or reactive and which are regulated by any Federal, State or Local governmental agency; (b) asbestos, (c) petroleum and petroleum base products, (d) urea formaldehyde foam insulation, and (e) polychlorinated biphenyls ("PCBs"), freon and other chlorofluorocarbons.

#### ARTICLE 24

##### CERTIFICATE OF TENANT

24.01 Estoppel. Tenant, without charge, at any time and from time to time but no more than two (2) times per year, within ten (10) days after written request by Landlord, shall deliver a written instrument in form provided by Landlord, to Landlord or any other person, firm or corporation specified by Landlord, duly executed and acknowledged, certifying, to the extent true,

(a) that this Lease is unmodified and in full force and effect or, if there has been any modification, that the same is in full force and effect as modified and stating any such modification, that there is no existing basis to cancel or terminate this Lease, and to Tenant's knowledge, Landlord is not in default thereunder;

(b) whether the term of this Lease has commenced and rent become payable thereunder, and whether Tenant is in possession of the Demised Premises except for such portions of the Demised Premises that have been sublet or being held for sublet pursuant to the provisions of the Lease;

(c) whether or not there are then existing any defenses or offsets that are not claims under subsection (e) below against the enforcement of any of the agreements, terms, covenants or conditions of this Lease and any modification thereof upon the part of Tenant to be performed or complied with, and, if so, specifying the same;

(d) the amount of the Fixed Rent payable under this Lease and the dates to which the Fixed Rent and Additional Rent and other charges thereunder have been paid; and

(e) whether or not Tenant has made any claims against Landlord under this Lease and, if so, the nature and the dollar amount, if any, of such claim.



## ARTICLE 25

### LEGAL PROCEEDINGS AND WAIVER OF JURY TRIAL

25.01 Jury Trial Waiver. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease (but not the sale of the Property from Tenant to Landlord), the relationship of Landlord and Tenant, Tenant's use or occupancy of the Demised Premises, and/or any other claims (except claims for personal injury or property damage), and any statutory remedy. If Landlord commences any summary proceeding for non-payment of rent, Tenant shall not interpose any counterclaim, except those counterclaims which law requires to be raised or otherwise forfeited, of whatever nature or description on any such proceeding.

## ARTICLE 26

### SURRENDER OF DEMISED PREMISES

26.01 Surrender. Upon the expiration or other termination of the term of this Lease, Tenant shall quit and surrender the Demised Premises to Landlord in the order and condition thereof as of the completion of Tenant's Work, permitted alterations, ordinary wear and tear and damage by fire, the elements or other casualty excepted, and Tenant shall remove its property in accordance with Article 6 of this Lease. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term of this Lease.

26.02 Holdover. Tenant shall have the right to retain possess of the Demised Premises after the Expiration Date on a month-to-month basis for a period of up to three (3) months ("Permitted Hold Over Period") on the same terms and conditions as set forth in this Lease except that Tenant shall pay to Landlord for each month or portion thereof during the Permitted Hold Over Period an amount equal to the Fixed Rent payable under this Lease for the last month of the Term multiplied by 125%. Thereafter, if possession of the Demised Premises is not surrendered to Landlord at the expiration of the Permitted Hold Over Period, then, notwithstanding anything to the contrary contained in this Lease, Tenant shall pay to Landlord for each month and for each portion of any month during which Tenant holds over in the Demised Premises after the expiration of the Permitted Hold Over Period an amount equal to the Fixed Rent multiplied by 150%. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Demised Premises after the expiration of the Permitted Hold Over Period. The provisions of this Section shall survive the expiration or other termination of the Term of this Lease. During any such holdover, Tenant shall continue to be bound by all other terms of this Lease, including the obligations to pay Additional Rent.

## ARTICLE 27

### CONSENTS AND APPROVALS

27.01 Reasonable Time. A party shall not be deemed to have delayed unreasonably its consent (to the extent the party is obligated to act reasonably) if any consent is withheld for a period of less than ten (10) business days.

## ARTICLE 28

### NOTICES

28.01 Method and Address. Any notice, demand, consent, approval, disapproval, or statement (collectively, "Notices") from Landlord to Tenant or from Tenant to Landlord shall be in writing and shall be deemed duly given (i) if mailed by registered or certified mail, postage prepaid, return receipt requested, (ii) if delivered by Federal Express or other national commercial courier service, for next day delivery with receipt acknowledged, or (iii) only in the case of Notices that are bills for rent, if mailed by first class mail, postage prepaid, to the address(es) for Notices set forth in this Section.

Notices to Tenant shall be sent to:

Pall Corporation  
25 Harbor Park Drive  
Port Washington, NY 11050  
Attention: Adam I. Mandelbaum, Assistant General Counsel  
[Adam\\_Mandelbaum@pall.com](mailto:Adam_Mandelbaum@pall.com)

With a copy to:

Nixon Peabody LLP  
50 Jericho Quadrangle  
Suite 300  
Jericho, NY 11753  
Attention: Denise D. Pursley, Esq.  
[dpursley@nixonpeabody.com](mailto:dpursley@nixonpeabody.com)

or to such other address as Tenant shall have last designated by notice in writing to Landlord.

Notices to Landlord shall be sent to:

c/o Kiss Nails Products, Inc.  
57 Seaview Boulevard  
Port Washington, NY 11050  
Attention: Richard K. Kim, Esq.  
[cfo@kissusa.com](mailto:cfo@kissusa.com)

With a copy to:

Farrell Fritz, P.C.  
1320 RXR Plaza  
Uniondale, NY 11556-1320  
Attention: Peter L. Curry, Esq.  
[pcurry@farrellfritz.com](mailto:pcurry@farrellfritz.com)

or to such other address as Landlord shall have last designated by notice in writing to Tenant.

28.02 Each Notice shall be effective on receipt and the time period in which a response to any Notice must be given shall commence to run from the date of receipt on the delivery confirmation or the return receipt of the Notice by the addressee or the courier thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given shall be deemed to be receipt of the Notice given.

## ARTICLE 29

### NO WAIVER

29.01 No Waiver. No agreement to accept a surrender of this Lease shall be valid unless in writing signed by both parties. No employees of Landlord or of Landlord's agents shall have any power to accept the keys to the Demised Premises prior to the termination of this Lease. The delivery of keys to any employee of Landlord or Landlord's agent shall not operate as termination of this Lease or a surrender of the Demised Premises. If Tenant at any time desires to have Landlord sublet the Demised Premises for Tenant's account, Landlord or Landlord's agents are authorized to receive said keys for such purpose without releasing Tenant from any of the obligations under this Lease. The failure of either party hereto to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease, shall not be considered a waiver for future violations nor prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived by either party, unless such waiver be in writing signed by the party against whom it is intended to be enforced. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installment of Fixed Rent herein stipulated shall be deemed to be other than on the account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

## ARTICLE 30

### LANDLORD DEFAULT

30.01 Landlord. The term "Landlord" as used in this Lease means only the owner, or mortgagee in possession at the time in question of the present Landlord's interest in the Demised Premises or the Building so that in the event of any transfer of title to said Demised Premises or the Building, upon notification to Tenant of such transfer, the said transferor Landlord shall be and hereby is entirely freed and relieved of all existing or future covenants, obligations and liabilities of Landlord hereunder, and it shall be deemed and construed as a covenant running with the land without further agreement between the parties or their successors in interest, or between the parties and the transferee of title to the Demised Premises or the Building that the transferee has assumed and agreed to carry out any and all such covenants, obligations and liabilities of Landlord hereunder, it being intended that Landlord's obligations under this Lease shall, as limited by this Section, be binding on Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership.

30.02 It shall be a "Landlord Default" under this Lease if Landlord fails to perform or comply with any of its covenants or obligations under this Lease and such failure continues for a period of ten (10) days after notice of such default is given to Landlord, in the case of a monetary default, or thirty (30) days after notice of such failure is given to Landlord, in the case of a non-monetary default, except that in the case of a non-monetary default which cannot with diligence and continuity be cured within a period of thirty (30) days, the time within which such default may be cured shall be extended for such period as may be reasonably necessary (but not to exceed ninety (90) days after notice of such default is given to Landlord) to complete the curing of such default; provided that Landlord gives Tenant written notice within said thirty (30) day period of Landlord's intention to cure such default and thereafter promptly commences and completes the curing of such default with diligence and continuity.

30.03 Upon the occurrence of any Landlord Default, Tenant shall have the right to either (i) cure such Landlord Default and offset the cost thereof against the installments of Rent next becoming due under this Lease, or (ii) cancel this Lease on thirty (30) days' notice to Landlord, subject, in each case, to the right of any Mortgagee to receive notice of and to cure such Landlord Default pursuant to Section 20.03 hereof.

## ARTICLE 31

### INABILITY TO PERFORM

31.01 Unavoidable Delay. This Lease and the obligation of each party hereto to perform all of the covenants and agreements hereunder on the parties' respective parts to be performed shall in no way be affected, impaired or excused because such party is unable to fulfill any of its obligations under this Lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any

equipment or fixtures, unless such party is prevented or delayed from doing so by reason of strike or labor troubles or government preemption in connection with a National Emergency or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency or when, in the reasonable judgment of Landlord, temporary interruption of such services is necessary by reason of accident, mechanical breakdown or to make repairs alterations or improvements.

## ARTICLE 32

### NO ORAL MODIFICATION

32.01 Amendment. Except as otherwise provided in this Lease, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless in writing and signed by the party against whom enforcement of the alteration, amendment, change or addition is sought.

## ARTICLE 33

### NON-LIABILITY

33.01 Landlord Liability. Except as otherwise expressly provided for in this Lease, neither Landlord nor any partner, member, director, officer, agent, shareholder, servant or employee of Landlord shall be liable to Tenant for any loss, injury or damage to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss; provided that Landlord (but not any partner, member, director, officer, shareholder, servant or employee of Landlord) shall be liable to Tenant for its (and its partner, member, director, officer, shareholder, servant or employee) gross negligence and willful misconduct.

## ARTICLE 34

### MISCELLANEOUS

34.01 Governing Law. Irrespective of the place of execution or performance, this Lease shall be governed and construed in accordance with the law of the State of New York. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted.

34.02 Independent Covenants. Except as otherwise expressly provided in this Lease, each covenant, agreement, obligation or other provision of this Lease on Tenant's part to be performed shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease.

34.03 Gender. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and other gender as the context may require.

34.04 Captions. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Lease or the intent of any provision hereof.

34.05 Legal Proceedings. If any action, suit or proceeding is commenced under or in connection with this Agreement, the losing party shall pay to the prevailing party, and the prevailing party shall be entitled to an award for (i) attorneys' fees, court costs and other litigation expenses incurred by the prevailing party in connection with such action, suit or proceeding; and (ii) interest on the amount recovered from the due date to the date of payment at the prime or base rate of Citibank (or its successor) in effect at the due date (or, if not a business day, then at the first business day thereafter), plus three (3) percentage points per annum (the "Default Rate").

34.06 No Consequential Damages. Notwithstanding anything herein to the contrary, in no event shall either party be liable to the other for consequential damages, including lost profits.

34.07 Counterparts. This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same Agreement.

34.08 Nassau County Industrial Development Agency. Landlord and Tenant acknowledge and agree that, although this Lease is expressed as a lease, Landlord's interest in the Property is as tenant under a lease from the Nassau County Industrial Development Agency (the "NCIDA Lease") and this Lease is a sublease, subject to the terms and conditions of the NCIDA Lease. Landlord shall perform all obligations of the tenant under the NCIDA Lease as they pertain to the Property, including but not limited, to the obligation to provide annual reports to the NCIDA regarding job maintenance, based, in part, on the information provided by Tenant, among other reporting obligations as more particularly described in the NCIDA Lease, the PILOT Agreement, and related NCIDA documents (collectively, the "NCIDA Documents"). Both Landlord and Tenant shall comply with the requirements of the NCIDA Documents and shall promptly respond to requests for information by the NCIDA. Landlord and Tenant shall be responsible for their respective benefits "recapture" resulting from their respective breach of obligations under the IDA documents.

## ARTICLE 35

### RIGHT OF FIRST OFFER AND RIGHT OF FIRST REFUSAL

35.01. As used herein, the following terms shall have the meanings hereinafter set forth:

(i) "Available Premises" shall mean any rentable space in the Building which after the expiration of the initial leasing to a third party becomes available for lease;

(ii) "Outside Party" shall mean any third party other than Tenant or Landlord, but shall expressly exclude any "Prior Party";

(iii) "Prior Party" or "Prior Parties" shall mean any then tenant or occupant of the Available Premises or any other party then holding any right or option (that predates the date of



this Lease) to lease the Available Premises, whether or not similar to the rights granted to Tenant hereunder.

(iv) **"Exercise Conditions"** shall mean that all of the following shall be true as of both the Exercise Date and the New Lease Commencement Date:

(A) Tenant shall not be in breach or default of any of the terms, covenants or conditions of this Lease or the IDA Documents after the giving of any required notice and expiration of any applicable grace or cure period; and

(B) No Prior Party shall have exercised its rights with respect to the Available Premises.

(v) **"Offer Terms"** shall mean the terms upon which Landlord is willing to lease the Available Premises to Tenant;

(vi) **"Available Premises Availability Date"** shall mean the date that Landlord anticipates that the Available Premises will be vacated by the existing tenant or occupant thereof.

35.02. Provided that the Exercise Conditions shall then be satisfied, then for Term of this Lease (herein, the **"Offer Period"**), Landlord shall offer to lease the Available Premises to Tenant before leasing the same to any Outside Party (the **"Offer Right"**). The Offer Right shall be in accordance with and on the terms and conditions contained in the balance of this Article. The Exercise Conditions shall be solely for the benefit of Landlord and may be enforced, relied upon or waived only by Landlord.

35.03. Prior to entering into a lease for any Available Premises during the Offer Period with any Outside Party, Landlord shall send written notice (hereinafter referred to as the **"Offer Notice"**) to Tenant of the availability of the Available Premises for leasing from Landlord and setting forth the Offer Terms and Available Premises Availability Date.

35.04. If Tenant shall desire to accept the Offer Terms, Tenant shall send Landlord written notice thereof (hereinafter referred to as an **"Acceptance Notice"**) by overnight mail or certified or registered mail, return receipt requested, on or before the thirtieth (30th) day next succeeding the day upon which Landlord shall have sent the Offer Notice to Tenant. If Tenant rejects the Offer Terms, then with respect to the Available Premises that were the subject of the Offer Notice only the Offer Right shall be deemed waived and thereupon cease and terminate and Landlord shall thereafter have the right to lease such Available Premises to a third party. Notwithstanding the foregoing, if the same or any other Available Premises shall subsequently become available during the Lease Term, the provisions of this Article 35 shall apply to such Available Premises.

35.05. If Tenant shall send an Acceptance Notice to Landlord in the time and manner referred to in Section 35.04 hereof, the parties hereto shall promptly enter into an amendment of this Lease for the Available Premises (hereinafter called the **"Lease Amendment"**) on the terms contained in the Offer Notice and subject to the terms of this Lease except for any terms specifically applicable to the Premises and except that:

(i) Tenant shall take possession of the Available Premises on the "Available Premises Commencement Date" (as hereinafter defined) in its "as-is" condition as of such date, subject to the Substantial Completion of any work performed by or on behalf of Tenant to prepare the Available Premises for Tenant's occupancy ("Tenant's Work");

(ii) "Tenant's Proportionate Share" shall be recomputed based upon the rentable square foot area of the Available Premises;

(iii) the term of the lease for the Available Premises shall commence upon Substantial Completion of Tenant's Work (hereinafter referred to as the "Available Premises Commencement Date") and shall expire upon the Expiration Date of this Lease (as the same may be extended pursuant to Section 1.02); and

(iv) Tenant shall receive its proportionate share of parking spaces with respect to the Available Premises.

**END OF TEXT**

IN WITNESS WHEREOF, Landlord and Tenant have respectively executed this Lease as of the day and year first above written.

**LANDLORD:**  
**25 HARBOR PARK DRIVE REALTY LLC**

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

Its: \_\_\_\_\_

**TENANT:**  
**PALL CORPORATION**

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

Its: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**  
(follows immediately)

EXHIBIT A

DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, situate, lying and being at Port Washington, Town of North Hempstead, County of Nassau and State of New York, known and designated as and by Lot No. 1 and part of Lot No. 6 in Block 87 on a certain map entitled, "Map of Hempstead Harbor Industrial Park, Section No. 1, Port Washington, Town of North Hempstead, Nassau County, New York, December 1968, J.J. Bohn L.S.", and filed in the Office of the Clerk of the County of Nassau on April 29, 1969 as Map No. 8227 and Lots 11, 12, 13 and 14 in Block 87 on a certain map entitled "Map of Hempstead Harbor Industrial Park Section 3, Port Washington, Town of North Hempstead, Nassau County, New York, April 1973, Bohn and Bonacci, P.C., successor to J.J. Bohn, L.S.", and filed in the Office of the Clerk of the County of Nassau on December 22, 1977 as Map No. 8713, which are bounded and described as follows:

BEGINNING at a point on the easterly side of Industrial Park where the same is intersected by the division line between Lots 1 and 2 in Block 87 as shown on the "Map of Hempstead Harbor Industrial Park Section 1";

RUNNING THENCE northerly along the easterly side of Industrial Park Drive the following five (5) courses and distances:

1. north 18 degrees 26 minutes 15 seconds west, 40.00 feet;
2. along the arc of a curve bearing to the right, having a radius of 1,000.00 feet, a distance along the arc of said curve of 436.33 feet (actual distance: 436.10 feet, as shown on said map);
3. north 06 degrees 33 minutes 45 seconds east, 187.71 feet;
4. along the arc of a curve bearing to the left, having a radius of 544.27 feet, a distance along the arc of said curve of 191.09 feet;
5. north 13 degrees 33 minutes 12 seconds west, 213.01 feet to the extreme southerly end of a curve whose radius is 50.00 feet and has a length of 78.54 feet, which connects the easterly side of Industrial Park Drive with the southerly side of Harbor Park Drive;

RUNNING THENCE northeasterly and easterly along said curve, a distance of 78.54 feet to the southerly side of Harbor Park Drive;

RUNNING THENCE southerly and southeasterly along the along the southerly and southwesterly side of Harbor Park Drive the following three (3) courses and distances:

1. north 76 degrees 26 minutes 48 seconds east, 78.50 feet;

2. along the arc of a curve bearing to the right, having a radius of 389.75 feet, a distance along the arc of said curve of 332.43 feet;
3. south 54 degrees 41 minutes 04 seconds east, 265.00 feet;

THENCE easterly along the southerly side of Harbor Park Drive along the arc of a circle, bearing to the left, with a radius of 370.00 feet, a distance of 232.48 feet to the westerly terminus of the curve connecting the southerly side of Harbor Park Drive with the westerly side of West Shore Drive;

THENCE easterly and southerly along the arc of said curve bearing to the right, with a radius of 50.00 feet, a distance of 78.54 feet;

THENCE south 00 degrees 41 minutes 04 seconds east along the westerly side of West Shore Drive, 153.12 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east still along the westerly side of West Shore Drive, 218.88 feet;

RUNNING THENCE south 89 degrees 35 minutes 22 seconds west, 295.00 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east, 256.78 feet;

RUNNING THENCE south 89 degrees 35 minutes 22 seconds west, 125.00 feet;

RUNNING THENCE south 00 degrees 24 minutes 38 seconds east, 32.89 feet;

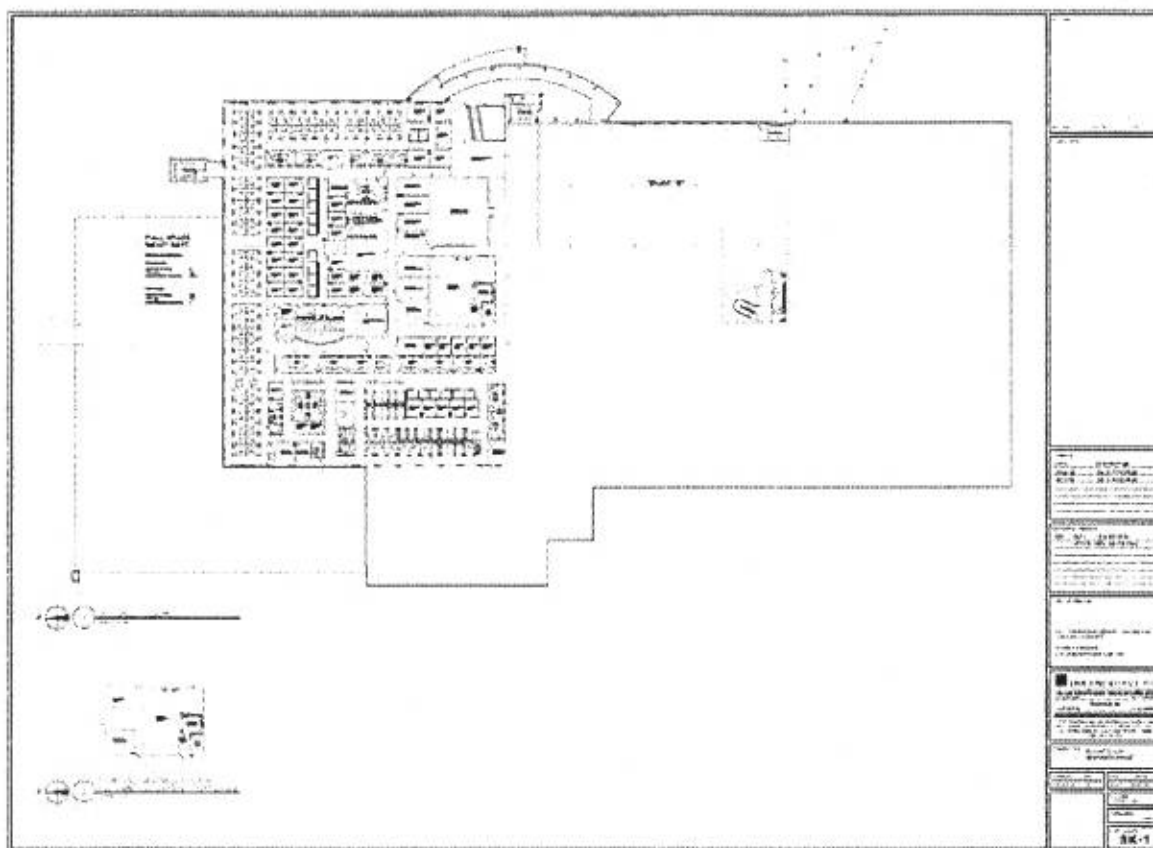
RUNNING THENCE south 71 degrees 33 minutes 45 seconds west, 424.78 feet to the easterly side of Industrial Park Drive the point or place of BEGINNING.

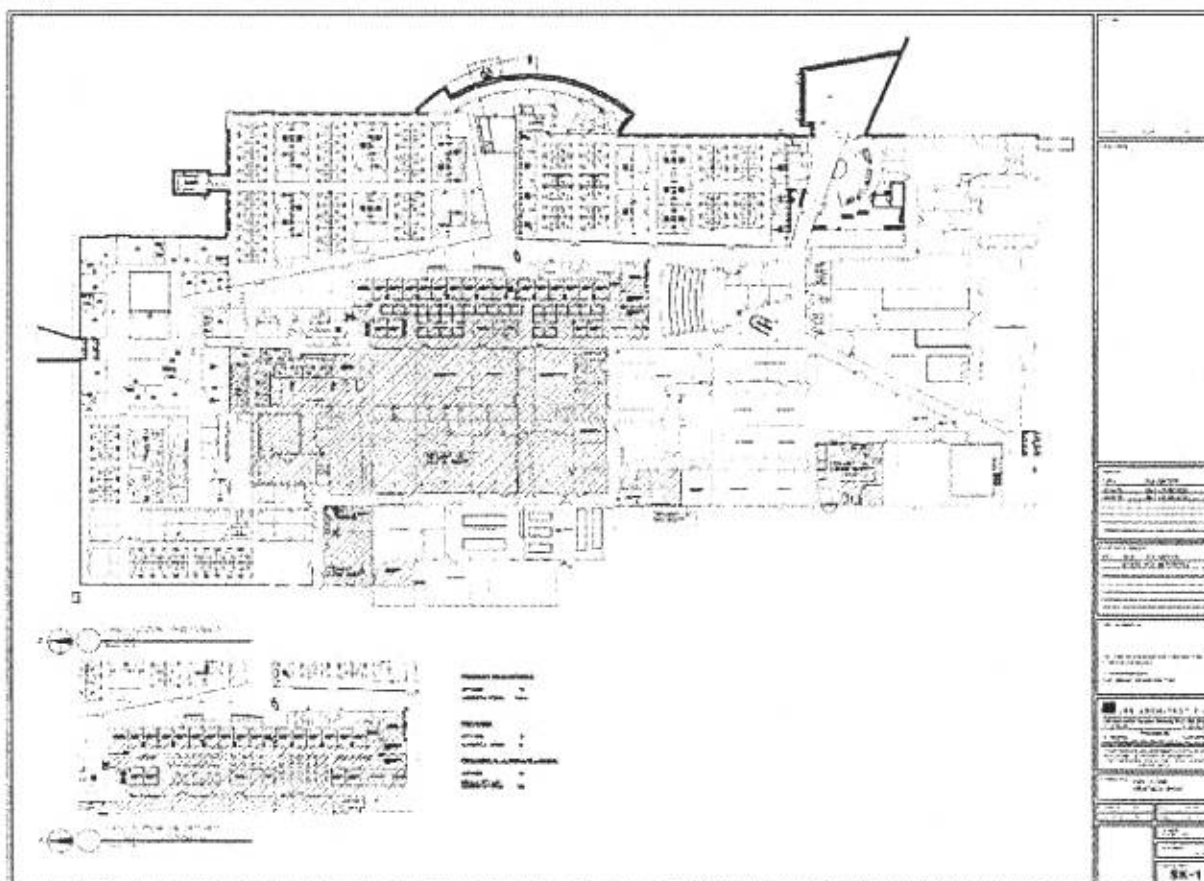




**EXHIBIT B**

**DEMISED PREMISES**  
(on next page)





**EXHIBIT C**

**WORK AGREEMENT  
Between**

\_\_\_\_\_

**And**

**PALL CORPORATION**

The provisions of this Exhibit shall have the same force and effect as if this Exhibit were a numbered Article of the Lease. The terms used in this Exhibit that are defined in the Lease shall have the same meanings as provided in the Lease.

**1. Plans and Specifications; Bidding.**

- a) Tenant has caused JRS Architect, P.C. ("Architect") to complete a test fit (the "Test Fit") for improvements to the Demised Premises which Test Fit is annexed hereto as Schedule 1.
- b) Landlord, at its sole cost and expense, shall cause the Architect to prepare construction drawings (the "Construction Drawings") for the work based upon the Test Fit, which Construction Drawings shall include the work identified in Schedule 2 annexed hereto (the "Demising Work"), and submit such Construction Drawings to Landlord and Tenant for review. Landlord's review shall be limited to the Demising Work only. Landlord and Tenant shall finalize the Construction Drawings with respect to the Demising Work within twenty (20) days after receipt of the Construction Drawings. The final mutually acceptable Construction Drawings with respect to the Demising Work are referred to herein as the "Demising Work Plans". The work set forth on the Demising Work Plans and in Schedule 2 hereof are collectively referred to as "Landlord's Work".
- c) Notwithstanding anything to the contrary contained herein, Landlord's Work shall be performed by Landlord at Landlord's sole cost and expense. The cost of Landlord's Work shall not be included in the Work Costs (as hereinafter defined) and shall be paid separately by the Landlord. For the avoidance of doubt, Landlord shall have no obligations to alter, improve, decorate or otherwise prepare the Demised Premises for Tenant's occupancy other than Landlord's Work.

**2. Construction of Landlord's Work.** Landlord shall perform Landlord's Work and shall retain all necessary contractors and subcontractors for such work. Landlord shall submit all necessary applications for a building permit by the Town of North Hempstead for Landlord's Work as soon as practicable after the execution of this Lease and shall thereafter diligently pursue the issuance of such permit. Landlord shall commence Landlord's Work as soon as reasonably practicable after Landlord receives the building permit and shall use commercially reasonable efforts to cause Landlord's Work to be Substantially Completed on or before the date that is thirty (30) days after the issuance of a building permit, subject to delays beyond Landlord's reasonable control. Landlord's Work shall be performed in a good and workman-like manner concurrently with the construction of Tenant's Work (as hereinafter defined) and in accordance with all laws and/or requirements of public authorities, and any requirements of insurance bodies. Notwithstanding anything to the contrary set forth herein, Landlord shall have no liability in the event that the Demised Premises are not substantially ready for occupancy upon the date specified by Landlord. Tenant shall periodically inspect Landlord's Work and promptly make objections, if any, without delay to mitigate changes, delays and costs.

3. **Construction of Tenant's Work.** Except for Landlord's Work, Tenant, at Tenant's sole expense shall be responsible for the construction for all work necessary to conduct Tenant's business in the Demised Premises and such work shall be referred to hereinafter as "**Tenant's Work**". Landlord's Work and Tenant's Work are collectively referred to as the "**Work**"). Tenant shall immediately commence the preparation of plans for Tenant's Work and, upon receipt of permits from governmental agencies, shall diligently prosecute the construction of Tenant's Work to completion. Tenant's Work shall be performed in a good and workman-like manner concurrently with the construction of Landlord's Work and in accordance with all laws and/or requirements of public authorities, and any requirements of insurance bodies. Landlord hereby grants to Tenant and its architects, engineers, contractors, subcontractors, suppliers and other agents, non-exclusive access to the Building for the purpose of performing Tenant's Work as soon as reasonably practicable after the execution of this Lease.

4. **Substantial Completion.** As used herein, "Substantially Completed" and similar terms (including but not limited to "Substantially Completion" and "Substantially Completing") shall mean that the Landlord's Work has been substantially completed to permit Tenant's occupancy of the Demised Premises, except for details of construction, decoration and mechanical adjustments which are minor in character, the non-completion of which will not unreasonably interfere with Tenant's use and enjoyment of the Demised Premises and the issuance of a final or temporary certificate of occupancy or other governmental consent or approval allowing Tenant to legally occupy the Demised Premises ("Governmental Approval"). At any time after the Substantial Completion Date, both parties, at the request of either party, shall execute and deliver a document stating the Rent Commencement Date.

5. **Payment of Work Costs.** Landlord shall, at its sole cost and expense, pay for all construction drawings, permits, engineering, architectural, expediting and filing fees, and third party inspections, and the cost of the Demising Work set forth on Schedule 2 annexed hereto.

6. **Tenant's Representative.** Tenant has designated David LeFurgy as its sole representative with respect to the matters set forth in this Work Letter, who, until further notice to Landlord, shall have full authority and responsibility to act on behalf of the Tenant as required in this Work Letter.

7. **Landlord's Representative.** Landlord has designated \_\_\_\_\_ as its sole representative with respect to the matters set forth in this Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Work Letter.

8. **Mutual Cooperation.** The parties agree to work together in good faith and to cooperate reasonably with one another so as to facilitate the completion of the Work in accordance with the terms of this Exhibit C and minimize interference with each other as the Work is performed concurrently.



SCHEDULE 1

TEST FIT

SCHEDULE 2

Landlord's Work Paid for by Landlord

- Landlord will separate and demise the Demised Premises from the balance of the Building pursuant to the Plans.
- Landlord will install utility meters or sub-meters exclusively serving the Demised Premises.

**EXHIBIT D**  
**CLEANING SPECIFICATIONS**

**General Cleaning:**

a. **NIGHTLY:**

1. Carpet sweep all carpets, moving only light furniture four (4) times per week. (Desks, file cabinets, etc. not to be moved.)
2. Empty all waste receptacles and remove wastepaper.
3. Sweep and wash all floors in lavatories and restrooms.
4. Wash and polish all mirrors, shelves, brightwork and enameled surfaces in lavatories and restrooms.
5. Wash and disinfect all basins, bowls and urinals in lavatories and restrooms.
6. Hand dust and clean all partitions, tile walls, dispensers and receptacles in lavatories and restrooms.
7. Empty paper receptacles, fill receptacles and remove wastepaper in lavatories and restrooms.
8. Fill toilet tissue holders, paper towel dispensers and soap dispensers in lavatories and restrooms.
9. Empty and clean sanitary disposal receptacles in lavatories and restrooms.

b. **WEEKLY:**

1. Vacuum all carpeting and rugs.
2. Dust all door louvers and other ventilating louvers within cleaner's normal reach.
3. Hand dust and wipe clean all furniture, fixtures and windowsills.
4. Wipe clean all brass and other bright work.
5. All hard flooring to be swept.

c. **SEMI-ANNUALLY:**

1. Clean windows, both interior and exterior.

**EXHIBIT E**

**CAFETERIA SPECIFICATIONS**

During the Term Landlord shall provide the same level of food service as was provided by Tenant prior to the commencement of this Lease Term including but not limited to, hot and cold breakfast and lunch entrees, sandwiches, and salads during the hours of 7:30 a.m. – 2:30 p.m. Monday through Friday. Landlord or the third-party provider shall have the right to set commercially reasonable charges in the Town of North Hempstead for all food to be provided, such charges to be paid by the diners.

Attachment B to Schedule I – Copy of Environmental Report  
[previously delivered to the Agency]

Exhibit A

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