

---

---

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
as sublessor

AND

PROSPECT REALTY HOLDING COMPANY, LLC  
as sublessee

---

SUBLEASE AGREEMENT

---

DATED AS OF FEBRUARY 1, 2014

---

ADDRESS: 102-110 Duffy Avenue  
VILLAGE: Hicksville  
TOWN: Oyster Bay  
COUNTY: Nassau  
STATE: New York  
SECTION: 11  
BLOCK: G  
LOTS: 237 and 182

---

---

Prepared By:

Phillips Lytle LLP  
1305 Franklin Avenue, Suite 200  
Garden City, NY 11530  
Attention: Paul V. O'Brien, Esq.

TABLE OF CONTENTS

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

SECTION 6.1	MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY. ....	25
SECTION 6.2	TAXES, ASSESSMENTS AND UTILITY CHARGES.....	28
SECTION 6.3	INSURANCE REQUIRED. ....	28
SECTION 6.4	ADDITIONAL PROVISIONS RESPECTING INSURANCE.....	30
SECTION 6.5	APPLICATION OF NET PROCEEDS OF INSURANCE.....	31
SECTION 6.6	PAYMENTS IN LIEU OF TAXES.....	31
ARTICLE VII	DAMAGE, DESTRUCTION AND CONDEMNATION.....	32
SECTION 7.1	DAMAGE OR DESTRUCTION. ....	32
SECTION 7.2	CONDEMNATION.....	33
SECTION 7.3	ADDITIONS TO THE PROJECT FACILITY. ....	34
ARTICLE VIII	SPECIAL COVENANTS.....	34
SECTION 8.1	NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE “AS IS”. ....	34
SECTION 8.2	HOLD HARMLESS PROVISIONS. ....	35
SECTION 8.3	RIGHT OF ACCESS TO THE PROJECT FACILITY. ....	36
SECTION 8.4	COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS.....	36
SECTION 8.5	AGREEMENT TO PROVIDE INFORMATION. ....	36
SECTION 8.6	BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES.....	36
SECTION 8.7	COMPLIANCE WITH APPLICABLE LAWS. ....	37
SECTION 8.8	DISCHARGE OF LIENS AND ENCUMBRANCES.	37
SECTION 8.9	PERFORMANCE OF THE COMPANY’S OBLIGATIONS.....	38
SECTION 8.10	DEPRECIATION DEDUCTIONS AND TAX CREDITS.....	38
SECTION 8.11	EMPLOYMENT OPPORTUNITIES.....	38
SECTION 8.12	SALES AND USE TAX EXEMPTION.....	39
SECTION 8.13	IDENTIFICATION OF THE EQUIPMENT. ....	43
SECTION 8.14	FINANCIAL STATEMENTS.....	43
ARTICLE IX	ASSIGNMENTS; LEASING; MERGER OF THE AGENCY.....	43
SECTION 9.1	ASSIGNMENT OF THIS LEASE.....	43
SECTION 9.2	MERGER OF THE AGENCY. ....	43
SECTION 9.3	SALE OR LEASE OF THE PROJECT FACILITY. .	44

ARTICLE X	EVENTS OF DEFAULT AND REMEDIES .....	45
	SECTION 10.1	EVENTS OF DEFAULT DEFINED..... 45
	SECTION 10.2	REMEDIES ON DEFAULT. .... 47
	SECTION 10.3	REMEDIES CUMULATIVE..... 49
	SECTION 10.4	AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES..... 49
	SECTION 10.5	NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. .... 49
ARTICLE XI	OPTIONS TO TERMINATE .....	49
	SECTION 11.1	EARLY TERMINATION OF THE LEASE..... 49
	SECTION 11.2	OBLIGATION TO TERMINATE THE LEASE. .... 49
	SECTION 11.3	RESERVED..... 50
	SECTION 11.4	RECAPTURE OF AGENCY BENEFITS..... 50
ARTICLE XII	MISCELLANEOUS .....	52
	SECTION 12.1	NOTICES..... 53
	SECTION 12.2	BINDING EFFECT. .... 53
	SECTION 12.3	SEVERABILITY..... 54
	SECTION 12.4	AMENDMENT. .... 54
	SECTION 12.5	EXECUTION OF COUNTERPARTS. .... 54
	SECTION 12.6	APPLICABLE LAW. .... 54
	SECTION 12.7	SURVIVAL OF OBLIGATIONS. .... 54
	SECTION 12.8	TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING..... 54
	SECTION 12.9	NO RECOURSE; SPECIAL OBLIGATION..... 54
	SECTION 12.10	NET LEASE. .... 55
	SECTION 12.11	WAIVER OF JURY TRIAL..... 56
	SECTION 12.12	PRIOR AGREEMENTS..... 56
	SECTION 12.13	SERVICE OF PROCESS. .... 56
	SECTION 12.14	THIRD PARTY BENEFICIARIES..... 56
	SECTION 12.15	NON-DISCRIMINATION..... 57
	SECTION 12.16	DATE OF LEASE. .... 57
	SECTION 12.17	RECORDING AND FILING. .... 57

- EXHIBIT A - Description of the Land**
- EXHIBIT B - Description of the Equipment**
- EXHIBIT C - Form of Termination of Company Lease**
- EXHIBIT D - Form of Bill of Sale to Company**
- EXHIBIT E - Form of Sales Tax Exemption Letter**
- EXHIBIT F - Form of Termination of Lease**
- EXHIBIT G - Form of Annual Employment Report**

## **SUBLEASE AGREEMENT**

THIS SUBLEASE AGREEMENT dated as of February 1, 2014 (this "Lease") by and between the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 1550 Franklin Avenue, Suite 235, Mineola, NY 11501 (the "Agency"), and PROSPECT REALTY HOLDING COMPANY, LLC, a limited liability company duly organized and existing under the laws of the State of New York, having an office at 615 Merrick Avenue, Westbury, NY 11590 (the "Company").

### **W I T N E S S E T H :**

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

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

WHEREAS, the Company submitted an application for financial assistance (the "Application") to the Agency requesting that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 3 acre parcel of land located at 102-110 Duffy Avenue, Hicksville, Town of Oyster Bay, County of Nassau, New York (Section: 11; Block: G; Lots: 237 and 182) (collectively, the "Land"), (2) the renovation of the existing approximately 160,000 square foot building on the Land, together with parking and other related improvements to the Land (collectively, the "Building"), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Equipment"), all of the foregoing for use by the Company as a back office & processing administration facility (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes and real property taxes; and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on May 2, 2013 to the chief executive officer of Nassau County, New York and of each other affected tax jurisdiction within which the Project Facility is or is to be located; (B) caused notice of the Public Hearing to be published on May 2, 2013 in the Nassau edition of *Newsday*, a newspaper of general circulation available to residents of the County of Nassau, New York; (C) conducted the Public Hearing on May 16, 2013 at 10:30 a.m., local time, at Oyster Bay Community Center, 59 Church Street, Oyster Bay, Town of Oyster Bay, Nassau County, New York; and (D) prepared a report of the Public Hearing (the "Report") which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, the Executive Director of the Agency (A) caused notice of a meeting of the Agency (the "IDA Meeting") with respect to the proposed deviation from the Agency's uniform tax exemption policy and guidelines to be mailed on July 10, 2013 to the chief executive officer of each affected tax jurisdiction; and (B) conducted the IDA Meeting on December 5, 2013, and reviewed any written comments or correspondence received from the affected tax jurisdictions at or before the IDA Meeting regarding the proposed deviation from the Agency's uniform tax exemption policy and approved the proposed deviation; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Company and made any necessary comments to members of the Agency, and by resolution of the members of the Agency adopted on December 5, 2013, the Agency decided to conduct an uncoordinated review of the Project and determined that the Project is a Type II action under SEQRA and that the Project will not have a significant effect on the environment; and

WHEREAS, by resolution adopted by the members of the Agency on December 5, 2013 (the "Authorizing Resolution"), the Agency, following a review of the Report, determined to proceed with the Project, to grant the Financial Assistance and to enter into the "straight lease transaction" (as such quoted term is defined in the Act) contemplated by this Lease and the other Transaction Documents (as hereinafter defined); and

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

WHEREAS, the acquisition of an interest in the Project Facility, the straight lease of the Project Facility and the granting of the Financial Assistance by the Agency to the Company are

for proper purposes, including, without limitation, the advancement of the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State and the prevention of unemployment and economic deterioration pursuant to the provisions of the Act; and

WHEREAS, the granting of the Financial Assistance by the Agency to the Company has been determined by the Agency to be necessary to induce the Company to proceed with the Project; and

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

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

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

ARTICLE I  
DEFINITIONS

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

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

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

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



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

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

“Applicable Law” or “Applicable Laws” means, individually or collectively as the context may require, all current and future statutes, codes, laws, acts, ordinances, treaties, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, determinations and requirements, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of the foregoing to be determined both as if the Agency were the owner of an interest in the Project Facility and as if the Company and not the Agency were the owner of an interest in the Project Facility), including but not limited to (1) applicable health, building, zoning, use, rent, accessibility, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, (3) judgments, decrees, orders or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority, and (4) applicable covenants and restrictions relating in any way to the Project Facility.

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

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

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

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

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

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

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

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

“Closing Date” means the date of the Closing.

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

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

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

“Company” means Prospect Realty Holding Company, LLC, a limited liability company duly organized and existing under the laws of the State of New York, and its successors and assigns, to the extent permitted pursuant to this Lease.

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

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

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

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

“County” means the County of Nassau, New York.

“Default Interest Rate” means a rate of interest equal to three percent (3%) per annum above the “prime rate” of Citibank, N.A., as in effect from time to time, or the maximum rate permitted by applicable law, whichever is less.

“Environmental Indemnification” means the Environmental Compliance and Indemnification Agreement dated of even date herewith from the Company in favor of the Agency.

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

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

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

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

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

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

“Guarantor” means New York Community Bancorp, Inc., a Delaware corporation.

“Guaranty” means the Guaranty dated of even date herewith from the Guarantor to the Agency.

“Hazardous Materials” means all hazardous materials including, without limitation, any explosives, radioactive materials, radon, asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, lead based paints, petroleum, petroleum products, methane, hazardous materials, hazardous chemicals, hazardous wastes, extremely hazardous wastes, restricted hazardous wastes, hazardous or toxic substances, toxic pollutants, hazardous air pollutants, pollutants, contaminants, toxic chemicals, toxics, pesticides or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Clean Water Act, as amended (33 U.S.C. Section 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.) the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.), the Toxic Substances Control

Act, as amended (15 U.S.C. Section 2601, et seq.), Articles 15 or 27 of the New York State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule or regulation of any Governmental Authority having jurisdiction.

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

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

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

“Maximum Sales Tax Benefit” means \$931,500.

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

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

“Permitted Encumbrances” means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and are identified on Schedule B to the Title Policy, (B) Liens for taxes, assessments and utility charges, to the extent permitted by this Lease, (C) any Lien or encumbrance on the Project Facility obtained through any Transaction Document, and (D) any Lien or encumbrance requested by the Company in writing and consented to by the Agency, which consent shall not be unreasonably withheld or delayed.

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

“PILOT Agreement” means the Payment in Lieu of Taxes Agreement of even date herewith between the Company and the Agency, pursuant to which the Company shall make certain payments in lieu of real property taxes with respect to the Premises.

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

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

“Plans and Specifications” means the plans and specifications for the renovation, installation, furnishing and equipping of the Project Facility contemplated by Section 4.1 of this Lease prepared by the Company’s architect and approved by the Agency and all applicable Governmental Authorities, as the same may be amended, modified, supplemented, restated or replaced from time to time in accordance with the terms hereof and subject to the approval of the Agency.

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

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

“Project” means that project being undertaken by the Agency consisting of (A) the acquisition of an interest in the Premises, (B) the renovation of the Building and related improvements on the Land, (C) the acquisition and installation of the Equipment, (D) the granting of the Financial Assistance, and (E) the subleasing of the Project Facility to the Company.

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

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

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

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

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

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

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

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

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

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

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

“State” means the State of New York.

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

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

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

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

“Termination of Lease” means the Termination of Lease between the Company and the Agency, pursuant to which the Agency and the Company terminate this Lease, substantially in the form attached as Exhibit F to this Lease.

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS

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

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

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

(C) Except as provided in Articles IX, X and XI hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project Facility or any part thereof and shall maintain the Project Facility free and clear of all liens or encumbrances created by the Agency, except as contemplated or permitted by the terms of this Lease and the other Transaction Documents.

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

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



any other action is required as a condition to the validity or enforceability of this Lease or any of the other Transaction Documents.

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

(C) Although the completion of the Project Facility, the granting of an interest therein by the Agency to the Company and the operation thereof by the Company may result in the removal of a facility or plant of the Company or the Guarantor from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Applicant or the Guarantor located within the State (but outside of Nassau County), the Project is reasonably necessary to discourage the Applicant and the Guarantor from removing such facility or plant to a location outside the State and is reasonably necessary to preserve the competitive position of the Applicant and the Guarantor in their industry.

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

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

(F) The Project Facility and the operation thereof will comply with all Applicable Laws, and the Company will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from all claims, liabilities, damages, fees,

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

(G) The Project will not have a “significant effect on the environment” (as such term is used in SEQRA) and the Company hereby covenants to comply with all mitigating measures, requirements and conditions enumerated in the resolution adopted by the Agency on December 5, 2013, under SEQRA applicable to the acquisition, renovation, installation, equipping and operation of the Project Facility contemplated by Section 4.1 of this Lease and in any other approvals issued by any other Governmental Authority with respect to the Project Facility. No material changes with respect to any aspect of the Project Facility have arisen from the date of the adoption of such resolution which would cause the determinations contained therein to be untrue.

(H) Intentionally omitted.

(I) Intentionally omitted.

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

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

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

(M) The Company shall cause the Guarantor and its Affiliates to (i) maintain their current level of employment in the County of Nassau as set forth in the Application (i.e., eight hundred eighty (880) full-time equivalent, private sector jobs) throughout the term of this Lease, (ii) maintain its current level of employment in the State of New York as set forth in the Application (i.e., two thousand eighty-five (2,085) full-time equivalent, private sector jobs) throughout the term of this Lease, (iii) cause there to be relocated to the Project Facility, on or before the Scheduled Completion Date, not less than four hundred sixty-three (463) full-time equivalent, private sector jobs, of which three hundred fifty-three (353) jobs will represent relocations from other facilities within County of Nassau, (iv) create at least twenty (20) new, full-time equivalent, private sector jobs in the County of Nassau within five (5) years after the Scheduled Completion Date as described in the Application, of which not less than sixteen (16) jobs shall be located at the Project Facility, and maintain all such jobs throughout the term of this Lease, (v) create at least an additional twenty (20) new, full-time equivalent, private sector jobs in the County of Nassau within ten (10) years after the Scheduled Completion Date as described in the Application, of which not less than sixteen (16) jobs shall be located at the Project Facility, and maintain all such jobs throughout the term of this Lease, (vi) create at least an additional twenty (20) new, full-time equivalent, private sector jobs in the State of New York within fifteen (15) years after the Scheduled Completion Date as described in the Application, of which not less than sixteen (16) jobs shall be located at the Project Facility, and maintain all such jobs throughout the term of this Lease, (vii) create at least an additional twenty (20) new, full-time equivalent, private sector jobs in the State of New York within twenty (20) years after the Scheduled Completion Date as described in the Application, of which not less than nine (9) jobs shall be located at the Project Facility, and maintain all such jobs throughout the term of this Lease, and (viii) create at least thirty-eight (38) new, full-time equivalent, private sector construction jobs at the Project Facility during the period from the Closing Date until the Completion Date (collectively, the “Minimum Employment Requirement”).

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

(O) The Company is not a Prohibited Person, the Guarantor is not a Prohibited Person and no Affiliate of the Company or the Guarantor is a Prohibited Person.

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

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

(R) The Company is, and shall at all times during the term of this Lease, continue to be owned solely by NYB Realty Holding Company, LLC, which is and shall continue to be owned solely by the Guarantor; provided, however, that the merger or consolidation of the Guarantor with another financial institution (a "Substitute Guarantor") shall not constitute a breach of the foregoing, provided that (i) such merger or consolidation is approved by all required regulatory agencies (including, without limitation, the FDIC), (ii) the Substitute Guarantor assumes and agrees to be bound by the terms of the Transaction Documents to which the Guarantor is a party in a writing satisfactory to the Agency, and (iii) upon the completion of such merger or consolidation, the Company shall be and shall thereafter at all times remain a wholly-owned subsidiary of the Substitute Guarantor.

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

(T) The total cost of the Project is at least \$34,300,000.

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

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

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

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

ARTICLE III  
CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1 CONVEYANCE TO THE AGENCY. (A) Pursuant to the Company Lease, the Company has conveyed or will convey to the Agency a leasehold interest in and to the Premises for the purpose of undertaking and completing the Project. The Company hereby represents and warrants that it has good and marketable title to the Premises, free and clear from all Liens except for Permitted Encumbrances, and agrees that the Company will defend (with counsel selected by the Agency), indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto or due to any defect in the leasehold interest granted to the Agency pursuant to the Company Lease.

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

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

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

SECTION 3.3 HAZARDOUS MATERIALS.

(A) The Company represents, warrants and covenants that, (i) the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner that violates any Applicable Law, including, but not limited to, those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials (each, an “Environmental Law” and, collectively, the “Environmental Laws”), (ii) the environmental and ecological condition of the Project Facility is not in violation of any Applicable Law, including, without limitation, any Environmental Law, (iii) the Company has all Environmental Permits required to renovate and operate the Project Facility and is in compliance with their requirements, (iv) the Premises is not listed in CERCLIS, the NPL or any similar state or local listing nor is it included in an area included in such a list, and the Company has no knowledge that such a listing is pending or contemplated, (v) no event has occurred which, with the passage of time or the giving of notice or both, would constitute a violation of any Environmental Law, (vi) to the best of the Company’s knowledge, there are not now, nor have there ever been, underground storage tanks on or under the Premises, (vii) there are no actions, suits, claims or proceedings seeking money damages, injunctive relief, remedial action or any other remedy pending or, to the Company’s knowledge, threatened relating to a violation of Environmental Law or the disposal, discharge or release of Hazardous Materials, and (viii) to the best of the Company’s knowledge, no prior owner of the Project Facility or any tenant, subtenant, operator, occupant, prior tenant, prior subtenant, prior operator or prior occupant, has used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Environmental Law.

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

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

(D) The Company shall (1) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Materials on, from or affecting the Project Facility (a) in accordance with all Environmental Laws, (b) to the satisfaction of the Agency, and (c) in accordance with the orders and directives of all Governmental Authorities, and (2) defend (with counsel selected by the Agency), indemnify, and hold harmless the Agency and its employees, agents, officers, attorneys, servants and members, past, present and future, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to: (a) the presence, disposal, release or threatened release of any Hazardous Materials on, from, under or affecting the Project Facility, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (c) any lawsuit brought or threatened, settlement reached, or any government order relating to such Hazardous Materials, and/or (d) any violations of Environmental Laws which are based upon or in any way related to such Hazardous Materials, including, without limitation, consultant fees, costs of remediation, investigation and laboratory fees, court costs, reasonable attorney fees and litigation expenses. Costs under this subsection (D) will be repaid immediately upon demand with interest at the Default Interest Rate commencing five (5) days after such demand.

(E) In the event this Lease is terminated, the Company shall deliver the Project Facility to the Agency free of any and all Hazardous Materials (except Hazardous Materials the presence of which do not violate any Environmental Laws), so that the condition of the Project Facility shall conform with all Environmental Laws affecting the Project Facility. The Agency acknowledges that the term of the Company Lease shall automatically and simultaneously terminate upon the expiration of the term of this Lease or upon any earlier termination pursuant to Article XI hereof.

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

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

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

created by this Lease or the leasehold estate created by the Company Lease and (y) the fee estate in the Premises or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

**SECTION 3.5 TITLE INSURANCE.** On or prior to the Closing Date, the Company will obtain and deliver to the Agency, in form, amount and substance satisfactory to the Agency, (a) an owner's title insurance policy (the "Title Policy") insuring the Agency's leasehold interest in the Premises against loss as a result of defects in title, subject only to Permitted Encumbrances, (b) a mortgagee title insurance policy insuring the PILOT Mortgagee's mortgage interest in the Premises against loss as a result of defects in title in the amount of \$968,311, subject only to Permitted Encumbrances, and (c) a current survey of the Premises certified to the Agency, the Company, the PILOT Mortgagee and the title insurance company issuing the Title Policy. Any proceeds of the Title Policy shall be paid to the Company and applied by the Company to remedy the applicable defect in title. If not so capable of being applied or if a balance remains after such application, the Net Proceeds or the remaining balance of the Net Proceeds, as the case may be, shall be applied to the payment of any sums due the Agency under this Lease or under any other Transaction Document, and any balance thereafter may be used by the Company for any lawful corporate purpose.

#### **ARTICLE IV UNDERTAKING AND COMPLETION OF THE PROJECT**

##### **SECTION 4.1 ACQUISITION, RENOVATION, INSTALLATION, FURNISHING AND EQUIPPING OF THE PROJECT FACILITY.**

(A) The Company shall, on behalf of the Agency, promptly acquire, renovate, install, furnish and equip the Project Facility, or cause the acquisition, renovation, installation, furnishing and equipping of the Project Facility, all in accordance with the Plans and Specifications, in a workmanlike manner using high grade materials, free of material defects in materials and workmanship. Notwithstanding the foregoing, the Company shall not, at any time during the term of this Lease, construct an addition to or otherwise increase the useable square footage of the Building depicted in the Plans and Specifications or otherwise construct any additional improvement on the Land without the prior written consent of the Agency. The Agency acknowledges that the Company shall have the right to construct a parking garage on the Land, provided, however, that such improvement shall not be entitled to any "financial assistance" (as such quoted term is defined in the Act) from the Agency unless agreed to in writing by the Agency.

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

(C) Title to all materials, equipment (including computer equipment), machinery and other items of Property presently incorporated or installed in and which are a part of the Project Facility shall vest in the Agency immediately upon execution of the Bill of Sale to Agency. Title to all materials, equipment, machinery and other items of Property acquired subsequent to the Closing Date and intended to be incorporated or installed in and to become part



of the Project Facility shall vest in the Agency immediately upon deposit on the Premises or incorporation or installation in the Project Facility, whichever shall first occur. The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest title to the above in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

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

(E) The Agency hereby appoints the Company, and the Company hereby accepts such appointment, as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Transaction Documents: (1) to acquire, renovate, install, furnish and equip the Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be required or proper, all for the acquisition, renovation, installation, furnishing and equipping of the Project Facility, with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefore by the Company and advanced for such purposes by the Company pursuant to Section 4.1(H) of this Lease, (3) to pay all fees, costs and expenses incurred in the acquisition, renovation, installation, furnishing and equipping of the Project Facility from funds made available therefor in accordance with this Lease, and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt, writing or instruction in connection with the acquisition, renovation, installation, furnishing and equipping of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same.

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

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

(H) The Company agrees, for the benefit of the Agency, to undertake and complete the Project and to pay all such sums as may be required in connection therewith. A leasehold interest in portions of the Project Facility acquired, renovated and installed at the Company's cost shall immediately upon such acquisition, renovation or installation vest in the

Agency, subject to Permitted Encumbrances. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's interest in and to such portions of the Project Facility.

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

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

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

(L) W/MBE Contractors.

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

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

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

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

#### SECTION 4.2 COMPLETION OF THE PROJECT FACILITY; FEES.

(A) The Company will proceed with due diligence to commence renovation, installation, furnishing and equipping of the Project Facility in accordance with Section 4.1 of this Lease within thirty (30) days after the Closing Date and shall proceed with due diligence to complete the renovation, installation, furnishing and equipping of the Project Facility on or before February 1, 2015 (the “Scheduled Completion Date”) and shall commence its operations in the Project Facility on or before the Scheduled Completion Date. The Company covenants to diligently prosecute its application for any required building permits for the Project Facility. Completion of the renovation, installation, furnishing and equipping of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of the Company delivered to the Agency stating (A) the date of such completion, (B) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid, (C) that the acquisition, renovation, installation, furnishing and equipping of the Project Facility have been completed in a good and workmanlike manner, (D) that the Company and the Agency have good and valid interests in and to all Property constituting a portion of the Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances, and (E) that the Project Facility is ready for occupancy, use and operation for its intended purposes. Such certificate shall be accompanied by a permanent certificate of occupancy for the Building and any and all permissions, licenses or consents required of Governmental Authorities for the occupancy, operation and use of the Project Facility for its intended purposes.

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

SECTION 4.3 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES. In the event of a default by any contractor, subcontractor or materialman under any contract made by it in connection with the acquisition, renovation, installation, furnishing and equipping of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and the Agency against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Company may, in its own name or, with the prior written consent of the Agency, which consent shall not be unreasonably withheld, in the name of the Agency, prosecute or defend any action or proceeding or take any other action involving any such contractor,

subcontractor, materialman or surety which the Company deems reasonably necessary, and in such event the Agency hereby agrees, at the Company's sole expense, to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Company shall advise the Agency of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Company as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Project Facility then to pay all reasonable costs and expenses incurred by the Agency in connection therewith, and thereafter be paid to the Company for its own use.

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

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

**SECTION 5.2 DURATION OF THE LEASE TERM; QUIET ENJOYMENT.**

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

(B) Provided that all amounts, costs and expenses payable by the Company to the Agency under this Lease and all other Transaction Documents are paid in full, the subleasehold estate created hereby shall terminate at 12:00 a.m. on the earlier to occur of (1) December 31, 2035 (the "Stated Expiration Date"), or (2) the date that this Lease shall terminate pursuant to Article X or Article XI hereof.

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

**SECTION 5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.**

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

(B) The Company agrees to pay to the Agency the following fees: (1) a closing compliance fee in the amount of \$2,500.00, (2) an Agency administrative fee in the amount of \$148,600, with respect to the Project, and (3) the Agency's general counsel fee in the amount of \$34,300 (collectively, the "Administrative Fee"). The Administrative Fee is due and payable by the Company to the Agency on the Closing Date. The Administrative Fee is non-refundable and is deemed earned in full upon the execution and delivery of this Lease.

(C) The Company agrees to pay to the Agency an annual administrative fee in the amount of \$1,000.00 (the "Annual Fee"). The Annual Fee for the first year of the lease term or part thereof (i.e., 2014) shall be due and payable on the Closing Date and the Annual Fee for each year thereafter (i.e., 2015 and thereafter) shall be due and payable, in advance, on January 1 of each year.

(D) Within ten (10) days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the reasonable costs and expenses of the Agency and the officers, members, agents, attorneys, servants and employees thereof, past, present and future, incurred by reason of the Agency's ownership, subleasing or sale of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease or any of the other Transaction Documents, and any other reasonable fee or expense of the Agency with respect to the Project Facility, the subleasing or sale of the Project Facility to the Company, or any of the other Transaction Documents, the payment of which is not otherwise provided for under this Lease.

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

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

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

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

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

#### SECTION 5.5 GRANT OF SECURITY INTEREST.

This Lease shall constitute a "security agreement", as such term is defined in the Uniform Commercial Code adopted in the State, as the same may from time to time be in effect (the "UCC"). The Company hereby grants the Agency a first-priority security interest in all of the right, title and interest of the Company in the Project Facility and in all additions and accessions thereto, all replacements and substitutions therefor, all books, records and accounts of the Company pertaining to the Project Facility, and all proceeds and products thereof (collectively, the "Collateral"), as security for payment of the rental payments and all other payments and obligations of the Company hereunder, and the Agency is authorized to file financing statements with respect to such Collateral without the Company executing the same. If any default shall occur under this Lease or any of the other Transaction Documents, the Agency shall have, in addition to any and all other rights and remedies set forth in this Lease, and may exercise without demand, any and all rights and remedies granted to a secured party under the UCC, including, but not limited to, the right to take possession of the Equipment and any fixtures or other personal property that constitute part of the Collateral, and the right to advertise and sell the same, or any part thereof, pursuant to and in accordance with the UCC. The Company agrees that any notice of public or private sale with respect to such Collateral, or any part thereof, shall constitute reasonable notice if it is sent to the Company not less than ten (10) days prior to the date of any such sale. The Company hereby irrevocably appoints the Agency as its attorney-in-fact to execute, deliver and/or file any instruments or statements necessary or convenient to perfect and continue the security interest granted herein.

### ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

#### SECTION 6.1 MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY.

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

(B) Upon prior written notice to the Agency, the Company may make alterations, modifications or improvements to the Project Facility, or any part thereof, provided:

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

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

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

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

(5) the Company shall furnish to the Agency, at least thirty (30) days prior to commencing such alteration, modification or improvement to the Project Facility, detailed plans and specifications therefor; provided, further, however, that such plans need not be furnished to the Agency for nonstructural modifications or improvements to the Project Facility which do not exceed, at any one time, \$50,000.00 in value;

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

(7) if the cost of such alterations, modifications or improvements is estimated to exceed \$50,000.00, such alterations, modifications or improvements shall be conducted only after the Company shall have furnished to the Agency a labor and materials payment bond, or other security, naming the Agency as dual obligee and otherwise in form and substance satisfactory to the Agency;

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

(9) if such alterations, modifications or improvements involve an addition to the Project Facility or would otherwise result, but for the Agency's interest in the Project Facility, in an increase in the assessed value of the Premises, then the Agency may require an increase in the Administrative Fee, the Annual Fee and/or the sums payable under the PILOT Agreement, if any;

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

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

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

The provisions of this Subsection (B) shall not apply to the initial renovation, installation, furnishing and equipping of the Project Facility pursuant to the Plans and Specifications (the "Initial Alterations"). With respect to any alterations (structural or non-structural) undertaken after the completion of the Initial Alterations that do not exceed \$1,000,000 in cost to the Company, the Company shall give prior written notice to the Agency of the undertaking of such alterations but the Agency's approval of such alterations shall not be required, provided, however, that the other provisions of Subsection (B) above shall continue to apply to such alterations.

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

(D) Any provision of this Lease to the contrary notwithstanding, the Company shall not construct any new building or structure on the Land or any addition to any existing



building on the Land, without the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion.

#### SECTION 6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES.

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

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

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

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

(A) Insurance protecting the interests of the Company and the Agency as insureds, as their interests may appear, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils embraced by so-called "All Risks" insurance, in amounts sufficient to prevent the Company or the Agency from becoming a co-insurer under such policy and not less than 100% of the replacement cost of the Project Facility, without deduction for depreciation, and including coverage against acts of terrorism (if such terrorism

coverage is available for similar commercial properties at commercially reasonable rates). Additionally, during any period in which construction work or alterations are being performed at the Project Facility, the Company shall maintain extended coverage casualty insurance in the form of a "Builder's Risk" completed value non-reporting policy in an amount satisfactory to the Agency and which shall contain a provision granting the insured permission to complete and/or occupy.

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

(C) Insurance protecting the Company and the Agency against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.2 of this Lease) and arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000.00 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000.00 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate umbrella liability policy protecting the Company and the Agency with a limit of not less than \$10,000,000.00, as said amounts may be adjusted by the Agency from time to time in its sole and absolute discretion.

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

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

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

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

#### SECTION 6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE.

(A) All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and satisfactory and having an A.M. Best rating satisfactory to the Agency. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged and shall provide that such insurance shall be without any right of contribution from any other insurance carried by the Agency. All policies evidencing such insurance shall name the County, the Company and the Agency as insureds, as their interests may appear, and naming the County as mortgagee and loss payee, and provide for at least thirty (30) days' written notice to the Company and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 hereof. At least fifteen (15) days prior to the expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease.

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

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

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

insurers to any setoff or counterclaim or other deduction, in respect of any liability of any Person insured under such policy. Any such insurance policies may be furnished under a so-called "master" or "blanket" policy covering locations other than the Project Facility; provided, however, that if casualty coverage for the Project Facility is provided under a master or blanket policy, such policy must contain an agreed amount endorsement evidencing that such coverage is in an amount sufficient to insure the full replacement cost of the Project Facility.

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

(F) Any provision of this Lease to the contrary notwithstanding, in the event of fire or other casualty, the proceeds of casualty insurance received by the Agency shall be turned over to the Company for purposes of restoring the Project Facility, provided that there are no uncured monetary defaults or Events of Default under this Lease or the other Transaction Documents.

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

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

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

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

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

ARTICLE VII  
DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1 DAMAGE OR DESTRUCTION.

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

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

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

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

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

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, the Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to terminate this Lease. In such event, subject to the provisions of Section 6.4(F) of this Lease, the Net Proceeds collected by the Agency under any

and all policies of insurance covering the damage to or destruction of the Project Facility, after deducting the amount necessary to repay the Indebtedness, shall be paid to the Company for its own purposes. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay the Indebtedness in full, the Company shall pay to the Agency the difference between the Net Proceeds of such insurance and the amount necessary to repay the Indebtedness in full.

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

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

#### SECTION 7.2 CONDEMNATION.

(A) To the best of the Company's knowledge, no Condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility or the Agency's or the Company's interest therein.

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

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

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

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

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

its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any Condemnation award remaining on deposit with the Agency, if any, after payment of all of the costs of such restoration shall be paid to the Company for its own purposes.

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

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

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

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

## **ARTICLE VIII SPECIAL COVENANTS**

**SECTION 8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS".** THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS

MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

#### SECTION 8.2 HOLD HARMLESS PROVISIONS.

(A) The Company hereby releases the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, from, agrees that the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, shall not be liable for and agrees to indemnify, defend (with counsel selected by the Agency) and hold the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising directly or indirectly as a result of the Agency's undertaking the Project, including, but not limited to: (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project or the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, renovating, equipping, installing, owning, leasing, subleasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Lease or any of the other Transaction Documents or the enforcement of or defense of validity of any provision of any of the Transaction Documents, (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) hereof, and (4) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company), attorneys, servants or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

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

(C) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure to the extent possible, in the liability policies required by Section 6.3(C) of this Lease, its liabilities assumed pursuant to this Section 8.2.



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

**SECTION 8.3 RIGHT OF ACCESS TO THE PROJECT FACILITY.** The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to enter upon and to examine and inspect the Project Facility; provided, however, that no such notice shall be required in the event of an emergency or if an Event of Default has occurred and is continuing under this Lease. The Company further agrees that the Agency shall have such rights of access to the Project Facility (subject to the provisions of the immediately preceding sentence of this Section) as may be reasonably necessary to cause the proper maintenance of the Project Facility in the event of failure by the Company to perform its obligations hereunder, but the exercise of such right shall in no event be construed to mean that the Agency has assumed any obligation hereunder to perform such maintenance.

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

**SECTION 8.5 AGREEMENT TO PROVIDE INFORMATION.** The Company agrees, whenever reasonably requested by the Agency, to promptly provide and certify or cause to be provided and certified such information concerning the Project Facility, the Company, the Guarantor or their respective finances, operations and affairs and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by Applicable Laws or other governmental regulation.

**SECTION 8.6 BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES.**

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

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

#### SECTION 8.7 COMPLIANCE WITH APPLICABLE LAWS.

(A) The Company agrees, for the benefit of the Agency, that it will, during the term of this Lease, promptly comply with all Applicable Laws.

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

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

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

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

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

constituting the consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Project Facility.

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

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

**SECTION 8.11 EMPLOYMENT OPPORTUNITIES.**

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

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

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

(D) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, on an annual basis not later than February 11 of each year during the term of this Lease, reports regarding the number of

people employed at the Project Facility as of December 31st of the immediately preceding year, and certain other matters, said annual employment reports to be in substantially the form promulgated from time to time by the Agency. The current forms of annual employment report are annexed hereto as Exhibit G. The Agency shall have the right, at the Company's expense, to audit, confirm and/or require additional information with regard thereto and the Company agrees to cooperate with the Agency in connection therewith.

(E) The Company shall, at all times during the term of this Lease, cause the Guarantor and/or the Guarantor's Affiliates to maintain the Minimum Employment Requirement.

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

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

#### SECTION 8.12 SALES AND USE TAX EXEMPTION.

(A) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales and use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. Any exemption from the payment of New York sales and use taxes resulting from Agency involvement in the Project shall be limited to purchases of services and the purchase or lease of tangible personal property conveyed to the Agency or utilized by the Agency or by the Company, the Guarantor or Affiliates of the Guarantor identified to the Agency, as agents of the Agency as a part of or incorporated within the Project Facility. No operating expenses (including, without limitation, costs of utilities, cleaning services or supplies) of the Project Facility and no other purchases of services or property shall be subject to an exemption from the payment of New York sales or use taxes. The Agency makes no representations or warranties that any property or service is exempt from the payment of New York sales or use taxes.

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

(1) The Sales Tax Exemption Letter shall be dated the Closing Date and shall be effective for a term commencing on its date and expiring upon the earliest to occur of: (a) the termination of this Lease, (b) April 1, 2016, or (c) the termination of the Sales Tax Exemption Letter pursuant to the terms hereof and thereof;

(2) Anything in this Lease or the Sales Tax Exemption Letter to the contrary notwithstanding, the sales and use tax exemption to be provided pursuant to the Sales Tax Exemption Letter (a) shall not be available for any date subsequent to which the Sales Tax Exemption Letter shall have been suspended as provided in this Lease; provided, however, that in the event the Company shall thereafter cure the default(s) giving rise to such suspension, or the Agency shall thereafter waive such suspension and the sales and use tax exemption shall again continue from the date of such cure or waiver; (b) shall not be available for or with respect to any tangible personal property having a useful life of less than one year; and (c) shall not be available after the Company (or its approved agents) shall have made purchases under the Sales Tax Exemption Letter resulting in sales and use tax exemptions in the aggregate amount of the Maximum Sales Tax Benefit;

(C) The Company agrees to furnish to the Agency within fifteen (15) days after the end of each calendar quarter, a sales and use tax exemption report (the "Quarterly Sales Tax Report"), in form and substance satisfactory to the Agency in its reasonable judgment, with respect to the use of the Sales Tax Exemption Letter by the Company and its agents, contractors and subcontractors during the preceding calendar quarter. Each said Quarterly Sales Tax Report shall be certified by an Authorized Representative of the Company and shall: (1) identify the contracts and specific property exempted from sales taxes and/or use taxes during such period; (2) indicate the parties to said contract; (3) indicate the maximum amount payable under said contract and indicate what portion of said amount would normally be subject to sales and use taxes imposed in the State; (4) indicate the amount of sales tax benefit expected to be received with respect to said contract; and (5) indicate the cumulative sales tax benefit received by the Company with respect to the Project for the calendar year.

(D) Pursuant to Section 874(8) of the Act, the Company agrees to file annually (through the year after the Sales Tax Exemption Letter expires or is earlier terminated), with the New York State Department of Taxation and Finance (the "Department"), no later than January 15th of each year, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Sales Tax Report"), a statement of the value of all sales and use tax exemptions claimed by the Company and all contractors, subcontractors, consultants and other agents of the Company under the authority granted to the Company pursuant to Section 4.1(E) of this Lease during the preceding calendar year. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be the termination of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this subsection (D), the Company shall immediately cease to be the agent of the Agency in connection with the Project.

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

(F) The Company acknowledges that, pursuant to Section 874(9) of the Act, the Agency shall file within thirty (30) days of the Closing Date with the Department on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), statement identifying the Company, the Guarantor and

Affiliates of the Guarantor identified to the Agency, as agents of the Agency, setting forth the taxpayer identification numbers of such parties, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. The Company agrees to timely provide the foregoing information to the Agency and to otherwise cooperate with the Agency in connection with the preparation and filing of the Thirty-Day Sales Tax Report.

(G) With respect to any period in which the Company (or its approved agents) receives a sales tax exemption benefit hereunder, the Company agrees to furnish to the Agency, on request, an opinion of a certified public accountant to the effect that such accountant has audited the use by the Company (and such approved agents) of the Sales Tax Exemption Letter for the preceding calendar year, and has reviewed the terms and provisions of the Sales Tax Exemption Letter and of this Section 8.12, and has further audited the Quarterly Sales Tax Reports for the preceding calendar year, and that such Quarterly Sales Tax Reports were properly prepared and accurately reflect the matters certified therein.

(H) The Company covenants and agrees that it shall include or cause to be included the following language in and as a part of each contract, invoice, bill or purchase order entered into by the Company, the Guarantor or any Affiliate of the Guarantor identified to the Agency, as agent of the Agency, in connection with the acquisition, renovation, installation, furnishing and equipping of the Project Facility:

“This [contract, agreement, invoice, bill or purchase order] is being entered into by [ ] (the “Agent”), as agent for and on behalf of the Nassau County Industrial Development Agency (the “Agency”) in connection with a certain project of the Agency for Prospect Realty Holding Company LLC consisting in part of the acquisition and renovation of a bank back office & processing administration facility (the “Building”) and the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in the Building located at 102-110 Duffy Avenue, Hicksville, Town of Oyster Bay, County of Nassau, New York (the “Premises”). The capital improvements, materials, machinery, equipment (including computer equipment), trade fixtures, furniture, furnishings and other tangible personal property to be incorporated or installed in the Premises which are the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Nassau if effected in accordance with the terms and conditions set forth in the attached Sales Tax Exemption Letter of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Exemption Letter. This [contract, agreement, invoice, bill or purchase order] is non-recourse to the Agency, and

the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

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

(I) (1) Without limitation of any of the Agency’s other rights under this Lease, in the event that the Company (or its approved agents) shall utilize the sales or use tax exemption provided pursuant to the Sales Tax Exemption Letter (i) in a manner that is not authorized or for which the Company (or its approved agents) is not entitled to claim an exemption, (ii) to claim exemptions in excess of the Maximum Sales Tax Benefit, (iii) to purchase or lease goods or services that are not authorized under this Lease, or (iv) in a manner that violates the provisions of this Section 8.12 or any other provision of this Lease or any provision of the Sales Tax Letter, then the Company shall promptly deliver notice of same to the Agency, and the Company shall promptly pay or cause to be paid to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the Default Interest Rate from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was used by the Company (or its approved agents). If the Company fails to promptly pay such return of sales or use tax exemptions when due, the Agency shall have the right, without limitation of any of its other rights under this Lease, to take any action or commence any proceeding at law or in equity which may appear necessary or desirable to the Agency to recover any such amounts and the Agency shall have the right to join the Commissioner as a party in any such action or proceeding. The Company shall cooperate with the Agency in all such actions and proceedings to recover such amounts. The Company acknowledges and agrees that its failure to pay over any such amounts to the Agency shall also be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company under Article 28 or Article 28-A of the New York State Tax Law, together with any applicable penalties and interest due on such amounts.

(2) The Company acknowledges and agrees that, in the event the Agency recovers, receives or otherwise obtains any amount of State Sales and Use Tax from the Company (or its approved agents) pursuant to the foregoing subsection, the Agency shall have the right to remit same to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amounts, and the Company agrees to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its members, officers, agents (other than the Company), attorneys, servants and

employees, past, present and future, against any liability incurred as a result of remitting such amounts to the Commissioner.

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

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

**SECTION 8.14 FINANCIAL STATEMENTS.** Within ninety (90) days after the end of each fiscal year, the Company shall deliver to the Agency the internally prepared financial statements of the Company, certified by the chief financial officer of the Company, including a balance sheet as of the last day of such period and an operating statement through the last day of such period. The Company represents to the Agency that the Company's fiscal year ends on December 31st.

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

### SECTION 9.1 ASSIGNMENT OF THIS LEASE.

This Lease may not be sold, assigned or otherwise transferred by the Company, in whole or in part, without the prior written consent of the Agency, which consent may be granted or withheld in the Agency's sole and absolute discretion, and shall in all events be subject to and conditioned upon the payment of the then-standard fees of the Agency and the satisfaction of all requirements of the Act; provided, however, that this Lease may be assigned to the Substitute Guarantor in connection with a merger or consolidation of the Guarantor with or into the Substitute Guarantor made in accordance with Section 2.2(R) of this Lease. Any such sale, assignment or transfer made by the Company without the prior written consent of the Agency as aforesaid shall be null and void. Any such sale, assignment or transfer consented to by the Agency shall be made pursuant to documentation satisfactory to the Agency. The Company shall pay all reasonable and customary fees and expenses incurred by the Agency in connection with any such sale, assignment or transfer.

### SECTION 9.2 MERGER OF THE AGENCY.



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

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

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

(A) The Company shall not lease, sublease, sub-sublease, license or otherwise permit others to use or occupy the Project Facility or any portion thereof without the prior written consent of the Agency, which consent may be granted or withheld in the Agency's sole and absolute discretion, except for use and occupancy arrangements as set forth in Subsection (B) of this Section 9.3, if any.

(B) Notwithstanding any provision of this Lease to the contrary notwithstanding, the Company shall have the right to permit the Guarantor to use and occupy the Project Facility.

(C) Subject to Subsection (D) of this Lease, the Company shall not sell, transfer, convey or otherwise dispose of its interest in the Project Facility or any portion thereof without the prior written consent of the Agency, which consent may be granted or withheld in the Agency's sole and absolute discretion.

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

ARTICLE X  
EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1       EVENTS OF DEFAULT DEFINED.

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

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

(2) A default in the performance or observance of any covenant, condition or agreement on the part of the Company in this Lease (other than as set forth in subsection (1) above or in any other subsection of this Section 10.1(a)) and the continuance thereof for a period of fifteen (15) days after written notice thereof is given by the Agency to the Company, or, if such covenant, condition or agreement is capable of cure but cannot be cured within such fifteen (15) day period, the failure of the Company to commence to cure within such fifteen (15) day period and to prosecute the cure to completion with due diligence.

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

(4) The Company shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due.

(5) The Company shall conceal, remove or permit to be concealed or removed any material part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within ten (10) days from the date thereof.

(6) (a) The filing by the Company (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy or insolvency statute; (b) the failure by the Company within thirty (30) days to lift any execution, garnishment or attachment of such consequence as will impair the Company’s ability to carry out its obligations hereunder; (c) the commencement of a case under Title 11 of the United States Code against the Company as the debtor or commencement under any other federal or state bankruptcy or insolvency statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of thirty (30) days; (d) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state

bankruptcy statute with respect to the debts of the Company; or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver, liquidator or trustee of the whole or a substantial portion of the Property of the Company, unless such order, judgment or decree is vacated, dismissed or dissolved within thirty (30) days of such appointment.

(7) If any interest in the Company shall be sold, assigned, transferred, conveyed, mortgaged, pledged, hypothecated or alienated, or if any member or shareholder of the Company enters into an agreement or contract to do so, without the prior written consent of the Agency.

(8) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance and the failure of the Company to remove such Lien, whether by the payment of money, the securing of a bond or otherwise, within fifteen (15) days after the Company receives notice or becomes aware of such imposition.

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

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

(11) If the environmental or ecological condition of the Project Facility is in material violation of any Environmental Law or any permit, license or approval related thereto or if the Project Facility, or any part thereof, contains any Hazardous Materials (except Hazardous Materials which do not materially violate Environmental Laws), and the Company is unable to comply with such Environmental Laws within twenty (20) days of the notification or discovery of such violation or complete all appropriate and lawful remedial containment and clean-up action within twenty (20) days of the notification or discovery of the existence of such Hazardous Materials.

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

(13) The Company, the Guarantor or any Affiliate thereof or any director, member, manager or shareholder of the Company, shall become a Prohibited Person.

(14) Any assignment of this Lease, in whole or in part, or any letting or sub-letting of the Project Facility, or any portion thereof, in violation of the terms of this Lease.

(15) An Event of Default shall occur under the Company Lease or under any other Permitted Encumbrance.

(16) If any of the events enumerated in clauses (4) through (6) of this Section 10.1 shall happen to the Guarantor.

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

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

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

(B) Notwithstanding the provisions of Section 10.1(A) hereof if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Lease and if such party shall give notice and full particulars of such force majeure event or cause in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability to perform. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required under this Lease, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 2.2(G), 3.1, 3.3, 4.1(F), 6.1, 8.2 and 12.9(C) hereof and to comply with the provisions of Sections 2.2(G), 6.6, 8.2, 8.4, 8.5 and 8.7(C) hereof. The term "force majeure" as used herein shall include acts outside of the control of the Agency and the Company, including, but not limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, restraint of government and people, civil disturbances, breakage or accident to transmission pipes or canals, and failure of utilities.

## SECTION 10.2 REMEDIES ON DEFAULT.

(A) Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law and upon five (5) days' prior written notice, take any one or more of the following remedial steps:

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

(2) re-enter and take possession of the Project Facility, enforce or terminate this Lease, sell the Agency's interest in the Project Facility, subject to Permitted

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

(3) terminate this Lease and/or terminate the Company Lease and/or convey to the Company all the Agency's right, title and interest in and to the Project Facility. The conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the execution by the Agency of the Termination of Lease and/or the Termination of Company Lease and/or the delivery of the Bill of Sale to Company, as applicable. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such termination and conveyance. The Company hereby waives delivery and acceptance of such termination and bill of sale as a condition to their validity, and appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest) with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording or filing of such documents; or

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

(5) suspend the right of the Company to act as agent for the Agency in connection with the Project, including, without limitation, as its agent for the purpose of the sales and use tax exemption afforded to the Company pursuant to this Lease; or

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

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

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

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

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

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

## **ARTICLE XI OPTIONS TO TERMINATE**

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

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

(A) Contemporaneously with the termination of this Lease in accordance with Section 5.2 or Section 11.1 hereof, the Company shall pay all sums required to be paid to the Agency or any other Person pursuant to this Lease and the other Transaction Documents (including any applicable Recapture of Benefits). The obligation of the Agency under this Section 11.2 to convey its interest in the Project Facility to the Company will be subject to there being no uncured monetary Event of Default existing hereunder or under any other Transaction

Document, and there being no other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default.

(B) The termination of this Lease and the conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the execution and delivery by the Agency of (1) the Termination of Company Lease (an unexecuted copy of which is attached hereto as Exhibit C), (2) the Bill of Sale to Company (an unexecuted copy of which is attached hereto as Exhibit D) and (3) the Termination of Lease (an unexecuted copy of which is attached hereto as Exhibit F). The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such termination, including, without limitation, all of the Agency's reasonable costs and expenses in connection therewith (including reasonable attorneys' fees and expenses).

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

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

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

SECTION 11.3        RESERVED.

SECTION 11.4        RECAPTURE OF AGENCY BENEFITS.

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

(1) one hundred per cent (100%) of the Benefits (as defined below) if the Recapture Event occurs on or before the tenth (10<sup>th</sup>) anniversary of the Closing Date;

(2) eighty per cent (80%) of the Benefits if the Recapture Event occurs after the tenth (10<sup>th</sup>) anniversary of the Closing Date but on or before the twelfth (12<sup>th</sup>) anniversary of the Closing Date;

(3) sixty per cent (60%) of the Benefits if the Recapture Event occurs after the twelfth (12<sup>th</sup>) anniversary of the Closing Date but on or before the fourteenth (14<sup>th</sup>) anniversary of the Closing Date;

(4) forty per cent (40%) of the Benefits if the Recapture Event occurs after the fourteenth (14<sup>th</sup>) anniversary of the Closing Date but on or before the sixteenth (16<sup>th</sup>) anniversary of the Closing Date;

(5) twenty per cent (20%) of the Benefits if the Recapture Event occurs after the sixteenth (16<sup>th</sup>) anniversary of the Closing Date but on or before the eighteenth (18<sup>th</sup>) anniversary of the Closing Date;

(6) ten per cent (10%) of the Benefits if the Recapture Event occurs after the eighteenth (18<sup>th</sup>) anniversary of the Closing Date but on or before the twentieth (20<sup>th</sup>) anniversary of the Closing Date; or

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

(B) The term “Benefits” shall mean the Agency’s calculation of, collectively:

(1) all real estate tax benefits which have accrued to the benefit of the Company during such time as the Agency held an interest in the Project Facility by reason of such interest, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under the PILOT Agreement (through the date that the Project Facility is returned to the tax rolls as taxable property) from those payments which the Company would have been required to pay through such date had the Company been the owner of the Project Facility and the Agency not been involved in the Project and based on the records of the Nassau County Tax Assessor and any applicable village tax assessor, and treating any negative result as \$0; and

(2) all miscellaneous benefits derived from the Agency’s participation in the transactions contemplated by this Lease, including, but not limited to, any exemption from real property transfer taxes, any exemption from mortgage recording taxes and any exemption from applicable sales and use taxes, provided, however, that the recapture of the value of any exemption from sales and/or use taxes shall be in the full amount of any exemption taken and shall not be subject to the scheduled percentage reduction set forth in Subsection (A) above.

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

(1) The Company shall have liquidated its operations and/or assets; or



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

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

(4) The occurrence and continuance of an Event of Default under this Lease or any other Transaction Document; or

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

(6) The Company shall have sold, leased, assigned, transferred or otherwise disposed of all or any part of its interest in the Project Facility in violation of this Lease; or

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

(8) The Application, or documentation in support of the Application, contained a false or intentionally misleading statement as to any fact material to the Application or omitted any information which, if included, would have rendered any information in the Application or supporting documentation false or misleading in any material respect, and such false or misleading statement or omission was made knowingly and intentionally for the purpose of obtaining the Financial Assistance.

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

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

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

## ARTICLE XII MISCELLANEOUS

SECTION 12.1 NOTICES.

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

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

IF TO THE COMPANY:

Prospect Realty Holding Company, LLC  
615 Merrick Avenue  
Westbury, NY 11590  
Attn: Craig Henneberger

WITH A COPY TO:

Cullen & Dykman LLP  
44 Wall Street  
New York, NY 10005  
Attn: Paul Michels, Esq.

IF TO THE AGENCY:

Nassau County Industrial Development Agency  
1550 Franklin Avenue, Suite 235  
Mineola, NY 11501  
Attn: Executive Director

WITH A COPY TO:

Phillips Lytle LLP  
1305 Franklin Avenue, Suite 200  
Garden City, NY 11530  
Attn: Paul V. O'Brien, Esq.

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

SECTION 12.2 BINDING EFFECT. This Lease shall inure to the benefit of the Agency and the Company and shall be binding upon the Agency, the Company and, as permitted

by this Lease, their respective successors and assigns, but no assignment shall be effective to relieve the Company of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency.

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

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

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

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

**SECTION 12.7 SURVIVAL OF OBLIGATIONS.**

(A) The obligations of the Company to make the payments required by Sections 2.2(G), 3.1, 3.3, 4.1, 5.3, 5.4, 6.4(B), 6.6, 8.2, 8.9, 8.12, 9.1, 9.3, 10.2 10.4, 11.2 and 11.4 hereof and to provide the indemnity required by Sections 2.2(G), 3.1, 3.3, 4.1(F), 6.1, 8.2 and 12.9(C) hereof and its obligations under the Environmental Indemnification shall survive the termination of this Lease, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

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

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

**SECTION 12.9 NO RECOURSE; SPECIAL OBLIGATION.**

(A) The obligations and agreements of the Agency contained herein and in the other Transaction Documents and any other instrument or document executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company), servant or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company), servants and employees, past, present and future, of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

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

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) business days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) business days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten (10) business day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company), servants or employees, past, present or future, shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company), servants and employees, past, present and future, against all liability expected to be incurred as a result of compliance with such request.

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

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

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

**SECTION 12.13 SERVICE OF PROCESS.**

(A) The Company represents that it is subject to service of process in the State of New York and covenants that it will remain so subject so long as this Lease shall be in effect. If for any reason the Company should cease to be so subject to service of process in the State of New York, the Company hereby designates and appoints, without power of revocation, Paul Michels, Esq., Cullen & Dykman, LLP, 44 Wall Street, New York, NY 10005 and successor(s) as its agent for service of process, and if such agent shall cease to act or otherwise cease to be subject to service of process in the State of New York, the Secretary of State of the State of New York, as the agents of the Company upon whom may be served all process, pleadings, notices or other papers which may be served upon the Company as a result of any of its obligations under this Lease; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to the Company's obligations hereunder.

(B) The Company irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Lease or the other Transaction Documents may be brought in the courts of record of the State of New York in Nassau County or the courts of the United States, Eastern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as this Lease is in effect, the Company's agents designated above shall accept and acknowledge in the Company's behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Company agrees and consents that any such service of process upon such agents and written notice of such service to the Company in the manner set forth in Section 12.1 hereof shall be taken and held to be valid personal service upon the Company whether or not the Company shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same force and validity as if service were made upon the Company according to the laws governing the validity and requirements of such service in the State of New York, and waives all claim of error by reason of any such service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Company or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Company.

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

**SECTION 12.15 NON-DISCRIMINATION.**

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

(B) The Company shall, in all solicitations or advertisements for employees placed by or on behalf of the Company, state that all qualified applicants will be considered for employment without regard to race, color, creed, national origin, age, gender or sexual orientation.

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

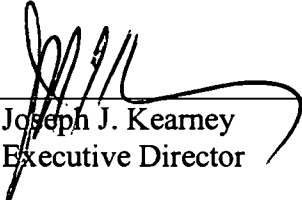
**SECTION 12.16 DATE OF LEASE.** The date of this Lease shall be for reference purposes only and shall not be construed to imply that this Lease was executed on the date first above written. This Lease was executed and delivered on February 3, 2014.

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

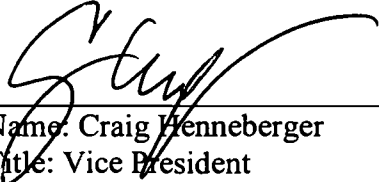
[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

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

PROSPECT REALTY HOLDING COMPANY,  
LLC

By:  \_\_\_\_\_  
Name: Craig Henneberger  
Title: Vice President

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


On the 31 day of February, in the year 2014, before me, the undersigned, a notary public in and for said state, personally appeared Joseph J. Kearney, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

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

Paul V O'Brien  
Notary Public State of New York  
No 02OB6235944  
Qualified in Nassau County  
Commission Expires February 14, 2015

On the 31 day of February, in the year 2014, before me, the undersigned, a notary public in and for said state, personally appeared Craig Henneberger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

Paul V O'Brien  
Notary Public State of New York  
No 02OB6235944  
Qualified in Nassau County  
Commission Expires February 14, 2015



EXHIBIT A  
DESCRIPTION OF THE LAND

As to Lot: 182

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING at Hicksville, in the Town of Oyster Bay, County of Nassau in the State of New York, bounded and described as follows:

BEGINNING at the intersection of the northerly line of Duffy Avenue (as widened) and the westerly side of Newbridge Road (as widened);

RUNNING thence south 82 degrees 18 minutes west (deed) south 82 degrees 03 minutes 00 seconds west (calculated) along the northerly line of Duffy Avenue, 104.68 feet to the land of Florian Spinner;

THENCE south 82 degrees 00 minutes 00 seconds west along the northerly line of Duffy Avenue, 769.95 feet (calculated) to true point or place of beginning;

THENCE south 82 degrees 00 minutes 00 seconds west along the northerly line of Duffy Avenue, 125.00 feet to a point;

THENCE north 06 degrees 35 minutes 00 seconds west, 273.90 feet to land now or formerly of Long Island Rail Road;

THENCE north 79 degrees 09 minutes 00 seconds east a length of 125.23 feet (deed), north 79 degrees 08 minutes 14 seconds east, a length of 125.31 feet (calculated) to a point;

THENCE south 06 degrees 35 minutes 00 seconds east, a length of 280.16 feet (calculated), 280.11 feet (deed) to the point of BEGINNING.

As to Lot: 237

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING at Hicksville, in the Town of Oyster Bay, County of Nassau in the State of New York, bounded and described as follows:

BEGINNING at a point on the northerly line of Duffy Avenue (Duffy's Avenue) (Duffy's Lane) as widened at the southeast corner of the herein described premises where the same is distant the following 2 (two) courses and distances as measured along the northerly line of Duffy Avenue (Duffy's Avenue) (Duffy's Lane) as widened from the southerly end of a tie line bearing south 40 degrees 24 minutes 02 seconds west having a length of 25.95 feet, said tie line connecting the westerly line of Newbridge Road (State Highway #546) (Jackson Place) (Jackson Avenue) with the northerly record line of Duffy Avenue (Duffy's Avenue) (Duffy's Lane) as widened;

1. South 82 degrees 03 minutes 00 seconds west 104.68 feet (calculated), south 82 degrees 18 minutes 00 seconds west 108 feet +/- (Tax Map)
2. South 82 degrees 00 minutes 00 seconds west 498.86 feet to the point or place of beginning;

RUNNING thence from said point or place of beginning along the northerly line of Duffy Avenue (Duffy's Avenue) (Duffy's Lane) as widened south 82 degrees 00 minutes 00 seconds west 271.09 feet;

THENCE north 06 degrees 35 minutes 00 seconds west 280.16 feet (calculated), 280.11 feet (Deed and Tax Map);

THENCE north 79 degrees 09 minutes 20 seconds east 28 .32 feet (Deed and Calculated) 28.52 feet (Tax Map);

THENCE north 09 degrees 21 minutes 00 seconds west 32.96 feet (Deed and Calculated) 32.56 feet (Tax Map) to land now or formerly of Long Island Railroad;

THENCE along said last mentioned land north 80 degrees 59 minutes 00 seconds east 236.85 feet;

THENCE south 07 degrees 58 minutes 18 seconds east 318.63 feet to the northerly record line of Duffy Avenue (Duffy's Avenue) Duffy's Lane) at the point or place of BEGINNING.

## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All equipment (including computer equipment), fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed in connection with the acquisition, renovation, installation, furnishing and equipping of the 2014 Prospect Realty Project (the "Project") of the Nassau County Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, renovated and installed by Prospect Realty Holding Company, LLC (the "Company") as agent of the Agency pursuant to a sublease agreement dated as of February 1, 2014 (the "Sublease Agreement") by and between the Agency and the Company and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

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

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

EXHIBIT C

FORM OF TERMINATION OF COMPANY LEASE

WHEREAS, Prospect Realty Holding Company, LLC (the "Company"), as landlord, and the Nassau County Industrial Development Agency (the "Agency"), as tenant, entered into a company lease agreement dated as of February 1, 2014 (the "Company Lease Agreement") pursuant to which, among other things, the Agency leased the Project Facility (as defined in the Company Lease Agreement) from the Company; and

WHEREAS, pursuant to the Company Lease Agreement, the Company and the Agency agreed that the Company Lease Agreement would terminate on the earlier to occur of (1) December 31, 2035 (the "Stated Expiration Date") or (2) any earlier date the Company Lease Agreement would terminate pursuant to the terms thereof; and

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

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

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

PROSPECT REALTY HOLDING COMPANY,  
LLC

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

NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

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

STATE OF )  
 ) ss.:  
COUNTY OF )

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

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

STATE OF )  
 ) ss.:  
COUNTY OF )

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

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

EXHIBIT D

FORM OF BILL OF SALE TO COMPANY

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 1550 Franklin Avenue, Suite 235, Mineola, NY 11501 (the "Grantor"), for the consideration of One Dollar (\$ 1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from PROSPECT REALTY HOLDING COMPANY, LLC, a limited liability company organized and existing under the laws of the State of New York, having an office for the transaction of business at 615 Merrick Avenue, Westbury, NY 11590 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, any and all of Grantor's right, title and interest, if any, in and to those materials, machinery, equipment (including computer equipment), fixtures or furnishings which are described in Exhibit B attached hereto (the "Equipment") now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on a parcel of land (the "Land") located at 102-110 Duffy Avenue, Hicksville, Town of Oyster Bay, Nassau County, New York, which Land is more particularly described on Exhibit A attached hereto.

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

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

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

NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_

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

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

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

EXHIBIT A

DESCRIPTION OF THE LAND

As to Lot: 182

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING at Hicksville, in the Town of Oyster Bay, County of Nassau in the State of New York, bounded and described as follows:

BEGINNING at the intersection of the northerly line of Duffy Avenue (as widened) and the westerly side of Newbridge Road (as widened);

RUNNING thence south 82 degrees 18 minutes west (deed) south 82 degrees 03 minutes 00 seconds west (calculated) along the northerly line of Duffy Avenue, 104.68 feet to the land of Florian Spinner;

THENCE south 82 degrees 00 minutes 00 seconds west along the northerly line of Duffy Avenue, 769.95 feet (calculated) to true point or place of beginning;

THENCE south 82 degrees 00 minutes 00 seconds west along the northerly line of Duffy Avenue, 125.00 feet to a point;

THENCE north 06 degrees 35 minutes 00 seconds west, 273.90 feet to land now or formerly of Long Island Rail Road;

THENCE north 79 degrees 09 minutes 00 seconds east a length of 125.23 feet (deed), north 79 degrees 08 minutes 14 seconds east, a length of 125.31 feet (calculated) to a point;

THENCE south 06 degrees 35 minutes 00 seconds east, a length of 280.16 feet (calculated), 280.11 feet (deed) to the point of BEGINNING.

As to Lot: 237

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING at Hicksville, in the Town of Oyster Bay, County of Nassau in the State of New York, bounded and described as follows:

BEGINNING at a point on the northerly line of Duffy Avenue (Duffy's Avenue) (Duffy's Lane) as widened at the southeast corner of the herein described premises where the same is distant the following 2 (two) courses and distances as measured along the northerly line of Duffy Avenue (Duffy's Avenue) (Duffy's Lane) as widened from the southerly end of a tie line bearing south 40 degrees 24 minutes 02 seconds west having a length of 25.95 feet, said tie line connecting the westerly lien of Newbridge Road (State Highway #546) (Jackson Place) (Jackson Avenue) with the northerly record line of Duffy Avenue (Duffy's Avenue) (Duffy's Lane) as widened;



1. South 82 degrees 03 minutes 00 seconds west 104.68 feet (calculated), south 82 degrees 18 minutes 00 seconds west 108 feet +/- (Tax Map)
2. South 82 degrees 00 minutes 00 seconds west 498.86 feet to the point or place of beginning;

RUNNING thence from said point or place of beginning along the northerly line of Duffy Avenue (Duffy's Avenue) (Duffy's Lane) as widened south 82 degrees 00 minutes 00 seconds west 271.09 feet;

THENCE north 06 degrees 35 minutes 00 seconds west 280.16 feet (calculated), 280.11 feet (Deed and Tax Map);

THENCE north 79 degrees 09 minutes 20 seconds east 28 .32 feet (Deed and Calculated) 28.52 feet (Tax Map);

THENCE north 09 degrees 21 minutes 00 seconds west 32.96 feet (Deed and Calculated) 32.56 feet (Tax Map) to land now or formerly of Long Island Railroad;

THENCE along said last mentioned land north 80 degrees 59 minutes 00 seconds east 236.85 feet;

THENCE south 07 degrees 58 minutes 18 seconds east 318.63 feet to the northerly record line of Duffy Avenue (Duffy's Avenue) Duffy's Lane) at the point or place of BEGINNING.

## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All equipment (including computer equipment), fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed in connection with the acquisition, renovation, installation, furnishing and equipping of the 2014 Prospect Realty Project (the "Project") of the Nassau County Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, renovated and installed by Prospect Realty Holding Company, LLC (the "Company") as agent of the Agency pursuant to a sublease agreement dated as of February 1, 2014 (the "Sublease Agreement") by and between the Agency and the Company and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

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

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

EXHIBIT E  
FORM OF SALES TAX EXEMPTION LETTER

See Attached

**SALES TAX EXEMPTION LETTER AND CONTRACT**

February 3, 2014

TO WHOM IT MAY CONCERN

Re: Nassau County Industrial Development Agency  
(2014 Prospect Realty Project)

Ladies and Gentlemen:

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

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

2. Pursuant to a resolution adopted by the Agency on December 5, 2013 (the "Authorizing Resolution") and a Sublease Agreement, dated as of February 1, 2014 (as amended, modified, supplemented or restated, the "Lease Agreement"), between the Agency and Prospect Realty Holding Company, LLC (the "Company"), the Agency has authorized the Company to act as its agent to acquire, renovate, improve, install, furnish and equip a commercial facility in Nassau County, New York, consisting of (1) the acquisition of an interest in an approximately 3 acre parcel of land located at 102-110 Duffy Avenue, Hicksville, Town of Oyster Bay, County of Nassau, New York (Section: 11; Block: G; Lots: 237 and 182) (collectively, the "Land"), (2) the renovation of the existing approximately 160,000 square foot building on the Land, together with parking and other related improvements to the Land (collectively, the "Building"), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and

equipment (including computer equipment) (collectively, the "Equipment"), all of the foregoing for use by the Company as a back office & processing administration facility (collectively, the "Project Facility").

3. In connection with the Authorizing Resolution and the Lease Agreement and pursuant to the authority therein granted, the Agency authorizes the Company (and its approved agents, which approved agents are listed on Schedule A hereto) to act as its agent in connection with the acquisition, renovation, improvement, installation, furnishing and equipping of the Project Facility and authorizes the Company (and such approved agents) to use this letter as its agent only for the payment of the costs of such acquisition, renovation, improvement, installation, furnishing and equipping of the Project Facility.

4. As agent for the Agency, the Company agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company as agent for the Agency (or its approved agents listed on Schedule A hereto) for the acquisition, renovation, improvement, installation, furnishing or equipping of the Project Facility shall include language in substantially the following form:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by [\_\_\_\_\_] (the "Agent"), as agent for and on behalf of the Nassau County Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for Prospect Realty Holding Company LLC consisting in part of the acquisition and renovation of a bank back office & processing administration (the "Building") and the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in the Building located at 102-110 Duffy Avenue, Hicksville, Town of Oyster Bay, County of Nassau, New York (the "Premises"). The capital improvements, materials, machinery, equipment (including computer equipment), trade fixtures, furniture, furnishings and other tangible personal property to be incorporated or installed in the Premises which are the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Nassau if effected in accordance with the terms and conditions set forth in the attached Sales Tax Exemption Letter of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Exemption Letter. This [contract, agreement, invoice, bill or purchase order] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

5. The acquisition, renovation, improvement, installation, furnishing and equipping of facilities, capital improvements, systems, trade fixtures, tangible personal property, equipment (including computer equipment) and machinery constituting a part of the Project Facility shall be exempt from the sales and use taxes levied by the State of New York and the County of Nassau on the condition that (i) such materials and capital improvements are separately identifiable property of the Agency, and (ii) any capital machinery, equipment (including computer equipment) or other tangible personal property shall have a useful life of one year or more, and shall solely be for the use of the Company, the Guarantor and the Guarantor's Affiliates at and in the Project Facility, and for no other entity and at no other location, and shall be effected by and at the sole cost of the Company. The exemption provided under this letter shall not apply to the acquisition of: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or other similar agency for use on public highways or streets.

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

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

8. Accordingly, until the earliest of (i) April 1, 2016, (ii) the completion of the Project as provided in the Lease Agreement, (iii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Lease Agreement), and (iv) the termination of the Lease Agreement and/or revocation of the appointment of the Company as agent of the Agency (the earliest to occur of the foregoing, the "Termination Date"), all vendors, lessors, licensors, contractors and subcontractors are hereby authorized to rely on this letter (or on a photocopy or fax of this letter) as evidence that purchases and leases of, and improvement and installation contracts relating to, the Project Facility, to the extent effected by the Company (or its approved agents or by a contractor or subcontractor engaged by the Company or such approved agents) as agent for the Agency, are exempt from all New York State and Nassau County sales and use taxes.

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

10. Any vendor, lessor, licensor or contractor that does not collect otherwise applicable sales or use tax in reliance upon this letter, shall be deemed to have acknowledged and agreed to the provisions of Paragraph 4 hereof regardless of whether or not the provisions thereof

are inserted in the contract, agreement, invoice, bill or purchase order entered into with the Company.

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

12. The exemption from sales and use taxes provided under this letter is granted subject to the requirements of Section 875 of the General Municipal Law, which requirements are incorporated herein by reference, and the Company and its approved agents agree to such requirements as a condition precedent to receiving the exemption from sales and use taxes under this letter.

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

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

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

ACCEPTED AND AGREED TO BY:

**PROSPECT REALTY HOLDING COMPANY, LLC**

By: \_\_\_\_\_  
Name: Craig Henneberger  
Title: Vice President

**SCHEDULE A**

**AUTHORIZED AGENTS**

<u>Agent Name</u>	<u>Taxpayer ID Number</u>
New York Community Bancorp, Inc.	06-1377322
Mattone Group Duffy Avenue LLC	46-3047054



EXHIBIT F

TERMINATION OF LEASE AGREEMENT

WHEREAS, Prospect Realty Holding Company, LLC (the "Company"), as subtenant, and the Nassau County Industrial Development Agency (the "Agency"), as sublandlord, entered into a sublease agreement dated as of February 1, 2014 (the "Lease Agreement") pursuant to which, among other things, the Agency subleased the Project Facility (as defined in the Lease Agreement) to the Company; and

WHEREAS, pursuant to the Lease Agreement, the Company and the Agency agreed that the Lease Agreement would terminate on the earlier to occur of (1) December 31, 2035 or (2) the date the Lease Agreement would terminate pursuant to Article X or Article XI of the Lease Agreement; and

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

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

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

PROSPECT REALTY HOLDING COMPANY,  
LLC

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

NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

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

STATE OF )  
 ) ss.:  
COUNTY OF )

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

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

STATE OF )  
 ) ss.:  
COUNTY OF )

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

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

EXHIBIT G  
FORM OF ANNUAL  
EMPLOYMENT REPORT

EMPLOYMENT PLAN STATUS REPORT

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TYPE OF BUSINESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

<u>Occupation</u>	<u>Number of New Jobs</u>	<u>Number Listed<sup>1</sup></u>	<u>Number Filled</u>	
			<u>Community Services Division Applicants</u>	<u>Job Training Partnership Act eligible persons</u>

---

<sup>1/</sup> With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.

**This information is reported to the Office of the New York State Comptrollers/Division of Municipal Affairs Office and as such the information is required to be accurate.**

Contact Person:		Actual Number of Employees as of 12/31/___:  Actual Number of Employees at Project Facility:  Average Annual Salary of Employees Retained:	F/T/E   \$	
Address of Home Office:  Phone & Fax:		20__ Total Annual Payroll Dollar Amount:	\$	Construction Jobs Created During 20__:  F/T/E
# of Employees before the IDA project:	F/T/E	Actual # of New Employees Hired in Fiscal Year 20__:  Actual # of New Employees Hired in Fiscal Year at Project Facility:  Average Annual Salary of Employees Hired:	F/T/E   \$	Average Annual Salary of 20__ Construction Jobs:  \$

**Please attach (1) the 20\_\_ fourth quarter form NYS-45 filed with New York State Employment Taxation Department indicating number of employees, and (2) the Undersigned's annual payroll report for year ending 12/31/\_\_. It is not necessary to include Part C. Undersigned, hereby confirms that no leases, subleases or other arrangements permitting the use or occupancy of the facilities subject to this report are in existence, except those expressly authorized in writing by the Nassau County Industrial Development Agency. Undersigned, hereby confirms that no Event of Default under the Transaction Document has occurred and is continuing.**

**Projects that received Sales Tax Benefits in 20\_\_ are required to complete the attached ST-340 form and include a copy of it with this report upon return. The original ST-340 must be filed with the NYS Department of Taxation and Finance, by the undersigned, no later than February 11th.**

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Signature

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

NOTARY PUBLIC (Please sign and affix stamp)

\_\_\_\_\_

RETURN TO: NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
1550 FRANKLIN AVENUE-SUITE 235  
MINEOLA, NY 11501

*Attn: Colleen Pereira*  
*\*\*due no later than February 11, 20\_\_*