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NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
as sublessor

AND

FIRST PLAYHOUSE OF GREAT NECK CORP.  
as sublessee

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SUBLEASE AGREEMENT  
(UNIFORM PROJECT AGREEMENT)

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DATED AS OF JUNE 1, 2023

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ADDRESS : 102-112 Middle Neck Road  
VILLAGE: Great Neck Estates  
TOWN: North Hempstead  
COUNTY: Nassau  
STATE: New York  
SECTION: 2  
BLOCK: 38  
LOTS: 116

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Prepared By:

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

TABLE OF CONTENTS

ARTICLE I DEFINITIONS ..... 4

    SECTION 1.1    DEFINITIONS..... 4

    SECTION 1.2    INTERPRETATION..... 13

ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS..... 14

    SECTION 2.1    REPRESENTATIONS, WARRANTIES AND  
                    COVENANTS OF THE AGENCY..... 14

    SECTION 2.2    REPRESENTATIONS, WARRANTIES AND  
                    COVENANTS OF THE COMPANY. .... 14

ARTICLE III CONVEYANCE AND USE OF PROJECT FACILITY..... 18

    SECTION 3.1    CONVEYANCE TO THE AGENCY.. .... 18

    SECTION 3.2    USE OF PROJECT FACILITY..... 19

    SECTION 3.3    HAZARDOUS MATERIALS. .... 19

    SECTION 3.4    NON-MERGER..... 21

    SECTION 3.5    TITLE INSURANCE..... 21

ARTICLE IV UNDERTAKING AND COMPLETION OF THE PROJECT ..... 22

    SECTION 4.1    ACQUISITION, CONSTRUCTION, INSTALLATION  
                    AND EQUIPPING OF THE PROJECT FACILITY..... 22

    SECTION 4.2    COMPLETION OF THE PROJECT FACILITY;  
                    FEES. .... 24

    SECTION 4.3    REMEDIES TO BE PURSUED AGAINST  
                    CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR  
                    SURETIES..... 25

ARTICLE V DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS AND OTHER  
AMOUNTS PAYABLE ..... 26

    SECTION 5.1    SUBLEASE OF THE PROJECT FACILITY.. .... 26

    SECTION 5.2    DURATION OF THE LEASE TERM; QUIET  
                    ENJOYMENT..... 26

    SECTION 5.3    RENTAL PAYMENTS AND OTHER AMOUNTS  
                    PAYABLE. .... 26

    SECTION 5.4    NATURE OF OBLIGATIONS OF THE COMPANY  
                    HEREUNDER. .... 27

    SECTION 5.5    GRANT OF SECURITY INTEREST.. .... 28

    SECTION 5.6    SUB-SUBLEASE ..... 28

ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE..... 29

SECTION 6.1	MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY. ....	29
SECTION 6.2	TAXES, ASSESSMENTS AND UTILITY CHARGES. ....	31
SECTION 6.3	INSURANCE REQUIRED. ....	32
SECTION 6.4	ADDITIONAL PROVISIONS RESPECTING INSURANCE. ....	33
SECTION 6.5	APPLICATION OF NET PROCEEDS OF INSURANCE. ....	35
SECTION 6.6	PAYMENTS IN LIEU OF TAXES. ....	35
ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION .....		36
SECTION 7.1	DAMAGE OR DESTRUCTION. ....	36
SECTION 7.2	CONDEMNATION. ....	37
SECTION 7.3	ADDITIONS TO THE PROJECT FACILITY. ....	38
ARTICLE VIII SPECIAL COVENANTS .....		38
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. ....	38
SECTION 8.2	HOLD HARMLESS PROVISIONS. ....	39
SECTION 8.3	RIGHT OF ACCESS TO THE PROJECT FACILITY. ....	40
SECTION 8.4	COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS. ....	40
SECTION 8.5	AGREEMENT TO PROVIDE INFORMATION. ....	40
SECTION 8.6	BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES. ....	41
SECTION 8.7	COMPLIANCE WITH APPLICABLE LAWS. ....	41
SECTION 8.8	DISCHARGE OF LIENS AND ENCUMBRANCES. ....	41
SECTION 8.9	PERFORMANCE OF THE COMPANY'S OBLIGATIONS. ....	42

SECTION 8.10	DEPRECIATION DEDUCTIONS AND TAX CREDITS.....	42
SECTION 8.11	EMPLOYMENT OPPORTUNITIES.....	42
SECTION 8.12	SALES AND USE TAX EXEMPTION.....	43
SECTION 8.13	IDENTIFICATION OF THE EQUIPMENT.....	49
SECTION 8.14	FINANCIAL STATEMENTS.....	49
SECTION 8.15	ANTI-TERRORISM LAWS .....	49
ARTICLE IX ASSIGNMENTS; LEASING; MERGER OF THE AGENCY .....		52
SECTION 9.1	ASSIGNMENT OF THIS LEASE.. .....	52
SECTION 9.2	MERGER OF THE AGENCY. ....	52
SECTION 9.3	SALE OR LEASE OF THE PROJECT FACILITY... ..	53
ARTICLE X EVENTS OF DEFAULT AND REMEDIES .....		56
SECTION 10.1	EVENTS OF DEFAULT DEFINED.....	56
SECTION 10.2	REMEDIES ON DEFAULT.....	59
SECTION 10.3	REMEDIES CUMULATIVE.. .....	61
SECTION 10.4	AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.....	61
SECTION 10.5	NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.....	61
ARTICLE XI EARLY TERMINATION .....		61
SECTION 11.1	EARLY TERMINATION OF THE LEASE.. .....	61
SECTION 11.2	OBLIGATION TO SELL AND TERMINATE THE LEASE. ....	62
SECTION 11.3	RECAPTURE OF AGENCY BENEFITS.....	62
ARTICLE XII MISCELLANEOUS.....		65
SECTION 12.1	NOTICES.....	65
SECTION 12.2	BINDING EFFECT.. .....	66
SECTION 12.3	SEVERABILITY.....	67
SECTION 12.4	AMENDMENT.....	67
SECTION 12.5	EXECUTION OF COUNTERPARTS.t. ....	67
SECTION 12.6	APPLICABLE LAW. ....	67
SECTION 12.7	SURVIVAL OF OBLIGATIONS. ....	67
SECTION 12.8	TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.....	67
SECTION 12.9	NO RECOURSE; SPECIAL OBLIGATION.....	67
SECTION 12.10	NET LEASE.. .....	68
SECTION 12.11	WAIVER OF JURY TRIAL.....	68
SECTION 12.12	PRIOR AGREEMENTS.....	69
SECTION 12.13	SERVICE OF PROCESS. ....	69
SECTION 12.14	THIRD PARTY BENEFICIARIES.....	69

SECTION 12.15	NON-DISCRIMINATION .....	69
SECTION 12.16	DATE OF LEASE.. .....	70
SECTION 12.17	RECORDING AND FILING.. .....	70
SECTION 12.18	SUBORDINATION.....	70
SECTION 12.19	SPECIAL LENDER PROVISIONS.....	71

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 Termination of Sublease Agreement
EXHIBIT F	Copy of PILOT Agreement
EXHIBIT G	Form of Annual Employment Report
EXHIBIT H	Form of Sales Tax Sub-Agent Authorization Letter
EXHIBIT I	Company Certificate Pursuant to Labor Law
EXHIBIT J	Agency Statement of Determination Pursuant to Labor Law
EXHIBIT K	Mortgage Requirements
EXHIBIT L	Form of Tenant Agency Compliance Agreement

**SUBLEASE AGREEMENT  
(UNIFORM PROJECT AGREEMENT)**

THIS SUBLEASE AGREEMENT (UNIFORM PROJECT AGREEMENT) dated as of June 1, 2023 (this “Lease”) by and between the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at One West Street, 4th Floor, Mineola, NY 11501 (the “Agency”), and FIRST PLAYHOUSE OF GREAT NECK CORP., a corporation duly organized and validly existing under the laws of the State of New York, having an address at 102-112 Middle Neck Road, Great Neck, NY 11501 (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 Closing Date (as hereinafter defined), 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 presented an application for financial assistance (the “Application”) to the Agency, which Application requests that the Agency consider undertaking a project (the “Project”) consisting of the following: (A)(1) the acquisition of an interest in an approximately 0.27 acre parcel of land located at 102-112 Middle Neck Road, Village of Great Neck Estates, Town of North Hempstead, Nassau County, New York (Section: 2; Block: 38; Lot: 116) (the “Land”), (2) the construction of an approximately 43,262 square foot four-story building (the “Building”) on the Land, together with related improvements to the Land, including on-site parking spaces, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the “Equipment”) necessary for the completion thereof (collectively, the “Project Facility”), all of the foregoing for use by the Company as a mixed-use facility consisting of approximately 3,000 square feet of retail space on the first floor and twenty (20) residential rental units, of which at least two (2) residential rental units shall be affordable units; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to

the foregoing in the form of potential exemptions or partial exemptions from real property taxes, sales and use taxes and mortgage recording taxes; and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on March 30, 2023 (the "Preliminary Resolution"), the Agency authorized the officers and employees of the Agency to undertake certain preliminary due diligence with respect to the Project and to otherwise comply with all other procedural and other requirements imposed on the Agency with respect to the Project and/or the Financial Assistance; and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance (as hereinafter defined) contemplated by the Agency with respect to the Project, to be mailed on April 25, 2023 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 April 27, 2023 in the Nassau edition of *Newsday*, a newspaper of general circulation available to residents of the County of Nassau, New York; (C) caused the Public Hearing to be conducted on May 15, 2023, at 11:00 a.m., local time, at 4 Gateway Drive, Village of Great Neck Estates, Town of North Hempstead, Nassau County, New York, and streamed the Public Hearing on the Agency's website in real-time; (D) posted a video recording of the Public Hearing on the Agency's website; and (E) caused a transcript of the Public Hearing (the "Report") to be prepared which sets forth the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, in accordance with Section 874(4) of the Act, (A) the Agency caused notice of a meeting of the members of the Agency (the "IDA Meeting") with respect to the proposed deviation from the Agency's uniform tax exemption policy and guidelines (the "UTEP") to be sent by certified mail, return receipt requested, on April 25, 2023 to the chief executive officer of each affected tax jurisdiction (including the superintendent and the district clerk in the case of each affected school district); and (B) the Agency conducted the IDA Meeting on May 18, 2023, reviewed any written comments or correspondence regarding the proposed deviation from the UTEP, and approved the proposed deviation by resolution adopted by the members of the Agency on May 18, 2023 (the "Deviation Resolution"); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations", and collectively with the SEQR Act, "SEQRA"), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Company and made any necessary comments to the members of the Agency, the Agency conducted a coordinated review pursuant to SEQRA, and by resolution adopted by the members of the Agency on May 18, 2023 (the "SEQRA Resolution"), the Agency determined that the Project is a Type I Action pursuant to SEQRA and that the Project will not have any significant adverse impacts on the environment; and

WHEREAS, following the Agency's review and assessment of the Report and all other material information necessary to afford a reasonable basis for the Agency to make a determination to approve the Financial Assistance, the Agency, by resolution adopted by the members of the Agency on May 18, 2023 (the "Authorizing Resolution"), 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 the Authorizing Resolution; and

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

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

WHEREAS, the members of the Agency have determined that (A) the granting of the Financial Assistance by the Agency to the Company is necessary to induce the Company to proceed with the Project, and (B) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Company; 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, 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 have granted a first lien mortgage on the Premises to the PILOT Mortgagee; and

WHEREAS, the Company has obtained or is obtaining the Loans from the Lenders, which Loans are secured by, inter alia, the Lender Mortgages;



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

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

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

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

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

Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, (3) judgments, decrees, orders or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority, and (4) applicable covenants and restrictions relating in any way to the Project Facility.

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

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

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

“Benefits” shall have the meaning assigned to such term in Section 11.3 of this Lease.

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

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

“Blocked Person” shall have the meaning assigned to such term in Section 8.15 of 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.

“Commissioner of Labor” shall have the meaning assigned to such term in Section 8.16 of this Lease

“Company” means First Playhouse of Great Neck Corp., corporation duly organized and validly 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 eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is less.

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

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

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

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

“Equipment” shall have the meaning assigned to such term in the recitals to this Lease and shall include all those materials, machinery, equipment, fixtures and furnishings intended to be acquired with the proceeds of any payment made by the Company pursuant to Section 4.1 of

this Lease, and such substitutions and replacements therefor as may be made from time to time pursuant to this Lease, including without limitation, all the Property described in Exhibit B attached to this Lease. "Equipment" shall not include: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or similar agency for use on public highways or streets.

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

"Financial Assistance" means (A) an exemption from all New York State and local sales and use taxes for purchases and rental of qualifying personal property necessary for the completion of the Project and having a value not exceeding the Maximum Sales Tax Benefit, (B) an exemption from mortgage recording tax (by reason of Section 874 of the Act, except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the Tax Law of the State of New York) with respect to the recording of the Lender Mortgages and having a value not exceeding the Maximum Mortgage Recording Tax Benefit, and (C) an exemption from real property taxes pursuant to the PILOT Agreement, which exemption from real property taxes the Agency has estimated to have a value of \$1,270,588.

"Form ST-60" shall have the meaning assigned to such term in Section 8.12 of this Lease.

"Form ST-123" shall have the meaning assigned to such term in Section 8.12 of this Lease.

"Form ST-340" shall have the meaning assigned to such term in Section 8.12 of 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" or "Guarantors" means Jan Soleimani and Andre Sakhai, each a natural person.

"Guaranty" means the Guaranty of even date herewith from the Guarantor(s) to the Agency.

“Hazardous Material” or “Hazardous Materials” means all (i) 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 5101, 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, and (ii) substances identified as emerging contaminants by any Governmental Authority, including, but not limited to, (a) per- and polyfluoroalkyl substances (“PFAS”), including, but not limited to, perfluorooctanoic acid (“PFOA”) and perfluorooctanesulfonic acid (“PFOS”), and (b) 1, 4 dioxane.

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

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

“JTPA” shall have the meaning assigned to such term in Section 8.11 of this Lease.

“JTPA Referral Entities” shall have the meaning assigned to such term in Section 8.11 of this Lease.

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

“Lender” or “Lenders” means Ponce Bank, a Federal Savings Bank, together with its successors and/or assigns, provided that the Agency is given notice of any such succession or assignment in accordance with Section 12.1 of this Lease.

“Lender Mortgage” or “Lender Mortgages” means, individually or collectively, as the context may require, that certain Building Loan Mortgage dated the Closing Date in the principal amount of up to \$15,500,000 made by the Agency and the Company to the Lender.

“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.

"Loans" means, individually or collectively, as the context may require, those certain loans from Lender to the Company secured by the Lender Mortgages.

"Maximum Mortgage Recording Tax Benefit" means \$116,250, which represents the maximum value of the mortgage recording tax exemption that would not otherwise be available to the Company without the Agency's involvement in the Project.

"Maximum Sales Tax Benefit" means \$1,270,462.50.

"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.

"NYSDOL" shall have the meaning assigned to such term in Section 8.11 of this Lease.

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

"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 Mortgage Satisfaction” shall have the meaning assigned to such term in Section 11.2 of this Lease.

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

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

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

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

“Prevailing Wage Law” shall have the meaning assigned to such term in Section 8.16 of this Lease.

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

“Project” means that project being undertaken by the Agency consisting of (A) the acquisition of a leasehold interest in the Premises, (B) the construction of the Building and related improvements on the Land, (C) the acquisition and installation of the Equipment, (D) the

granting of the Financial Assistance, (E) the leasing of the Project Facility to the Company, and (F) the subleasing of the Project Facility by the Company to the Sublessees pursuant to the Sublease Agreements, all as more particularly described in the recitals to this Lease.

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

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

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

“Quarterly Sales Tax Report” shall have the meaning assigned to such term in Section 8.12 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 11.3 of this Lease.

“Recapture of Benefits” shall have the meaning assigned to such term in Section 11.3 of this Lease.

“Regulatory Agreement” means that certain Regulatory Agreement of even date herewith between the Agency and the Company.

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

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

“Sales Tax Sub-Agent Authorization 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 of this Lease.

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



“SEQRA Resolution” 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.

“Special Provisions” shall have the meaning assigned to such term in Section 8.12 of this Lease

“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 of this Lease.

“Sub-Agent” shall have the meaning assigned to such term in Section 8.12 of this Lease.

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

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

“TACA” shall have the meaning assigned to such term in Section 9.3 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 between the Agency and the Company, pursuant to which the Agency and the Company terminate the Company Lease, substantially in the form attached as Exhibit C to this Lease.

“Termination of Lease” means the termination of sublease agreement (uniform project agreement) between the Company and the Agency, pursuant to which the Agency and the Company terminate this Lease, substantially in the form attached as Exhibit E 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, the Regulatory Agreement, this Lease, the Environmental Indemnification, the Guaranty, any Sales Tax Sub-Agent Authorization 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, 5.2, 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, 8.16, 9.1, 9.3, 10.2, 10.4, 11.2, 11.3, 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 this Lease, including, without limitation, any and all rights of indemnification, (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 11.3 of this Lease, (D) the right of the Agency in its own behalf to enforce the obligation of the Company to undertake and complete the Project and to confirm the qualification of the Project as a “project” under the Act, and (E) the right to enforce the foregoing pursuant to the PILOT Agreement, the PILOT Mortgage, and Section 5.5 and Article X of this Lease.

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

“W/MBE’s” shall have the meaning assigned to such term in Section 4.1 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. 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 certificate of establishment or 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 Section 5.5 and in Articles IX, X and XI hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project Facility or any part thereof and shall maintain the Project Facility free and clear of all liens or encumbrances created by the Agency, except as contemplated or permitted by the terms of this Lease and the other Transaction Documents.

(D) The Agency has been induced to enter into this Lease and the other Transaction Documents to which the Agency is a party by the undertaking of the Company to acquire, construct, install, equip and operate the Project Facility in furtherance of the public purposes of the Agency.

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 corporation duly organized, validly existing and in good standing under the laws of the State of New York and all other jurisdictions in which its operations or ownership of its Properties so require, and has the power to execute and deliver 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 shareholders, 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 directors or shareholders 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. This Lease and the other

Transaction Documents to which the Company is a party have been duly authorized, executed and delivered by the Company.

(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 certificate of incorporation or by-laws or any other company restriction, order, judgment, agreement, document or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any of the foregoing, other than Permitted Encumbrances, (2) conflict with or result in a violation of Applicable Laws, (3) require consent or approval (which has not been heretofore received and provided to the Agency) under any company restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent or approval (which has not been heretofore obtained and provided to the Agency) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any Governmental Authority having jurisdiction over the Company or any of the Property of the Company.

(C) The undertaking and completion of the Project by the Company as agent of the Agency and the operation of the Project Facility by the Company will not result in the removal of a facility or plant of the Company or any other occupant of the Project Facility, or any part thereof, from one area of the State to another area of the State (other than relocations within the County) or in the abandonment of one or more plants or facilities of the Company or any other occupant of the Project Facility, or any part thereof, located in the State (other than within the County). Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Company. Nothing in this subsection (C) shall constitute an authorization by the Agency for the Company to lease, sublease, sub-sublease or permit any other occupancy arrangements with respect to the Project Facility or any part thereof without the prior written consent of the Agency, except as set forth in Section 9.3 of this Lease.

(D) This Lease and the other Transaction Documents to which the Company is a party constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms.

(E) The Project Facility constitutes a commercial facility and the Project will advance the Agency's purposes by promoting job 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 Application was true, correct and complete as of the date it was submitted to the Agency, and no event has occurred or failed to occur since such date of submission which cause the Application to contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading.

(G) The Company shall cause the Project Facility and the operation thereof to comply with all Applicable Laws in all respects. 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.

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

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

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

(K) 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, (ii) would adversely affect the ability of the Company to perform its obligations under this Lease or any other Transaction Document, or (iii) question the validity of any of the Transaction Documents or any action to be taken in connection with the transactions contemplated thereby.

(L) 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.

(M) 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, 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.

(N) The Company shall (i) create at least two (2) new, full-time equivalent, private sector jobs in the State of New York as described in the Application within one (1) year after the Scheduled Completion Date and maintain such jobs throughout the term of this Lease, and (ii) create at least thirty (30) new, full-time equivalent, private sector construction jobs during the period from the Closing Date until the Completion Date; all of which jobs shall, at all times during the term of this Lease, be located solely at the Project Facility (collectively, the “Minimum Employment Requirement”).

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

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

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

(R) 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.

(S) The Company is, and shall at all times during the term of this Lease, continue to be owned solely by Jan Soleimani and Andre Sakhai.

(T) The Project Facility is located entirely within the boundaries of the Village of Great Neck Estates, Town of North Hempstead, Nassau County, New York, is not located in whole or in part within the boundaries of any other incorporated village, and is located only within the Great Neck Union Free School District.

(U) The total cost of the Project is at least \$21,601,477.

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

(W) 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 under the terms of which the existence of the Company Lease, this Lease or any other Transaction Document would constitute a default or an event of default.

(X) Neither the Company, nor any Guarantor, nor any Affiliate of the Company nor any shareholder or director of the Company 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.

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

(Z) 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. The Project Facility shall not be used or operated in violation of Section 862(2) of the Act. 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 Tax Law of the State of New York; 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 fee title to the Premises, free and clear from all Liens except for Permitted Encumbrances, and agrees that the Company will defend (with counsel selected by the Agency), indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto or due to any defect in the leasehold interest granted to the Agency pursuant to the Company Lease.

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

SECTION 3.2 USE OF PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Transaction Documents, provided such use causes the Project Facility to qualify or continue to qualify as a “project” under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project into disrepute as a public project; provided, further, however, that at no time shall any such use be other than by the Company as a mixed-use facility consisting of approximately 3,000 square feet of retail space on the first floor and twenty (20) residential rental units, of which at least two (2) residential rental units shall be affordable units, 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 which may constitute a nuisance, public or private, or (4) for any use that would make void or voidable any insurance then in force with respect thereto, (5) by any tenant, subtenant, user or occupant whose use, occupancy or operation of the Project Facility would be in violation of Applicable Laws, or (6) for any purpose or in any manner other than as approved by the Agency pursuant to the Authorizing Resolution and described herein, unless otherwise consented by the Agency. All permits and licenses necessary for the operation of the Project Facility as contemplated by this Section 3.2 shall be procured promptly by or on behalf of 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 3.2 shall constitute an authorization by the Agency for the Company to lease, license, sublease, sub-sublease or permit any other occupancy arrangements with respect to the Project Facility or any part thereof, except in accordance with Section 9.3 of this Lease.

### SECTION 3.3 HAZARDOUS MATERIALS.

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

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

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

remediation, investigation and laboratory fees, court costs, reasonable attorney fees and litigation expenses. Costs under this subsection (D) will be repaid immediately upon demand with interest at the Default Interest Rate commencing five (5) days after such written demand.

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

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

(G) [Reserved].

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

ARTICLE IV  
UNDERTAKING AND COMPLETION OF THE PROJECT

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

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

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

(C) Title to all materials, equipment, machinery and other items of Property presently incorporated or installed in and which are a part of the Project Facility (other than property owned by Sublessees) shall vest in the Agency immediately upon execution of the Bill of Sale to Agency, subject to Permitted Encumbrances. 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 (other than property owned by Sublessees) shall vest in the Agency immediately upon delivery to the Premises or incorporation or installation in the Project Facility, whichever shall first occur, subject to Permitted Encumbrances. 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, which shall be in form and substance reasonably satisfactory to the Agency and containing such exculpatory provisions as the Agency shall require; 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 this Section 4.1.

(E) The Agency hereby appoints the Company, and the Company hereby accepts such appointment, as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Transaction Documents: (1) to acquire, construct, install and equip the Project Facility as contemplated by this Lease, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be required or proper, all for the acquisition, construction, installation and equipping of the Project Facility, with the same powers and with

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

(F) The Company has given or will give or cause to be given all notices pursuant to 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. All permits and licenses necessary for the prosecution of work on the Project Facility have been or 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 at or in connection with the Project Facility.

(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. Leasehold title to portions of the Project Facility acquired, constructed and installed at the Company's cost shall immediately upon such acquisition, construction or installation vest in the Agency, subject to Permitted Encumbrances. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's leasehold title 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 or any other Transaction Document.

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

(K) The Company agrees to solicit bids, or cause bids to be solicited, from at least one (1) contractor or vendor based in the County for each contract entered into with respect

to the Project Facility, including, without limitation, contracts for construction (including, without limitation, the initial construction installation and equipping of the Project Facility), alteration, renovation, management, purchase of goods or services, maintenance and repair. Further, the Company covenants to use its best efforts to let such contracts or cause its contractors or subcontractors to let such contracts, where practicable, to contractors or vendors based in the County.

(L) W/MBE Contractors.

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

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

(M) The Company covenants and agrees to make a total investment in the Project Facility as of the Scheduled Completion Date in an amount not less than \$19,441,329 (which represents the product of (1) 0.90 and (2) the sum of \$21,601,477 being the total project costs as stated in the Application). The Company shall provide written documentation of such investment, in form and substance satisfactory to the Agency, no later than February 11th of the calendar year following the Scheduled Completion Date.

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

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

(A) The Company will proceed with due diligence to commence construction, installation 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 construction, installation and equipping of the Project Facility on or before December 1, 2024

(the "Scheduled Completion Date") and shall commence its occupancy of and operations at the Project Facility on or before the Scheduled Completion Date and thereafter continuously operate the Project Facility in accordance with the provisions of this Lease. The Company covenants to diligently prosecute its application for any required building permits for the Project Facility. Completion of the acquisition, construction, installation 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, construction, installation 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 temporary or permanent certificate of occupancy for all the Project Facility 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, construction, installation and equipping of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall (i) 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, or (ii) terminate 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.

**SECTION 4.4 PURPOSE OF THE PROJECT.** It is understood and agreed by the Agency and the Company that the purposes of the granting of the Financial Assistance are to

promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project Facility to advance the job opportunities, health, general prosperity and economic welfare of the people of the County and the State, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration, and to otherwise accomplish the purposes of the Act.

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

SECTION 5.1 SUBLEASE OF THE PROJECT FACILITY. In consideration of the Company's covenant herein to make rental payments hereunder, and in consideration of the other covenants of the Company contained herein, including, without limitation, 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, 2044 (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 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 on the date of execution and delivery of this Lease, the following fees: (1) a closing compliance fee in the amount of \$2,500.00, (2) an Agency administrative fee in the amount of \$123,202.95, with respect to the

Project, and (3) the Agency's general counsel fee in the amount of \$21,601.48 (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 term of this Lease or part thereof (i.e., 2023) shall be due and payable on the Closing Date and the Annual Fee for each year thereafter (i.e., 2024 and thereafter) shall be due and payable, in advance, on January 1 of each year.

(D) Within five (5) Business Days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the costs and expenses of the Agency and the officers, members, agents, attorneys, servants and employees thereof, past, present and future, incurred by reason of the Agency's ownership, leasing, subleasing 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 fee or expense of the Agency with respect to the Project Facility, the leasing, subleasing or sale of the Project Facility to the Company, the sub-subleasing of portions of the Project Facility to the Sublessees, 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 and without set-off or deduction, 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) Business 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 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 materials, machinery, equipment, trade fixtures, fixtures, furniture, furnishings and other tangible personal property acquired by or on behalf of the Company pursuant to this Lease and/or any Sales Tax Sub-Agent Authorization Letter, 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 an Event of Default shall occur under this Lease or any other Transaction Document, 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) Business 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.

**SECTION 5.6 SUB-SUBLEASE.** The Company covenants and agrees to enforce the Sublease Agreements in accordance with their respective terms as is commercially reasonable.

(B) In order to further secure the payment and performance of the obligations of the Company under this Lease and the other Transaction Documents, the Company does hereby collaterally assign, transfer and set over to the Agency all of the Company's right, title and interest in and to the Sublease Agreements, including all sublease rentals, revenues and receipts therefrom, and the right to enforce all of the Company's rights and remedies thereunder.

(C) In the exercise of the powers herein granted, no liability shall be asserted or enforced against the Agency, all such liability being hereby expressly waived and released by the Company. The Agency shall not be obligated to perform or discharge any obligation, duty or liability under any Sublease Agreement, or under or by reason of this assignment.

## 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, (6) perform or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency under and pursuant to the Lender Mortgages, and (7) not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Project Facility, or any part thereof, or the interest of the Agency or the Company in the Project Facility, the Company Lease or this Lease, except for Permitted Encumbrances. The Agency shall have no obligation to replace, maintain or effect replacements, renewals or repairs of the Project Facility, or to furnish any utilities or services for the Project Facility and the 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 subsection (B), and (d) not be in 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, \$100,000.00 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 \$300,000, 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; provided, however, that such bond or other security need not be furnished to the Agency in connection with (a) customary and reasonable initial tenant improvements, and (b) the initial construction, installation and equipping of the Project Facility;

(8) the Agency receives evidence reasonably satisfactory to the Agency 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 (other than those installed and owned by any subtenant) 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 construction, installation and equipping of the Project Facility pursuant to the Plans and Specifications.

(C) Any provision of this Lease to the contrary notwithstanding, the Company shall not construct any building or structure on the Land other than the Building (as depicted and described in the Plans and Specifications) 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.

(D) The Company from time to time may install additional machinery, equipment or other personal property in the Project Facility (which may be attached or affixed to the Project Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Project Facility, so long as such additional property is properly identified by such appropriate records, including computerized records, as approved by the Agency. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Project Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur: (i) if any Event of Default has occurred or (ii) if any such removal shall adversely affect the structural integrity of the Project Facility or impair the overall operating efficiency of the Project Facility for the purposes for which it is intended, and provided further, that if any damage to the Project Facility is occasioned by such removal, the Company agrees promptly to repair or cause to be repaired such damage at its own expense.

SECTION 6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES. 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 sales and use taxes exempted pursuant to this Lease, mortgage recording taxes exempted pursuant to this Lease and those real property 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 in good faith actively contest the amount, validity or the applicability of any payment referred to in subsection (A), provided that (1) the Company shall have first notified the Agency in writing of such contest, (2) the Company is not in default 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 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, as insured, the PILOT Mortgagee, as mortgagee, and the Agency, as loss payee, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils embraced by so-called "Special Form" policy of property insurance, in amounts sufficient to prevent the Company, the PILOT Mortgagee and/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. Additionally, during any period in which construction work or alterations are being performed at the Project Facility, the Company shall maintain "Special Form" property insurance in the form of a "Builder's Risk" completed value non-reporting policy in an amount satisfactory to the Agency and which shall contain a provision granting the insured permission to complete and/or occupy.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the 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, construction, installation and equipping of the Project Facility.

(C) Commercial general liability and professional liability insurance protecting the Company, as insured, and the PILOT Mortgagee and the Agency, as additional insureds, against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section

8.2 of this Lease) or arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000.00 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000.00 per accident or occurrence on account of damage to the Property of others, and \$2,000,000 general aggregate, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate excess liability policy (written on a "follow form" basis to the commercial general liability policy) protecting the Company, as named insured, and the Agency and the PILOT Mortgagee, as additional insureds, with a limit of not less than \$10,000,000.00, as said amounts may be adjusted by the Agency from time to time in its reasonable 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, the PILOT Mortgagee and the Agency in a minimum amount of \$10,000,000.00 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) If at any time any part of the improvements on the Project Facility are located in an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards, 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, but in no event to exceed \$100,000, 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 Company, as named insured, and the Agency and the PILOT Mortgagee, as additional insureds on a primary and non-contributory basis (via ISO

endorsements CG 20 26 and CG 20 37 or their equivalents), with respect to liability policies, and name the Agency as loss payee and the PILOT Mortgagee as mortgagee, with respect to casualty policies, and provide for at least thirty (30) days' written notice to the Company, the PILOT Mortgagee and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance shall be written on an occurrence basis or a claims made basis; provided, however, that if any insurance is written on a claims made basis, the Company agrees to maintain coverage for an adequate period of time to report losses, but in no event shall such period be less than three (3) years after the Stated Expiration Date. 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 Section 6.3 hereof. At least fifteen (15) days prior to the expiration of any policy required by Section 6.3 hereof, the Company shall furnish to the Agency (i) a certificate of insurance with respect to such policy evidencing the renewal of such policy for a period of at least one (1) year, which certificate shall be in form and substance reasonably satisfactory to the Agency, and (ii) written evidence of the payment in full of the premium for such policy for the next succeeding one (1) year period.

(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 from the date of payment by the Agency.

(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 and the PILOT Mortgagee as additional insureds on liability policies carried by such contractors or subcontractors with respect to their operations at the Premises or with respect to the Project.

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

waive subrogation thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or other deduction, in respect of any liability of any Person insured under such policy.

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

(F) Any provision of this Lease or any of the other Transaction Documents to the contrary notwithstanding, at any time during the term of this Lease that any Lender Mortgage remains a Lien on the Project Facility and that any portion of the indebtedness secured thereby remains outstanding, the Agency agrees that (i) the Lenders and not the Agency shall be the loss payee with respect to the Net Proceeds of the insurance required by Sections 6.3(A) and (E) hereof, and (ii) the provisions of Sections 6.5(A) and 7.1(B) shall be superseded and replaced by the applicable provisions of the Lender Mortgages.

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 the provisions of 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. It is recognized that, under the provisions of the Act, the Agency is not required to pay certain taxes or assessments upon any of the Property acquired by it or under its jurisdiction, control or supervision or upon its activities as more particularly set forth in Section 874 of the Act. It is the intention of the parties hereto that the Project Facility be treated as exempt from real property taxation to the extent set forth in the PILOT Agreement, a copy of which is attached hereto as Exhibit F. 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 an 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 district(s), city, town(s), county, village(s) 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 or the PILOT Agreement (whether or not the Project Facility is replaced, repaired, rebuilt or restored), unless otherwise agreed to in writing by the Agency;

(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 and the Lenders shall consent in writing to such termination. 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) Subject to the provisions of Section 6.4(F) of this Lease, 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) of this Lease.

(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 or in the Company Lease or this Lease.

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

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

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

(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) subject to the provisions of Section 6.4(F) of this Lease, (1) 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 and the Lenders shall consent in writing to such termination. In such event, subject to the provisions of Section 6.4(F) of this Lease, 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) Subject to the provisions of Section 6.4(F) of this Lease, 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 of this Lease, 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 occupancy 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, constructing, equipping, installing, owning, leasing, subleasing, sub-subleasing or selling the Project Facility or arising from or incurred based on the Agency's involvement in the Project Facility, including, without limiting the generality of the foregoing, (i) all liabilities or claims arising as a result of the Agency's obligations under this Lease or any of the other Transaction Documents or the enforcement of or defense of validity of any provision of any of the Transaction Documents, and (ii) all liabilities or claims arising as a result of the Agency's involvement in the Project or the granting of the Financial Assistance, (3) all liabilities and expenses arising from the failure or alleged failure of the Project Facility, the Project, the Company or the Company's members, managers, officers, agents, attorneys, servants or employees to comply with Applicable Laws, including, without limitation, any claim that the Agency aided or abetted in such failure or alleged failure to comply with Applicable Laws, (4) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1 of this Lease, and (5) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing. 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 its liabilities assumed pursuant to this Section 8.2 in the liability policies required by Section 6.3(C) of this Lease.

(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, subject to the rights of commercial and residential Sublessees of the Project Facility, the Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to the Company to enter upon and to examine and inspect the Project Facility (except in the event of an emergency for which prior notice shall not be required); 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 8.3) 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, (A) it will maintain its corporate 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 Person, or permit one or more Persons to consolidate with or merge into it, without giving prior written notice to the Agency and obtaining the written 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 written consent of the Agency, which consent shall not be unreasonably withheld or delayed.

**SECTION 8.5 AGREEMENT TO PROVIDE INFORMATION.** The Company shall provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs, and the Guarantors, as the Agency deems necessary, including, to enable the Agency to make any report required by Applicable Laws, including, without limitation, any reports required by the Act or the Public

Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller, or any of the Transaction Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

#### 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) On or before February 10th of each year during the term of this Lease, 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 31<sup>st</sup>.

SECTION 8.7 COMPLIANCE WITH APPLICABLE LAWS. 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), 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) is not in default 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), 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, other than Permitted Encumbrances.

(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 beyond applicable notice and/or cure periods, if applicable, 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, from the date of written demand to the Company.

**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.** 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, or any of its Affiliates, are afforded equal employment opportunities without discrimination.

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

employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.

(C) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the 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) The Company agrees to file with the Agency on a calendar year basis not later than February 10th of each year during the term of this Lease, measured as of December 31st of the immediately preceding calendar year, a report (i) certifying the full-time equivalent jobs retained and the full time equivalent jobs created as a result of the granting of the Financial Assistance, by category, including full-time equivalent independent contractors and employees of independent contractors that work at the Project Facility, and (ii) certifying that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were set forth in the Application are then still accurate or, if not then still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Said annual report shall be in substantially the form promulgated from time to time by the Agency. The current form of report is annexed hereto as Exhibit G. The Company shall provide such annual report (and supporting documentation) with respect to its employees and shall cause its Affiliates, contractors and agents to provide such report (and supporting documentation) with respect to their respective employees, if any, at the Project Facility. 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 and to cause its Affiliates and such third parties to cooperate with the Agency in connection therewith. .

(E) The Company shall, at all times during the term of this Lease, maintain or cause to be maintained the Minimum Employment Requirement. The Company agrees to give the Agency written notice of the occurrence of any default under this subsection (E) within five (5) Business Days after the Company becomes aware of the occurrence of such default.

(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 new 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 a corporate governmental agency and a public benefit corporation under the laws of the State and, therefore, 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 as agent of the Agency, in connection with the completion of the acquisition, construction, installation and equipping of the Project Facility (but not the operation thereof). No operating expenses (including, without limitation, costs of utilities, cleaning services or supplies) of the Project Facility and no other purchases or leases 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) The Agency's granting of the sales and use tax exemption herein is subject to the following additional terms and conditions:

(1) The exemption from sales and use taxes shall be effective for a term commencing on the Closing Date and expiring upon the earliest to occur of: (a) the termination of this Lease, (b) December 1, 2024, (c) the failure of the Company to file a Form ST-340 (as defined below) when required, or (d) the termination of the exemption from sales and use taxes pursuant to the terms hereof or thereof, including, without limitation, pursuant to the provisions of Section 10.2 of this Lease;

(2) Anything in this Lease to the contrary notwithstanding, the sales and use tax exemption to be provided pursuant to this Lease and the other Transaction Documents (a) shall not be available for any date subsequent to which the authorization to claim sales and use tax exemptions shall have been suspended as provided in this Lease or any other Transaction Document; (b) shall not be available for or with respect to any tangible personal property other than Equipment; and (c) shall not be available after the Company (or the contractors or subcontractors engaged by the Company and approved by the Agency as its agents) shall have made purchases resulting in the claiming of sales and use tax exemptions for the Project equal in the aggregate to the Maximum Sales Tax Benefit;

(3) The sales and use tax exemption to be provided pursuant to this Lease shall be utilized only for Equipment which shall be purchased, incorporated, completed and installed for use only by the Company at the Project Facility;

(4) The sales and use tax exemption to be provided pursuant to this Lease shall not be used to benefit any person or entity, including any Sublessee, other than the Company, without the prior written consent of the Agency;

(5) The aggregate amount of sales and use tax exemption claimed by the Company (and the contractors or subcontractors engaged by the Company and approved by the Agency as its agents) in connection with the Project shall not exceed the

Maximum Sales Tax Benefit. The Company shall notify the Agency within seven (7) Business Days of exceeding the Maximum Sales Tax Benefit; and

(6) Upon the expiration or the earlier termination of the sales and use tax exemption to be provided pursuant to this Lease, the Company shall immediately notify each Sub-Agent (as defined below) in writing of such expiration or earlier termination.

(C) If the Company desires to seek from the Agency the appointment of a contractor, subcontractor or other party to act as the Agency's agent (each, a "Sub-Agent") for the purpose of effecting purchases or leases which are otherwise eligible for an exemption from sales and use taxes hereunder, the Company shall:

(1) For each Sub-Agent, the Company must complete and submit Form ST-60, *IDA Appointment of Project Operator or Agent* (each, a "Form ST-60"), to the Agency. The foregoing is required pursuant to the Section 874(9) of the Act and Form ST-60 and the regulations relating thereto which require that within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity.

(2) Following receipt by the Agency of the completed Form ST-60, such Sub-Agent may be appointed as agent by the Agency, by execution by the Agency and the Sub-Agent of a sales tax sub-agent authorization letter in the form attached hereto as Exhibit H (each, a "Sales Tax Sub-Agent Authorization Letter"). The determination whether to approve the appointment of an agent shall be made by the Agency, in its sole discretion. If executed by the Agency, a completed copy of the Sales Tax Sub-Agent Authorization Letter shall be sent to the Company. The Company must provide a copy of the executed Sales Tax Sub-Agent Authorization Letter, together with a copy of this Lease, to the Sub-Agent within five (5) Business Days after receipt thereof by the Company.

(3) The Company shall ensure that each Sub-Agent shall observe and comply with the terms and conditions of its Sales Tax Sub-Agent Authorization Letter and this Lease.

(D) The Company acknowledges that the executed Form ST-60 designating the Company or any Sub-Agent as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. Neither the Company nor any other Sub-Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW OF THE STATE. IN ADDITION, THE USE BY A SUB-AGENT, THE COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED

TO BE, UNDER ARTICLES TWENTY-EIGHT AND THIRTY-SEVEN OF THE TAX LAW OF THE STATE, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(E) The Company agrees to furnish to the Agency within fifteen (15) Business 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 and use tax exemption granted to the Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) under the authority granted to the Company pursuant to this Lease 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 claimed by the Company and the Sub-Agents with respect to the Project for the calendar year.

(F) Pursuant to Section 874(8) of the Act, the Company agrees to file annually (through the year after the exemption from sales and use taxes granted under this Lease 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 Form ST-340, *Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority* (each, a “Form ST-340”), or such other form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance, a statement of the value of all sales and use tax exemptions claimed by the Company and each Sub-Agent during the preceding calendar year under the authority granted pursuant to this Lease. Pursuant to Section 874(8) of the Act, the penalty for failure to file a Form ST-340 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 (F), the Company and the Sub-Agents shall immediately cease to be the agent of the Agency in connection with the Project.

(G) The Company agrees to furnish to the Agency, simultaneously with its delivery of such report to the Department, a copy of each such Form ST-340 submitted to the Department by the Company pursuant to Section 874(8) of the Act.

(H) 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”), statements identifying the Company and its contractors and subcontractors approved by the Agency as agents of the Agency, setting forth the taxpayer identification numbers of such Persons, 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.

(I) With respect to any period in which the Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) receives a sales tax exemption benefit under the authority granted to the Company pursuant to this Lease, 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 claiming of such exemption from sales and use taxes by the Company (and the contractors and subcontractors engaged by the Company and approved by the Agency as its agents) for the preceding calendar year, and has reviewed the terms and provisions 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.

(J) As an agent of the Agency, the Company agrees that it will, and will cause each Sub-Agent to, present to each seller or vendor a completed and signed Form ST-123, *IDA Agent or Project Operator Exempt Purchase Certificate* (each, a "Form ST-123") for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Sub-Agent, as agent for the Agency, with respect to the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Project Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency, the Sub-Agent or the Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice must state, "I, [Company/Agent], certify that I am duly appointed agent of the Nassau County Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the 2023 First Playhouse Project located at 102-112 Middle Neck Road, Village of Great Neck Estates, Town of North Hempstead, Nassau County, New York, IDA Project Number 2803 23 05A." The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the date thereof. For each Sub-Agent, the Form ST-123 shall be completed as follows: (i) the "Project Information" section of Form ST-123 should be completed using the name and address of the Project Facility as indicated on the Form ST-60 used to appoint the Sub-Agent; (ii) the date that the Sub-Agent was appointed as an agent should be completed using the date of the Sub-Agent's Sales Tax Sub-Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only. The Company acknowledges that, pursuant to Section 875 of the Act, the Form ST-123 must be provided to the vendor, lessor, licensor, contractor or subcontractor in order for the contract, agreement, lease, invoice, bill or purchase order to be exempt from the imposition of sales and/or use taxes pursuant to the authority granted under Section 4.1 of this Lease. The Company agrees to provide the Agency a copy of each such Form ST-123 within five (5) days after the delivery of such form by the Company or a Sub-Agent to the vendor, lessor, licensor, contractor or subcontractor.

(K) (1) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, agents, and persons or entities acting on its behalf to comply, with the requirements of Sections 875(1) and (3) of the Act (the "Special Provisions"), as such

provisions may be amended from time to time. In the event of a conflict between the other provisions of this Agreement and the Special Provisions, the Special Provisions shall control.

(2) Without limitation of any of the Agency's other rights under this Lease, the Company acknowledges and agrees that pursuant to Section 875(3) of the Act, in the event that the Company or any Sub-Agent shall utilize the sales or use tax exemption provided pursuant to this Lease (i) in a manner that is not authorized or for which the Company (or any contractor or subcontractor engaged by the Company and approved by the Agency as its agent) 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 Sales Tax Sub-Agent Authorization 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 a contractor or subcontractor engaged by the Company and approved by the Agency as its agent). 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, and shall require each Agent and any other person or entity acting on behalf of the Company to 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.

(3) 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 a contractor or subcontractor engaged by the Company and approved by the Agency as its agent) 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.

(4) Upon reasonable notice to the Company from the Agency, the Company shall make available at reasonable times to the Agency and/or the Agency's officers, employees or agents, all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Sub-Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or such officers, employees

or agents, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company or any Sub-Agent shall have utilized the sales and use tax exemption granted pursuant to this Lease and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company under this Section 8.12.

(5) 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. Within ten (10) Business Days after request from the Agency, the Company shall deliver to the Agency a schedule listing all such Equipment.

**SECTION 8.14 FINANCIAL STATEMENTS.** Within one hundred twenty (120) days after the end of each fiscal year, the Company shall deliver to the Agency the financial statements of the Company prepared and compiled by an independent certified public accountant, 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.

**SECTION 8.15 ANTI-TERRORISM LAWS**

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

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

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

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

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

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

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

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

(C) Blocked Person or Transactions. Neither the Company, nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, nor to the Company’s knowledge any of its agents acting in any capacity in connection with the transactions contemplated by the Transactions Documents (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

(D) Trading with the Enemy. The Company is not engaged, nor does it intend to engage, in any business or activity prohibited by the Trading with the Enemy Act.

(E) OFAC and Patriot Act. The Company represents, warrants, covenants and agrees as follows: (i) the Company, its directors, officers, members, managers, shareholders and Affiliates are in compliance with all Anti-Terrorism Laws; (ii) the Company shall immediately notify the Agency if it obtains knowledge that it or any of its Affiliates has become or been listed as a Restricted Party or has been charged with or has engaged in any violation of any Anti-Terrorism Law; (iii) the Company shall not receive any funds from a Restricted Party and, in any case, exclude any funds derived from any Restricted Party or from any person or entity involved in the violation of any Anti-Terrorism Law from being used to pay the Indebtedness or any part thereof; (iv) the Company shall not transfer or permit the transfer of any legal or beneficial ownership interest of any kind in the Company to a Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; (v) the Company shall not acquire, directly or indirectly, ownership interest of any kind in any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law, (vi) the Company shall not form any partnership or joint venture or conduct any business with any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law, (vii) the Company shall not act, directly or indirectly, as the agent or representative of any Restricted Party or any person or

entity involved in the violation of any Anti-Terrorism Law; and (viii) the Company shall indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency from and against any costs incurred by the Agency, and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, as a result of any violation of an Anti-Terrorism Law by the Company or any of its directors, officers, members, managers, shareholders or Affiliates.

#### SECTION 8.16 REQUIREMENTS OF LABOR LAW SECTION 224-a.

(A) The Company hereby acknowledges that the Agency has made the Company aware of the provisions of Part FFF of the New York State FY2020-21 Enacted Budget (Chapter 58 of the Laws of 2020 of the State of New York), which provisions are codified, in part, at Sections 224-a, 224-b and 224-c of the New York State Labor Law (the “Prevailing Wage Law”). The Company represents and warrants that it has read and made itself familiar with the requirements of the Prevailing Wage Law and the applicability of such requirements to the Project, including consultation with its counsel with respect to such requirements.

(B) If the Project is a “covered project” within the meaning of the Prevailing Wage Law, the Company covenants and agrees with the Agency to comply with the following requirements:

(1) The Company shall certify, under penalty of perjury, within five (5) Business Days of commencement of any construction work following the Closing Date whether the Project is subject to the provisions of the Prevailing Wage Law. Such certification shall be made pursuant to a standard form developed by the Commissioner of Labor of the State of New York (the “Commissioner of Labor”). If the Commissioner of Labor has not developed such form as of the date the Company is required to certify as set forth above, then the Company shall make such certification pursuant to the form attached to this Agreement as Exhibit I. A copy of such certification shall be filed with the Agency not later than ten (10) days after any filing required by the Prevailing Wage Law.

(2) The Company shall retain original payroll records in accordance with Section 220 of the New York State Labor Law for a period of six (6) years from the conclusion of the construction work. All such payroll records shall be subject to inspection on request of the Commissioner of Labor or the Agency. The Company may authorize the prime contractor of the Project to take responsibility for retaining and maintaining payroll records, but will be held jointly and severally liable for any violations of such contractor. All such records obtained by the Commissioner of Labor or the Agency shall be subject to the New York State Freedom of Information Law.

(C) In accordance with the Prevailing Wage Law, the Company may seek guidance from the “public subsidy board” contained in Section 224-c of the New York State Labor Law as to whether or not the Project is subject to the requirements of the Prevailing Wage Law. If the Company obtains an opinion of the public subsidy board with respect to the Project, the Company shall deliver to the Agency: (1) a copy of such opinion within ten (10) Business



Days after receipt by the Company, and (2) any correspondence between the Company and the public subsidy board or the Commissioner of Labor promptly after receipt or delivery of same, as the case may be.

(D) In accordance with Section 224-a(8)(d) of the New York State Labor Law, the Agency is required to identify the nature and dollar value of the “public funds” (as such term is defined in the Prevailing Wage Law) provided by the Agency with respect to the Project and whether any such funds are excluded under Section 224-a(3) of the New York State Labor Law. The Agency shall comply with such requirement by delivering the statement attached to this Agreement as Exhibit J on the Closing Date.

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

SECTION 9.1 ASSIGNMENT OF THIS LEASE. (A) 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 and 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 fees and expenses incurred by the Agency in connection with such sale, assignment or transfer.

(B) The limitations in this Section 9.1 on assignment or transfer of this Lease and in Section 9.3 of this Lease on subletting in whole or in part of the Project Facility shall apply equally to any assignment or transfer of a Sublease Agreement and any letting or subletting in whole or in part of the Project Facility, whether by the Company or any other tenant, subtenant, occupant or user of the Project Facility, or part thereof.

SECTION 9.2 MERGER OF THE AGENCY. 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 or the Lenders 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 or any interest therein 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 leases, subleases, sub-subleases and other occupancy arrangements as set forth in subsection (B) of this Section 9.3.

(B) (1) Notwithstanding any provision of this Lease to the contrary, the Company may, without the consent of the Agency, sub-sublease portions of the Project Facility in arms' length, bona fide transactions with third parties for use as the residence of such third parties in connection with the operation of the Project as a residential rental facility and substantially in accordance with a form of residential lease approved in advance by the Agency, or one containing a series of standard clauses designated by the Agency; provided that (1) the Company shall nevertheless remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Lease and the other Transaction Documents, (2) the sub-sublessee shall utilize the demised portion of the Project Facility only as such person's residence and for no other purpose, except for the first floor commercial space which may be used for any lawful purpose, subject to Applicable Laws, (3) such sub-sublease shall not violate any provision of this Lease or any other Transaction Document, (4) each such sub-sublease contains such other provisions as required pursuant to the form of sub-sublease approved by the Agency, and (5) such sub-sublease shall not diminish or impair the obligation of the Company to carry the insurance required under Article VI hereof, and that such insurance cover shall in no manner be limited by such sub-sublease. Notwithstanding any provision of this Lease to the contrary, the sub-subleasing of the Project Facility to residential tenants shall comply with the requirements of the Regulatory Agreement.

(2) Except as set forth in subsection (1) above, if at any time during the term of this Lease the Company shall request the Agency's consent to sub-sublet or otherwise permit the use or occupancy of the Project Facility (each, a "Proposed Sublease"), or any portion thereof, the Company shall include with such request (i) a copy of the proposed lease, sublease, sub-sublease, license or occupancy arrangement executed on behalf of the Company and the proposed lessee, sublessee, sub-sublessee, licensee or occupant (the "Proposed Sublessee"), (ii) a Tenant Agency Compliance Agreement substantially in the form attached hereto as Exhibit L, executed on behalf of the Proposed Sublessee and containing only such modifications to the form as are satisfactory to the Executive Director or other Authorized Representative of the Agency in his or her sole discretion (each, a "TACA"), and (iii) any other information reasonably requested by the Agency with respect to the Proposed Sublease and the Proposed Sublessee. The Agency agrees to promptly review and respond to any such request for consent to a Proposed Sublease.

(3) The Executive Director or other Authorized Representative of the Agency shall not unreasonably withhold, condition or delay the consent of the Agency to a Proposed Sublease, provided that:

(a) neither the Company nor any of its Affiliates nor any Guarantor is then in default, beyond applicable notice and cure periods, under this Lease or any document, instrument or agreement between the Company, such Affiliates or such Guarantors and either the Agency or the County;

(b) the Proposed Sublease will not cause the Project Facility to cease to qualify as a “project” under the Act, will not cause the Project Facility to be in violation of Section 862(2) of the Act, and will not tend, in the judgment of the Agency, to bring the Project Facility into disrepute as a public project;

(c) the proposed use of the premises demised by the Proposed Sublease (the “Subleased Premises”) is a permitted use under Section 3.2 of this Lease;

(d) the Proposed Sublessee is not a Prohibited Person, no guarantor (if any) under the Proposed Sublease is a Prohibited Person and no Affiliate of the Proposed Sublessee or any such guarantor (if any) is a Prohibited Person and, if the Proposed Sublessee is not a publicly traded company, no partner, member or shareholder, as the case may be, of the Proposed Sublessee, is a Prohibited Person;

(e) the Agency determines, based on the record before it, that the Proposed Sublease will not result in the removal of a facility or plant of the Proposed Sublessee from one area of the State to another area of the State (other than relocations within the County) or in the abandonment of one or more plants or facilities of the Proposed Sublessee located in the State (other than in the County), unless the Agency shall first determine that the Proposed Sublease is reasonably necessary to discourage the Proposed Sublessee from removing its plant or facility to a location outside the State or is reasonably necessary to preserve the competitive position of the Proposed Sublessee in its respective industry;

(f) the Agency determines, based on the record before it, that the Proposed Sublease will not result in a relocation of the Proposed Sublessee within the County that would result in the creation of vacant space within the County, unless the Agency shall first determine that the Proposed Sublease is reasonably necessary to discourage the Proposed Sublessee from removing its plant or facility to a location outside the County;

(g) neither the Company, the Proposed Sublessee nor any Affiliate of either of them nor any Guarantor has employed or retained any appointed or elected governmental official to solicit or secure the

Agency's consent to the Proposed Sublease upon an agreement of understanding for a commission or percentage, brokerage or contingent fee;

(h) no funds of the Agency shall, as a result of the Agency's consent to the Proposed Sublease, be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State;

(i) the use of the Sublease Premises as contemplated by the Proposed Sublease would not cause the Project Facility or any part thereof or the operation thereof to be in violation of any Applicable Law; and

(j) no additional Financial Assistance is requested by the Company in connection with such Proposed Sublease.

If the Proposed Sublease does not satisfy each and every condition set forth in clauses (a) through and including (j) above, then the Proposed Sublease shall require the Agency's prior written consent, which consent may be granted or withheld in the Agency's sole and absolute discretion.

(4) If the Agency grants its consent as aforesaid, the Agency shall execute and deliver the signed TACA to the Company provided that the Company shall have paid the Agency's consent fee of \$750 and all reasonable and customary fees and expenses incurred by the Agency in connection with such lease, subletting, sub-subletting, license, transfer, conveyance or use or occupancy by others, including, without limitation, all reasonable attorneys' fees and expenses incurred by the Agency.

(5) Any consent by the Agency to a Proposed Sublease shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of necessity for such consent to any subsequent transaction, including but not limited to a subsequent transaction by any trustee, receiver or liquidator, or personal representative of the Sublessee nor shall the references anywhere in this Lease to lessees, sublessees, sub-sublessees, licensees and occupants be construed as a consent by the Agency to a sale, lease, subletting, sub-subletting, license, transfer, conveyance or use or occupancy by others.

(6) Within thirty (30) days after the end of each calendar year, the Company shall deliver to the Agency a current rent roll and a certificate, (i) listing all leases, subleases, sub-subleases, licenses and other occupancy agreements in effect with respect to the Project Facility, or any portion thereof (other than with respect to residential tenants), during the immediately preceding fiscal year, including, without limitation, the name of the lessee, sublessee, sub-sublessee, licensee or occupant, the square footage of the space leased, subleased, licensed or occupied, the rental and other consideration for such lease, sublease, sub-sublease, license or agreement, and such other information as the Agency may reasonably require from time to time, and (ii) certifying that such leases, subleases, sub-subleases, licenses or other occupancy

agreements do not and shall not result in a violation of the terms of this Lease or any other Transaction Document.

(C) In the event of the Company's default beyond any applicable grace, notice or cure periods in the payment of rent or other amounts due under this Lease or the other Transaction Documents, the Agency shall have the right, but not the obligation, to collect rent from any lessee, sublessee, sub-sublessee, licensee or occupant during the continuance of any such default. The Agency may apply the net amount received by it to the rent provided herein, and no such collection shall be deemed a waiver of the covenant herein against assignment, transfer or sublease of the Project Facility, or constitute the acceptance of the lessee, sublessee, sub-sublessee, licensee or occupant, or a release of the Company from the further performance of the covenants herein contained on the part of the Company.

(D) Subject to subsection (E) of this Section 9.3, 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. The standards set forth above shall also apply to any subsequent sale, transfer, conveyance or other disposal of the Project Facility or any part thereof.

(E) 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 in the ordinary course of its business, 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 except in the ordinary course in which case no prior notice is required. 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. No conveyance of any part of, or interest in, the Project effected under the provisions of this subsection (G) shall entitle the Company to any abatement or diminution of the rents payable by it under this Lease or any abatement or diminution of the Company's obligations under the PILOT Agreement.

(F) The Company shall use its commercially reasonable efforts to market and lease space within the Project Facility.

## 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) Business 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)) beyond any applicable cure period and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, or, if such covenant, condition or agreement is capable of being cured but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period or to prosecute the cure to completion with due diligence.

(3) The occurrence of an “Event of Default” under any other Transaction Document, which has not been cured within any applicable grace, notice or cure period.

(4) The Company shall generally not pay its debts as such debts become due or admits in writing 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) Business 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 partner, 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) Business 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(E) of this Lease.

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

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

(12) If the environmental or ecological condition of the Project Facility is in violation of any Environmental Law or any permit, license or approval related thereto or if the Project Facility, or any part thereof, contains any Hazardous Materials (except Hazardous Materials which do not violate Environmental Laws), and the Company is either unable to commence to comply with such Environmental Laws within forty-five (45) days of the notification or discovery of such violation or to complete all appropriate and lawful remedial containment and clean-up action within one hundred twenty (120) days of the notification or discovery of the existence of such Hazardous Materials.

(13) Any material loss or impairment of the Agency's or the Company's respective interests in and to the Project Facility, or any part thereof, not due to the voluntary acts of the Agency.

(14) The Company, any Affiliate of the Company, any Guarantor or any shareholder or director of the Company shall become a Prohibited Person.

(15) Subject to assignments expressly permitted by this Lease, any assignment of this Lease or the Company Lease by the Company, in whole or in part, or any letting, subletting or sub-subletting of the Project Facility, or any portion thereof, in violation of the terms of this Lease, or any sale, assignment or transfer of fee title to the Project Facility.

(16) An Event of Default shall occur under the Company Lease, any Lender Mortgage or under any other Permitted Encumbrance.

(17) If Jan Soleimani or Andre Sakhai ceases to have day-to-day control of the management and operations of the Company for any reason.

(18) The Company or any 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 or the Guaranty.

(19) If the Company fails to maintain or fails to cause to be maintained the Minimum Employment Requirement at any time during the term of this Lease.

(20) The Company shall have ceased to operate the Project Facility as a residential rental facility in the manner contemplated by this Lease, or shall have otherwise effected a substantial change in the scope and nature of the Project Facility without the consent of the Agency.

(21) Failure by the Company at any time to keep in full force and effect any insurance policy or coverage required by Section 6.3 of this Lease.

(22) A default by any lessee, sublessee, sub-sublessee, licensee or occupant under its respective TACA.

(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 the provisions of this Lease and to comply with the provisions of Sections 2.2, 6.6, 8.2, 8.4, 8.5 and 8.7 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, pandemics, 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.** Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent not prohibited by law and upon



five (5) Business Days' prior written notice, take any one or more of the following remedial steps:

(1) declare 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 11.3 of this Lease; or

(2) re-enter and take possession of the Project Facility, enforce or terminate this Lease, sell or assign the Agency's interest in the Project Facility, subject to Permitted Encumbrances, at public or private sale, as a whole or piecemeal, in whole or in part, for such consideration as may be deemed appropriate in the circumstances by the Agency, and hold the 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 to Company 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 and the Sub-Agents to act as agents 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 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 the Company 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, reasonable attorneys' fees and expenses) so incurred, whether an action is commenced or not. **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 EARLY TERMINATION

**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 11.3 of this Lease). 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 SELL AND TERMINATE THE LEASE.

(A) Contemporaneously with the termination of this Lease in accordance with Section 5.2 or Section 11.1 of this Lease, 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 then due and owing the Agency at the time of termination or due and owing the Agency as a result of such termination (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 and to terminate this Lease and the Company Lease will be subject to there being no uncured 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 E). In addition, the Agency shall use commercially reasonable efforts to cause the County to execute and deliver a satisfaction in recordable form of the PILOT Mortgage (the "PILOT Mortgage Satisfaction"). 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 costs and expenses in connection therewith (including 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 the PILOT Mortgage Satisfaction, 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 of this Lease.

(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 of this Lease, 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 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 or to the State, if directed by the Agency, as a return of public benefits conferred by the Agency, an amount as follows (such amount, the "Recapture of Benefits"):

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

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

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

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

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

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

(B) The term "Benefits" shall mean the Agency's calculation of all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived from the Agency's participation in the transactions contemplated by this Lease, including, but not limited to:

(1) all real property 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, 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 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 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 11.3 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 closure or by relocation to another facility or otherwise, or whether to another facility either within or outside of the County); or
- (3) The transfer of all or substantially all of the employees engaged in the construction, maintenance or operation of the Project Facility to another location; or
- (4) The occurrence and continuance of an Event of Default under this Lease or any other Transaction Document; or
- (5) The Company shall have effected a substantial change in the scope and nature of the operations of the Company at the Project Facility without the prior written consent of the Agency; or
- (6) The Company shall have sold, leased, subleased, sub-subleased, assigned, transferred or otherwise disposed of all or any part of its interest in the Project Facility in violation of this Lease; or
- (7) The Company fails to maintain or fails to cause to be maintained the Minimum Employment Requirement at any time during the term of this Lease; or
- (8) The occurrence of a default under the Regulatory Agreement beyond applicable notice, grace and cure periods; or
- (9) The Application, or documentation submitted by the Company in support of the Application, contained as of the date of its submission to the Agency or as of the Closing Date a knowingly false or knowingly misleading statement as to any fact material to the Application or knowingly 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; or
- (10) The Company realizes an exemption from sales and use tax in connection with property or services not authorized by the Agency as part of the Project; or
- (11) The Company receives an exemption from sales and use tax in connection with the Project in excess of the Maximum Sales Tax Benefit; provided, however, that

the foregoing shall constitute a Recapture Event with respect to the amount of sales and use tax exemption realized in excess of the Maximum Sales Tax Benefit only. It is further provided that failure to repay such excess amount within thirty (30) days shall constitute a Recapture Event with respect to all Benefits; or

(12) Failure of the Company to file a copy of Form ST-340 when required in compliance with Section 8.12 of this Lease.

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 (i) of the occurrence of any Recapture Event, and (ii) of the existence of any facts or circumstances that would likely lead to a Recapture Event, which notification shall set forth the terms of such Recapture Event or describe such facts or circumstances.

(E) In the event any payment owing by the Company under this Section 11.3 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:

First Playhouse of Great Neck Corp.  
50 Enterprise Avenue N, Unit B  
Secaucus, NJ 07094  
Attn: Jan Soleimani

WITH A COPY TO:

Harras Bloom & Archer LLP  
445 Broad Hollow Road, Suite 127  
Melville, NY 11747  
Attn: Paul J. Bloom, Esq.

IF TO THE AGENCY:

Nassau County Industrial Development Agency  
One West Street, 4th Floor  
Mineola, NY 11501  
Attn: Chief Executive Officer/Executive Director

WITH A COPY TO:

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

IF TO THE LENDER:

Ponce Bank  
2244 Westchester Avenue  
Bronx, NY 10462  
Attn: Ioannis Kouzilos and Davy Hamadi

WITH A COPY TO:

Cortisidis, Sotirakis & Saketos, PLLC  
425 Northern Boulevard, Suite 20  
Great Neck, NY 11021  
Attn: John Saketos, Esq.

(C) The Agency, the Company and the Lender 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 this Lease and to provide the indemnity required by the provisions of this Lease and the obligations of the Company and the Guarantor 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 and the other Transaction Documents 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. 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 J. Bloom, Esq., c/o Harras Bloom & Archer LLP, 445 Broad Hollow Road, Suite 127, Melville, NY 11747, 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 of this Lease 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 (and shall cause its Affiliates not to) discriminate against any customer, occupant, employee or applicant for employment because of race, color, religion, creed, ethnicity, age, gender, pregnancy, sex, sexual orientation, gender identity, national origin, citizenship, marital status, domestic violence victim status, military status, veteran status, disability, familial status, genetic information, genetic predisposition or carrier status, or other characteristic or criteria protected by Applicable Law. The Company shall use reasonable efforts to ensure that employees and applicants for employment with any tenant, subtenant, occupant or user of the Project Facility, or any part thereof, or any contractor or subcontractor with respect to the Project Facility, are treated without regard to their race, color, religion, creed, ethnicity, age, gender, pregnancy, sex, sexual orientation, gender identity, national origin, citizenship, marital status, domestic violence victim status, military status, veteran status, disability, familial status, genetic information, genetic predisposition or carrier status, or other characteristic or criteria protected by Applicable Law. As used herein, the term “treated” shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(B) The Company shall, in all solicitations or advertisements for employees placed by or on behalf of the Company (or any of its Affiliates), state that all qualified applicants will be considered for employment without regard to race, color, religion, creed, ethnicity, age, gender, pregnancy, sex, sexual orientation, gender identity, national origin, citizenship, marital status, domestic violence victim status, military status, veteran status, disability, familial status, genetic information, genetic predisposition or carrier status, or other characteristic or criteria protected by Applicable Law.

(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.

(D) The provisions of Section 2.11 of the Regulatory Agreement are hereby incorporated herein by reference.

**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 June 12, 2023.

**SECTION 12.17 RECORDING AND FILING.** A memorandum of this Lease 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.

**SECTION 12.18 SUBORDINATION.** Except for the terms and provisions of the PILOT Agreement and the PILOT Mortgage, the payment of all amounts owing thereunder or secured thereby, and the Agency’s rights with respect to the Unassigned Rights under this Lease, this Lease and the other Transaction Documents shall be subject and subordinate to the Lender Mortgages, including all amounts advanced thereunder.

SECTION 12.19 SPECIAL LENDER PROVISIONS. Notwithstanding any provision of this Lease or any other Transaction Document to the contrary:

(A) The Agency shall simultaneously give to the Lenders a copy of each notice of default given to the Company under this Lease or any of the other Transaction Documents concurrently with the giving of any such notice by the Agency to the Company. The Lenders shall, as herein provided, have the right to remedy such default within the applicable notice, cure or grace period, if any, provided under this Lease or the applicable Transaction Document with respect to such default. The Agency shall accept performance by the Lenders of any covenant, condition or agreement on the Company's part to be performed hereunder with the same force and effect as though performed by the Company. For purposes of this Section 12.19, all references to "default" shall be deemed to include, without limitation, a Recapture Event.

(B) Notwithstanding the provisions of subsection (A) of this Section 12.19, if a non-monetary default under this Lease or any other Transaction Document that is susceptible of cure by the Lenders cannot reasonably be cured by the Lenders within the applicable notice, cure or grace period, with respect to such non-monetary default for which a notice, cure or grace period is granted, the Lenders shall have as long as is reasonably required to cure such non-monetary default provided that, within the applicable notice, cure or grace period (or, if no notice, cure or grace period shall be provided for such non-monetary default, then within fourteen (14) days), the Lenders shall have delivered to the Agency their notice of intention to take the action described in clause (i) or (ii) below and thereafter, in good faith, shall have commenced promptly either (i) to cure such non-monetary default and to actively prosecute the same with diligence and continuity to completion, or (ii) if possession of the Project Facility is required to cure such non-monetary default, to institute foreclosure proceedings and obtain possession directly or through a receiver, and to actively prosecute such proceedings with diligence and continuity, provide the Agency with periodic updates as to the status and progress of same, and, upon obtaining such possession, commence promptly to cure such non-monetary default and to prosecute the same to completion with diligence and continuity, provided that during the period in which such action as set forth in clause (i) or (ii) is being taken (and any foreclosure proceedings are pending), all of the other obligations of the Company under this Lease and the other Transaction Documents, to the extent they are susceptible of being performed by the Lenders, are being performed and during such period the Agency shall not terminate this Lease or any of the other Transaction Documents. A "non-monetary default" as such term is used in this Section 12.19 shall be deemed to mean a default that is not susceptible of cure by the payment of money. By way of illustration and not of limitation, a default by the Company with respect to (a) its obligation to obtain and maintain insurance pursuant to Section 6.3 of this Lease, or (b) its obligation to indemnify pursuant to the provisions of this Lease, shall not constitute a "non-monetary default" hereunder because such default is susceptible of cure by the payment of money.

With respect to clause (i) of subsection (B) above, the Lenders shall not be required to cure any "non-monetary default" under this Lease that is not susceptible of cure by the Lenders in order to avail themselves of their rights under this subsection (B) above; provided, however, that (i) no default that is susceptible of cure by the payment of money shall constitute a default that is not susceptible of cure by the Lenders, and (ii) the Lenders shall not be obligated to cure any default

under this Lease that is a default hereunder solely because it constitutes a default under a Lender Mortgage. The Lenders must in any event comply with their other obligations set forth in this subsection (B) above in order to avail themselves of their rights thereunder.

The foregoing provisions of this subsection (B) to the contrary notwithstanding, a non-monetary default that constitutes or becomes a Recapture Event under Section 11.3 of this Lease shall not be subject to the additional cure period set forth in this subsection (B) and shall be and remain a Recapture Event unless waived in writing by the Agency, and the Agency shall be entitled to exercise its right and remedies with respect thereto.

(C) A Lender (or its designee or nominee pursuant to subsection (D) below) shall not become liable under the provisions of this Lease or the other Transaction Documents unless and until such time as it becomes, and then only for as long as it remains, the owner of the Project Facility. In the event that a Lender (or such designee or nominee) shall become the owner of the Project Facility, such Lender (and such designee or nominee) shall not be bound by any modification or amendment of this Lease or any other Transaction Document made subsequent to the Closing Date unless such Lender shall have consented (which consent shall not be unreasonably withheld, conditioned or delayed) in writing to such modification or amendment. Such Lender shall have ten (10) Business Days to consent or deny consent to any such modification or amendment and such Lender's failure to consent or deny consent in writing within such period shall be deemed to mean that such Lender has consented to the amendment or modification in question.

(D) The Agency shall give prompt notice to the Lenders of the termination of this Lease and/or any of the other Transaction Documents by reason of any Event of Default hereunder or thereunder. In the event of any such termination or in the event a Lender shall foreclose on the Company's interest in the Project Facility pursuant to a Lender Mortgage (or shall accept a deed in lieu thereof), the Agency shall, upon request of such Lender given within thirty (30) days after the earlier of (x) the giving of notice of termination by the Agency or (y) the date of the foreclosure sale or acceptance of the deed in lieu thereof, as applicable, (i) execute and deliver to such Lender, or a wholly-owned subsidiary of such Lender the obligations of which to the Agency are unconditionally guaranteed by such Lender (provided that neither such Lender nor such subsidiary is a Prohibited Person), a new lease of the Project Facility and other applicable Transaction Documents, or (ii) in its sole discretion, grant or withhold its consent to a written request of such Lender (accompanied by such information and documentation as the Agency shall reasonably request), that the Agency promptly execute and deliver a new lease of the Project Facility and other applicable Transaction Documents to such Lender's designee or nominee who is not a Prohibited Person, in either case such new lease and other applicable Transaction Documents shall be for the remainder of the term of this Lease upon all the covenants, conditions, limitations and agreements herein and therein contained, provided that such Lender (a) shall pay to the Agency, simultaneously with the delivery of such new lease, all unpaid rents and other charges due and payable under or pursuant to this Lease and the other Transaction Documents up to and including the date of the commencement of the term of such new lease (excluding any Recapture of Benefits) and all reasonable expenses, including, without limitation, attorneys' fees and disbursements and court costs, incurred by the Agency in connection with such Event of Default, the termination of this Lease and/or other Transaction

Documents and the preparation of the new lease and/or other transaction documents, and (b) shall cure (within the time periods set forth in this Lease) all defaults existing under this Lease and/or the other Transaction Documents (other than defaults not susceptible of cure by such Lender or its designee or nominee). Any such consent, if given, shall be subject to the Agency's then current rules, policies and procedures.

(E) Any such new lease and the leasehold estate created thereby and/or other transaction documents shall, subject to the same conditions contained in this Lease and/or other Transaction Documents, continue to maintain the same priority as this Lease and/or other Transaction Documents with regard to any mortgage, including the PILOT Mortgage, encumbering the Project Facility or any part thereof or any other lien, charge or encumbrance thereon whether or not the same shall then be in existence.

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

(G) The Agency shall at the request of, and at the sole cost and expense of, the Company (i) mortgage its interest in the Project Facility, and (ii) pledge and assign its rights to and interest in this Lease (other than Unassigned Rights) to the Lender as security for the payment of the principal of and interest on the Loan, in each case in accordance with the provisions attached hereto as Exhibit K. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities contained in this Lease shall, subsequent to such mortgage, pledge and assignment, continue to run to the Agency for its benefit.

(H) The Agency hereby grants to the Company exemption from mortgage recording taxes not to exceed the Maximum Mortgage Recording Tax Benefit, in connection with the financing of the costs of the acquisition, construction, installation and equipping of the Project Facility and any future financing, refinancing or permanent financing of the such costs. The Company acknowledges that such exemption by the Agency does not extend to the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the Tax Law of the State of New York. The Company represents and warrants (1) that the real property secured by the Lender Mortgages is located within a transportation district referenced in Section 253(2)(a) of the Tax Law of the State of New York, and (2) that upon recording any Lender Mortgage, the Company shall pay the mortgage recording tax allocated to transportation districts referenced in Section 253(a)(2) of the Tax Law of the State of New York.

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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: 

Sheldon L. Shrenkel  
CEO/Executive Director

FIRST PLAYHOUSE OF GREAT NECK CORP.

By: 

Name: Jan Soleimani  
Title: Vice President

*[Signature Page to Sublease Agreement]*

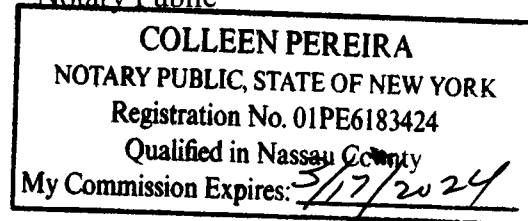
STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NASSAU )

On the 7<sup>th</sup> day of June, 2023, before me, the undersigned, a notary public in and for said state, personally appeared **Sheldon L. Shrenkel**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

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



On the 12<sup>th</sup> day of June, 2023, before me, the undersigned, a notary public in and for said state, personally appeared **Jan Soleimani**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

**CHARLES M BARREDO**  
Notary Public - State of New York  
No. 01BA6072143  
Qualified in Nassau County  
My Commission Expires 03-25-2026

[Acknowledgment Page to Sublease Agreement]



EXHIBIT A

DESCRIPTION OF THE LAND

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Incorporated Village of Great Neck Estates in the Town of North Hempstead, County of Nassau and State of New York, known and designated as Lots 14, 15, 16, 17 and 18 and part of Lot 19 on a certain map entitled, "Amended Map of All of Section 'D' including Thorn Wood Great Neck Estates Property of the McKnight Realty Co. and the Villa Park Ass'n of Great Neck" surveying January 1914 by Homer L. Bartlett and filed in the Office of the Clerk of the County of Nassau February 3, 1914 as Map No. 42 and which said lots when taken together according to said map are more particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Maple Street (Maple Drive) with the westerly side of Middle Neck Road;

RUNNING THENCE along the northerly side of Maple Street (Maple Drive) south 66 degrees 54 minutes, West 104.77 feet;

THENCE north 23 degrees 6 minutes west 110 feet;

THENCE north 66 degrees 54 minutes east 107.45 feet to the westerly side of Middle Neck road;

THENCE south 21 degrees 48 minutes 50 seconds east along the westerly side of Middle Neck Road, 110.03 feet to the corner, the point or place of BEGINNING.

FOR INFORMATION PURPOSES ONLY: Premises known as 102-112 Middle Neck Road, Great Neck, NY 11021.

Section: 2, Tax Block: 38, Lot: 116

## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed in connection with the acquisition, construction, installation equipping of the 2023 First Playhouse 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, constructed and installed by First Playhouse of Great Neck Corp. (the "Company") as agent of the Agency pursuant to a sublease agreement (uniform project agreement) dated as of June 1, 2023 (the "Lease Agreement") by and between the Agency and the Company, and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, 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, First Playhouse of Great Neck Corp. (the “Company”), as landlord, and the Nassau County Industrial Development Agency (the “Agency”), as tenant, entered into a company lease agreement dated as of June 1, 2023 (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, 2044 (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 \_\_\_\_\_, \_\_\_\_.

FIRST PLAYHOUSE OF GREAT NECK CORP.

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 One West Street, 4th Floor, 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 FIRST PLAYHOUSE OF GREAT NECK CORP., a corporation duly organized and validly existing under the laws of the State of New York, having an address at 102-112 Middle Neck Road, Great Neck, NY 11023 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, any and all of Grantor's right, title and interest, if any, in and to those materials, machinery, equipment, fixtures or furnishings which are described in Exhibit B attached hereto (the "Equipment") now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on a parcel of land (the "Land") located at 102-112 Middle Neck Road, Village of Great Neck Estates, Town of North Hempstead, 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 the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

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

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

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

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Notary Public

Exhibit A

Description of the Land

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Incorporated Village of Great Neck Estates in the Town of North Hempstead, County of Nassau and State of New York, known and designated as Lots 14, 15, 16, 17 and 18 and part of Lot 19 on a certain map entitled, "Amended Map of All of Section 'D' including Thorn Wood Great Neck Estates Property of the McKnight Realty Co. and the Villa Park Ass'n of Great Neck" surveying January 1914 by Homer L. Bartlett and filed in the Office of the Clerk of the County of Nassau February 3, 1914 as Map No. 42 and which said lots when taken together according to said map are more particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Maple Street (Maple Drive) with the westerly side of Middle Neck Road;

RUNNING THENCE along the northerly side of Maple Street (Maple Drive) south 66 degrees 54 minutes, West 104.77 feet;

THENCE north 23 degrees 6 minutes west 110 feet;

THENCE north 66 degrees 54 minutes east 107.45 feet to the westerly side of Middle Neck road;

THENCE south 21 degrees 48 minutes 50 seconds east along the westerly side of Middle Neck Road, 110.03 feet to the corner, the point or place of BEGINNING.

FOR INFORMATION PURPOSES ONLY: Premises known as 102-112 Middle Neck Road, Great Neck, NY 11021.

Section: 2, Tax Block: 38, Lot: 116

## Exhibit B

### Description of the Equipment

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed in connection with the acquisition, construction, installation equipping of the 2023 First Playhouse 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, constructed and installed by First Playhouse of Great Neck Corp. (the "Company") as agent of the Agency pursuant to a sublease agreement (uniform project agreement) dated as of June 1, 2023 (the "Lease Agreement") by and between the Agency and the Company, and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, 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

TERMINATION OF SUBLEASE AGREEMENT  
(UNIFORM PROJECT AGREEMENT)

WHEREAS, First Playhouse of Great Neck Corp. (the “Company”), as subtenant, and the Nassau County Industrial Development Agency (the “Agency”), as sublandlord, entered into a sublease agreement (uniform project agreement) dated as of June 1, 2023 (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, 2044, 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 desire 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 (uniform project 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 11.3 and 12.7 of the Lease Agreement.

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

FIRST PLAYHOUSE OF GREAT NECK CORP.

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 F  
COPY OF PILOT AGREEMENT

## PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this "Agreement"), made as of June 1, 2023, by and among FIRST PLAYHOUSE OF GREAT NECK CORP., a corporation duly organized and validly existing under the laws of the State of New York, having an address at 102-112 Middle Neck Road, Great Neck, NY 11501 (the "Obligor" or "Company") and the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at One West Street, 4th Floor, Mineola, NY 11501 (the "Agency"). Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Lease Agreement (as hereinafter defined).

### WITNESSETH

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I 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 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 manufacturing, industrial and commercial 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 presented an application for financial assistance (the "Application") to the Agency, which Application requests that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 0.27 acre parcel of land located at 102-112 Middle Neck Road, Village of Great Neck Estates, Town of North Hempstead, Nassau County, New York (Section: 2; Block: 38; Lot: 116) (the "Land"), which Land is more particularly described on Schedule A hereto, (2) the construction of an approximately 43,262 square foot four-story building (the "Building") on the Land, together with related improvements to the Land, including on-site parking spaces, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company as a mixed-use facility consisting of approximately 3,000 square feet of retail space on the first floor and twenty (20) residential rental units, of which at least two (2) residential rental units shall be affordable units; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial

exemptions from real property taxes, sales and use taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Company is the owner of fee title to the Land; and

WHEREAS, the Agency is or will be the holder of a leasehold interest in the Project Facility pursuant to a certain Company Lease Agreement of even date herewith (as amended, modified, supplemented or restated from time to time, the "Company Lease"), between the Obligor and the Agency; and

WHEREAS, the Agency proposes to undertake the Project as an authorized project under the Act and to sublease its interest in the Project Facility to the Obligor pursuant to a Sublease Agreement (Uniform Project Agreement) of even date herewith between the Agency and the Obligor (as amended, modified, supplemented or restated from time to time, the "Lease Agreement"); and

WHEREAS, the payment and performance of the Obligor's obligations under this Agreement shall be secured by a Mortgage and Assignment of Leases and Rents of even date herewith (as amended, modified, supplemented or restated from time to time, the "PILOT Mortgage") from the Obligor and the Agency, as mortgagor, to the County of Nassau (the "PILOT Mortgagee"), its successors and assigns, as mortgagee, pursuant to which the Agency and the Obligor grant a first mortgage lien on the Project Facility to the PILOT Mortgagee; and

WHEREAS, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York (the "RPTL"), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control;

NOW, THEREFORE, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, the Obligor and the Agency covenant and mutually agree as follows:

Section 1. Tax-Exempt Status of Facility.

A. Application.

(1) The Obligor shall complete, and the Agency shall file, an application for tax exemption pursuant to Section 412-a of the RPTL (the "Application"). The Application shall be filed with the assessor for each of the various taxing entities having jurisdiction over the Project Facility, including, without limitation, the County of Nassau (the "County") and each city, town, village and school district within which the Project Facility is located (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the "Taxing Entities" and each individually as a "Taxing Entity"). The Project Facility shall not be entitled to exempt status on the tax rolls of any Taxing Entity until the beginning of the first fiscal tax year of such Taxing Entity following the first taxable status date of such Taxing Entity occurring subsequent to the last to occur of (i) the Agency becoming the holder of a

leasehold interest in the Project Facility, (ii) the filing by the Agency of the appropriate Application for tax exemption, and (iii) the acceptance of such Application by the appropriate tax assessor(s) (such date, the "PILOT Commencement Date").

(2) The Obligor hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Obligor, arising from any denial of an exemption from real property taxes and assessments, except to the extent that such denial results solely from the willful failure of the Agency, after demand by the Obligor, to file the completed Application for tax exemption as set forth in this Agreement.

B. Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law of the State of New York and Section 412-a of the RPTL may not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement and the other Transaction Documents, the Obligor will be required to pay all special assessments and special ad valorem levies levied and/or assessed against or with respect to the Project Facility, subject to Section 2(B)(3) hereof.

C. Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Obligor or the Agency on the Project Facility or the rental paid pursuant to the Lease Agreement or the occupancy of or any interest of the Obligor or the Agency in the Project Facility or any part thereof or any personal property used in connection with the business conducted and located therein, the amount of any such taxes, assessments or charges shall be paid by the Obligor as and when due. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid as and when due directly by the Obligor and shall not be credited against nor be affected in any manner by any payment in lieu of real property taxes and assessments in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

## Section 2. Payments

A. Tax Payments. Prior to the PILOT Commencement Date, the applicable real property taxes and assessments levied and/or assessed against or with respect to the Project Facility shall be payable in full by the Obligor to the applicable Taxing Entity as if the Agency were not the holder of a leasehold interest in the Project Facility or otherwise involved in the Project.

### B. PILOT Payments.

(1) From the PILOT Commencement Date through and including the last day of the twentieth (20th) fiscal tax year thereafter (such date, the "Abatement Expiration Date" and such period, the "Term"), the Obligor shall make payments in lieu of real property taxes and assessments levied and/or assessed by the Taxing Entities against the Project Facility as set forth on Schedule B hereto, subject to the provisions of Section 2(B)(3) hereof.

The payments in lieu of real property taxes and assessments levied and/or assessed by the Taxing Entities against the Project Facility pursuant to clause (1) above are referred to herein as the "PILOT Payments."

(2) From and after the Abatement Expiration Date, and until the Agency's interest in the Project Facility is conveyed to the Obligor pursuant to the terms of the Lease Agreement and the Project Facility has been returned to the tax rolls as fully taxable property, the Obligor shall make PILOT Payments equal to one hundred percent (100%) of the amount of real property taxes and assessments that would have been levied and/or assessed against or with respect to the Project Facility as if the Project Facility were owned by the Obligor and the Agency were not otherwise involved in the Project.

"PILOT Obligations" shall mean all amounts required to be paid by the Obligor under this Agreement, including, without limitation, those amounts set forth in Sections 2(A) and 2(B) hereof.

(3) Any provision of this Agreement to the contrary notwithstanding, the amount of PILOT Payments set forth in Section 2(B)(1) hereof for each fiscal tax year from the PILOT Commencement Date through the Abatement Expiration Date, shall be reduced (but not below \$0) by the amount, if any, of special assessments and special ad valorem levies assessed against or levied upon the Project Facility for such fiscal tax year (collectively, "Special Assessments"), whether by the Nassau County Tax Assessor's Office or otherwise, which Special Assessments would otherwise be payable by the Obligor pursuant to this Agreement. The amount of any such reduction of a PILOT Payment shall be set forth on the applicable PILOT bill issued with respect to such fiscal tax year, if any, but the failure of the Obligor to receive such bill shall in no event affect the Obligor's obligation to pay such PILOT Payment. In the event that (i) the amount of Special Assessments for a particular fiscal tax year exceeds the amount of the PILOT Payment for such fiscal tax year (such excess is hereinafter referred to as an "SA Credit"), or (ii) the amount of PILOT Payments for a particular fiscal tax year are not reduced by the amount of Special Assessments for such fiscal tax year (the amount of such Special Assessments is hereinafter referred to as an "SA Reduction"), then the amount of such SA Credit or SA Reduction, as the case may be, shall be carried over as a credit for the following fiscal tax year(s); provided, however, that if there is an unused SA Credit at the end of the Term of this Agreement, then the Obligor shall not be entitled to (a) take such SA Credit against any further payments hereunder or against real property taxes assessed against the Project Facility, or (b) an extension of the Term of this Agreement.

### C. Payments

(1) Amounts due and payable under this Agreement shall be payable to the Treasurer of the County of Nassau (the "Treasurer"), One West Street, 1st Floor, Mineola, NY 11501, or at such other address as the Treasurer may notify the Obligor of in writing.

(2) All PILOT Payments hereunder shall be allocated among the affected tax jurisdictions in proportion to the amount of real property and other taxes and assessments that would have been received by each Taxing Entity had the Project not been tax exempt due to the status of the Agency. This provision constitutes the formula for the

calculation of the amounts of the PILOT Payments for each Taxing Entity as required by Section 859-a(6) of the General Municipal Law.

D. Due Dates; Interest; and Penalties

(1) The Obligor may be billed for PILOT Payments as if the Project Facility were on the tax rolls at the time when taxes for each Taxing Entity are due.

(2) If any payment required under this Agreement is not made on or before the due date thereof, such payment shall be delinquent and the unpaid amount(s) shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Entities and as further provided in the General Municipal Law, including Section 874(5) thereof, which currently provides for a late charge equal to the greater of (a) five (5%) percent of the unpaid amount for the first month, and for each month, or part thereof, that the payment is delinquent beyond the first month, an additional late charge equal to one (1%) percent per month of the total amount payable; and (b) the late charge applicable from time to time to real property tax levies and assessments that are not paid when due. The Obligor agrees to pay all such late charges, interest and penalties when due.

(3) Anything contained in this subparagraph to the contrary notwithstanding, the Obligor shall have the obligation to make all payments of PILOT Obligations (other than payments of penalties, if any), in (a) two equal semi-annual installments on or prior to the date which is five (5) Business Days prior to January 1 and July 1 for the General Tax portion of the PILOT Obligations, (b) two equal semi-annual installments on or prior to the date which is five (5) Business Days prior to October 1 and April 1 for the School Tax portion of the PILOT Obligations, and (c) one annual installment on or prior to the date which is five (5) Business Days prior to June 1 for the Village Tax portion of the PILOT Obligations, as applicable, of each year of the term of the Lease Agreement or on such other due dates as may be established by the Agency or the Treasurer from time to time during the term of the Lease Agreement.

E. Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the Term of this Agreement, in the event that the Agency's interest in the Project Facility, or any portion thereof or interest therein, is sold, transferred, assigned or otherwise disposed of by the Agency in accordance with the Lease Agreement, the transferees thereof will thereafter pay the real property taxes and assessments on such Land and the Building and any Additional Facilities (as hereinafter defined) located on the Land, or on such portion of the Land, that was sold, transferred, assigned or otherwise disposed of, as may be required by applicable law.

F. Sale; Obligor's Obligation. In the event that the Agency sells, transfers, assigns or otherwise disposes of its interest in the Project Facility to any party other than the Obligor, the Obligor's obligation for PILOT Obligations shall be prorated to the date of the closing of the transaction and thereupon all obligations of the Obligor for payment of PILOT Obligations shall cease, but the Agency shall take such steps with the transferee or assignee other than the Obligor to assure that each of the Taxing Entities shall suffer no loss of revenue until the



Project Facility can be placed back on the tax rolls as fully taxable real property and taxes levied and billed therefor.

Section 3. Effective Date; Duration of Agreement. This Agreement shall become effective upon the execution and delivery of the Lease Agreement by the Obligor and the Agency and this Agreement by the Obligor and the Agency and the execution and delivery of the Company Lease from the Obligor to the Agency and shall continue in effect until the earlier of (i) the termination of this Agreement pursuant to the terms of the Lease Agreement or of this Agreement, or (ii) the date on which the Company Lease and the Lease Agreement are terminated pursuant to the Lease Agreement or this Agreement and the Project Facility has been placed back on the tax rolls as taxable property.

Section 4. Events of Default.

The following shall constitute an "Event of Default" under this Agreement:

A. Failure by the Obligor to make any payment specified herein and the continuance of such failure for a period of fifteen (15) days after receipt by the Obligor of written notice from the Agency, the County and/or any Taxing Entity.

B. Failure by the Obligor to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days after receipt by the Obligor of written notice thereof from the Agency.

C. The occurrence of an Event of Default under the Company Lease, the Lease Agreement or any other agreement between the Agency and the Obligor.

If the Obligor fails to make any payments pursuant to this Agreement when due, the amount or amounts so in default shall continue as an obligation of the Obligor until fully paid.

Upon the occurrence and during the continuance of an Event of Default hereunder, the Obligor shall be required to make PILOT Payments as if the Project Facility were owned by the Obligor and the Agency was not otherwise involved in the Project, such amounts to commence to be paid for the period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the Taxing Entities in which the Project Facility is located.

Upon the occurrence and continuance of an Event of Default hereunder, (i) the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments of PILOT Obligations in default from the Obligor, together with all the costs and expenses of the Agency, its successors or assigns, paid or incurred in such recovery (including court costs and reasonable attorneys' fees and expenses) and interest at the rate charged by the respective Taxing Entities on overdue payments of taxes, and (ii) the Agency shall have the right to terminate the Company Lease and the Lease Agreement at any time, and the Obligor shall accept such termination and any tender of reconveyance from the Agency of its interest in the Project Facility.

The Agency, in enforcing payment by the Obligor of the PILOT Obligations, may take whatever action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every Event of Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. Further, no payment by the Agency or receipt by the Agency or a Taxing Entity of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency and/or any Taxing Entity may accept any check or payment as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity.

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not the Obligor makes such payments. The Obligor hereby agrees to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its officers, members, agents (other than the Obligor), attorneys, servants and employees, past, present and future, against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

The Agency and the Obligor hereby acknowledge the right of the County, as beneficiary of this Agreement (on behalf of itself and all other Taxing Entities), to pursue any appropriate remedies, including an action or proceeding in the courts, to recover directly from the Obligor any payments of PILOT Obligations in default hereunder and/or to exercise its rights and remedies under the PILOT Mortgage. The Obligor shall promptly notify the Agency of any action or proceeding brought, or other measure taken, by a Taxing Entity to recover such payments in default hereunder. It is understood that the right of any Taxing Entity herein acknowledged is in addition to, and shall not impair, the Agency's own rights arising from a breach of this Agreement.

In the event that any interest in and to the Project Facility is conveyed by the Obligor or title to the Project Facility is conveyed by the Obligor to any other party prior to expiration of the term of the Lease Agreement (other than transfers expressly permitted under the Lease Agreement or otherwise consented to by the Agency), this Agreement shall, at the option of the Agency, become null and void and any remaining tax abatement hereunder shall be canceled.

The rights, powers and remedies of the Agency and the County under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which the Agency or the County may have against the Obligor pursuant to this Agreement or the other Transaction Documents, or existing at law or in equity or otherwise. The respective rights, powers and remedies of the Agency and the County hereunder may be pursued singly,

concurrently or otherwise, at such time and in such order as the Agency or the County may determine in its sole discretion. No delay or omission to exercise any remedy, right or power accruing upon an Event of Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Event of Default with respect to the Obligor shall not be construed to be a waiver of any subsequent Event of Default by the Obligor or to impair any remedy, right or power consequent thereon.

Section 5. Additional Facilities.

If any structural additions or change in use shall be made to the buildings or other improvements included in the Project Facility subsequent to the date hereof (other than the initial construction of the Building contemplated by the Project), or if any additional buildings or improvements shall be constructed on the Land other than the Building (such change of use, new structures, structural additions, buildings and improvements being referred to hereinafter as "Additional Facilities"), the Obligor agrees that its PILOT Obligations hereunder shall be increased by an amount, as determined by the Agency or a tax assessor selected by the Agency, equal to the increased tax payments, if any, that would have been payable on such increase if this Agreement were not in effect. Nothing herein shall constitute the Agency's consent to the construction of any such additions or additional buildings or improvements or to such change of use.

Section 6. Change of Law.

In the event the Project Facility, or any part thereof, is declared to be subject to taxation for real property taxes or assessments by an amendment to the Act, other legislative change or a final judgment of a court of competent jurisdiction, the obligations of the Obligor hereunder shall, to such extent, be null and void. If the Obligor has already paid any amounts under this Agreement for any period that the Obligor is required to pay taxes or assessments because of such amendment, legislative or final judgment (collectively, "Prior Payments"), then the Obligor shall look to the Taxing Authorities for repayment of the Prior Payments or a credit in the amount of the Prior Payments against taxes payable to the relevant Taxing Entity but in no event shall the Obligor look to the Agency for a refund of the Prior Payments.

Section 7. Waiver of Tax Exemption.

The Obligor, in recognition of the benefits provided under this Agreement, and for so long as the Lease Agreement is in effect, hereby expressly waives any rights it may have for any exemption under Section 485-b of the RPTL or any other exemption under any other law or regulation (except, however, for the exemption provided under Article 18-A of the General Municipal Law) with respect to the Project Facility.

The Obligor, in recognition of the benefits provided under this Agreement and the Lease Agreement, hereby expressly waives the right to institute judicial or other review of an assessment of the real property with respect to the Project Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time, with respect to any fiscal tax year from and after the PILOT Commencement Date.

Notwithstanding the foregoing, during the final three (3) years of the term of this Agreement, the Obligor shall have the right to institute judicial or other review of the assessed value of the real property with respect to the Project Facility, whether pursuant to the provisions of Article 7 of the RPTL or other applicable law, as the same may be amended from time to time; provided, however, that no such judicial or other review or settlement thereof shall have any effect on the Obligor's obligations under this Agreement, including, without limitation, the Obligor's obligation to make the PILOT Payments when due. Such judicial or other review shall only be for purposes of setting the assessed value of the Project Facility as though the Project Facility was on the tax rolls of each Taxing Entity as taxable real property but shall have no effect on this Agreement or the tax-exempt status of the Project Facility during the term of this Agreement.

In addition, the Obligor hereby represents and warrants that it has stipulated to the discontinuance (with prejudice) of all pending tax certiorari proceedings, if any, with respect to the Project Facility on or before the date hereof.

Section 8. Delivery of PILOT Statement.

The Obligor shall deliver to the Comptroller of the County of Nassau, on or before the dates set forth for payment of the PILOT Obligations in Section 2 hereof, in each year during the term of the Lease Agreement, a verified statement setting forth the amount of such payments and the dates of such payments.

Section 9. Limited Obligation.

The obligations, covenants and agreements of the Agency hereunder shall not constitute or give rise to an obligation of the State of New York, the County, or any city, town, village or school district within which the Project Facility is located and neither the State of New York, the County, nor any such city, town, village or school district shall be liable thereon, and further, such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency.

Section 10. No Waiver.

Failure by the Agency in any instance to insist upon the strict performance of any one or more of the obligations of the Obligor under this Agreement, or to exercise any election herein contained, shall in no manner be or be deemed to be a waiver by the Agency of any of the Obligor's defaults or breaches hereunder or of any of the rights and remedies of the Agency by reason of such defaults or breaches, or a waiver or relinquishment of any and all of the Obligor's obligations hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing. Further, no payment by the Obligor or receipt by the Agency of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency may accept any check or payments as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity.

Section 11. 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:

To the Agency:

Nassau County Industrial Development Agency  
One West Street, 4th Floor  
Mineola, NY 11501  
Attention: Chief Executive Officer

With a copy to:

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

To the Obligor:

First Playhouse of Great Neck Corp.  
50 Enterprise Avenue N, Unit B  
Secaucus, NJ 07094  
Attn: Jan Soleimani

With a copy to:

Harras Bloom & Archer LLP  
445 Broad Hollow Road, Suite 127  
Melville, NY 11747  
Attn: Paul J. Bloom, Esq.

Section 12. Change of Address.

The Agency or the Obligor may, by notice given hereunder to each other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

Section 13. Assignment of Agreement.

This Agreement shall be binding upon the successors and permitted assigns of the Obligor but no assignment shall be effective to relieve the Obligor of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency. The rights and

obligations of the Obligor hereunder may not be assigned except in connection with a permitted assignment of the Obligor's interest in and to the Lease Agreement. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto, the County and the other Taxing Entities.

Section 14. Independent Agreement.

Notwithstanding any other provision of this Agreement, including the recitals hereof, the parties agree that the Lease Agreement executed between the parties thereto shall be a separate and independent document from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Lease Agreement shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Lease Agreement are the only considerations and terms for which the parties thereto have executed this Agreement.

Section 15. Invalidity.

If any one or more phrases, sentences, clauses or provisions of this Agreement or the entirety hereof shall be declared invalid or unenforceable by any order, decree or judgment of any court of competent jurisdiction, then such phrase, sentence, clause or provision or the entirety of this Agreement shall be deemed to be reformed in such manner as shall be determined by such court, or in the absence of such a determination then in the reasonable judgment of the Agency, to render such phrase, sentence, clause or provision of this Agreement valid and enforceable under applicable law. The parties hereto agree to enter into such documents, agreements and instruments as the Agency reasonably determines are necessary to effect any such reformation. In the event that any one more of the phrases, sentences, clauses or provisions of this Agreement cannot be reformed to comply with applicable law, then this Agreement shall be construed as if such phrase, sentence, clause or paragraph had not appeared in this Agreement.

Section 16. Amendments.

This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency and the Obligor.

Section 17. Prior Agreements.

This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof.

Section 18. Delivery of Agreement.

The Agency covenants to use reasonable efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution.

Section 19. Counterparts.

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

Section 20. Service of Process; Consent to Jurisdiction; Forum.

A. The Obligor 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 the Lease Agreement shall be in effect. If for any reason the Obligor should cease to be so subject to service of process in the State of New York, the Obligor hereby designates and appoints, without power of revocation, Paul J. Bloom, Esq., c/o Harras Bloom & Archer LLP, 445 Broad Hollow Road, Suite 127, Melville, NY 11747, as 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 Obligor upon whom may be served all process, pleadings, notices or other papers which may be served upon the Obligor as a result of any of its obligations under this Agreement; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to the Obligor's obligations hereunder.

B. The Obligor irrevocably and unconditionally (1) agrees that any suit, action or other legal proceeding arising out of this Agreement 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; (2) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (3) 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 the Lease Agreement is in effect, the Obligor's agents designated above shall accept and acknowledge in the Obligor's behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Obligor agrees and consents that any such service of process upon such agents and written notice of such service to the Obligor in the manner set forth in Section 11 hereof shall be taken and held to be valid personal service upon the Obligor whether or not the Obligor 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 Obligor 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 Obligor or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Obligor.

Section 21. Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, as the same may be in effect from time to time, without regard to principles of conflicts of laws.

Section 22. Nature of Obligations.

This Agreement shall remain in full force and effect until each and every one of the PILOT Obligations shall have been irrevocably paid in full and all other obligations of the Obligor under this Agreement shall have been paid and performed in full.

If the Obligor consists of more than one (1) Person, the obligations of the Obligor under this Agreement shall be joint and several.

Section 23. Indemnification.

The Obligor agrees to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its officers, members, agents (other than the Obligor), attorneys, servants and employees, past, present and future, against any liability arising from any default by the Obligor in performing its obligations hereunder or any expense incurred hereunder, including, without limitation, any expenses of the Agency and reasonable attorneys' fees and expenses.

[Remainder of this page intentionally left blank]



*[Signature Page to Payment in Lieu of Taxes Agreement]*

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

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: 

Sheldon L. Shrenkel  
Chief Executive Officer / Executive Director

**FIRST PLAYHOUSE OF GREAT NECK  
CORP.**

By: 

Name: Jan Soleimani  
Title: Vice President

[Acknowledgement Page to Payment in Lieu of Taxes Agreement]

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

On the 7<sup>th</sup> day of June, 2023, before me, the undersigned, a notary public in and for said state, personally appeared **Sheldon L. Shrenkel**, 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

COLLEEN PEREIRA  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01PE6183424  
Qualified in Nassau County  
My Commission Expires: 3/17/2024

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

On the 12<sup>th</sup> day of June, 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **Jan Soleimani**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual executed the instrument.



Notary Public

CHARLES M BARREDO  
Notary Public - State of New York  
No. 01BA6072143  
Qualified in Nassau County  
My Commission Expires 03-25-2026

**SCHEDULE A**

**DESCRIPTION OF THE LAND**

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Incorporated Village of Great Neck Estates in the Town of North Hempstead, County of Nassau and State of New York, known and designated as Lots 14, 15, 16, 17 and 18 and part of Lot 19 on a certain map entitled, "Amended Map of All of Section 'D' including Thorn Wood Great Neck Estates Property of the McKnight Realty Co. and the Villa Park Ass'n of Great Neck" surveying January 1914 by Homer L. Bartlett and filed in the Office of the Clerk of the County of Nassau February 3, 1914 as Map No. 42 and which said lots when taken together according to said map are more particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Maple Street (Maple Drive) with the westerly side of Middle Neck Road;

RUNNING THENCE along the northerly side of Maple Street (Maple Drive) south 66 degrees 54 minutes, West 104.77 feet;

THENCE north 23 degrees 6 minutes west 110 feet;

THENCE north 66 degrees 54 minutes east 107.45 feet to the westerly side of Middle Neck road;

THENCE south 21 degrees 48 minutes 50 seconds east along the westerly side of Middle Neck Road, 110.03 feet to the corner, the point or place of BEGINNING.

FOR INFORMATION PURPOSES ONLY: Premises known as 102-112 Middle Neck Road, Great Neck, NY 11021.

Section: 2, Tax Block: 38, Lot: 116

**SCHEDULE B**

**PILOT PAYMENT SCHEDULE**

**Term:**

General Tax Year/School Tax Year/Village Tax Year <sup>1</sup>	Total PILOT Payment
2025 General/2024-2025 School & Village	\$65,155
2026 General/2025-2026 School & Village	\$75,889
2027 General/2026-2027 School & Village	\$88,356
2028 General/2027-2028 School & Village	\$101,289
2029 General/2028-2029 School & Village	\$114,706
2030 General/2029-2030 School & Village	\$128,620
2031 General/2030-2031 School & Village	\$143,044
2032 General/2031-2032 School & Village	\$157,991
2033 General/2032-2033 School & Village	\$173,479
2034 General/2033-2034 School & Village	\$189,526
2035 General/2034-2035 School & Village	\$206,145
2036 General/2035-2036 School & Village	\$223,352
2037 General/2036-2037 School & Village	\$241,168
2038 General/2037-2038 School & Village	\$259,600
2039 General/2038-2039 School & Village	\$278,679
2040 General/2039-2040 School & Village	\$298,414
2041 General/2040-2041 School & Village	\$318,832
2042 General/2041-2042 School & Village	\$339,944
2043 General/2042-2043 School & Village	\$361,767
2044 General/2043-2044 School & Village	\$384,334

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<sup>1</sup> Actual PILOT Commencement Date is subject to timely acceptance of the Application by the appropriate tax assessor(s).

EXHIBIT G  
FORM OF ANNUAL  
EMPLOYMENT REPORT

**NASSAU IDA JOB CONFIRMATION FORM 20[ ]**

**1. Sales Tax Abatement Information**

Did your company receive Sales Tax Abatement on your Project during 20\_\_? Yes\_\_ No\_\_

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

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

**(A copy of the ST-340 Sales Tax Exemption Form submitted to New York State for the 20\_\_ reporting period is required to be attached with this report)**

**2. Mortgage Recording Tax Information**

a) Did your company receive Mortgage Tax Abatement on your Project during 20\_\_? Yes\_\_ No\_\_

(Note: this would only be applicable to the year that a mortgage was placed upon the Project, so if you did not close in 20\_\_, the answer should be NO)

b) Amount of the mortgage recording tax that was abated during 20\_\_:  
\$ \_\_\_\_\_

**3. Job Information**

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

a) Total number (as of December 31<sup>st</sup>, 20\_\_) of full time equivalent ("FTE") jobs (including both retained and newly created jobs) at the Project Facility by job category, the average salary or range of salaries, and average fringe benefits or range of fringe benefits for each:

Category	FTE	Average Salary or Range of Salary	Avg. Fringe Benefits or Range of Benefits
Management	_____	_____	_____
Professional	_____	_____	_____
Administrative	_____	_____	_____

Production	_____	_____	_____
Supervisor	_____	_____	_____
Laborer	_____	_____	_____
Independent Contractor <sup>1</sup>	_____	_____	_____
Other	_____	_____	_____
<b>TOTAL</b>	<input type="text"/>		

b) Number of the foregoing jobs that were (as of 12/31/22) filled by residents of the Local Market Area (i.e., Nassau and Suffolk Counties): \_\_\_\_\_

**Please attach (1) the 20\_\_ fourth quarter NYS-45 ATT report, along with the NYS 45 summary report filed with New York State Employment Taxation Department indicating number of employees, and (2) the Undersigned's annual payroll report for year ending 12/31/22.**

c) Number of FTE construction jobs during 20\_\_ : \_\_\_\_\_

d) Average Salary of construction jobs during 20\_\_ : \_\_\_\_\_

e) Number of FTE jobs created at the Project Facility during the fiscal year by job category the average salary or range of salaries, and average fringe benefits or range of fringe benefits for each:

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

f) Are the foregoing salary and fringe benefits figures consistent with the figures provided by the company in its application for financial assistance? Yes \_\_\_ No \_\_\_

g) Number of the foregoing jobs that were (as of 12/31/22) filled by residents of the Local Market Area (i.e., Nassau and Suffolk Counties): \_\_\_\_\_

h) Number of the foregoing jobs that were as of 12/31/22 filled by Community Services Division applicants: \_\_\_\_\_

i) Number of the foregoing jobs that were as of 12/31/22 filled by Job Training Partnership Act eligible persons: \_\_\_\_\_

j) Total Annual Payroll for 20\_\_ : \$ \_\_\_\_\_

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

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

**4. W/MBE Covenant:**

- a) Did you make best effort to use W/MBE vendors or construction workers ? \_\_\_\_\_
- b) Indicate any qualified women-owned and/or minority-owned business enterprises that were used for contracts in 20\_\_

\_\_\_\_\_

**5. Project Investment for 20\_\_ :** \$ \_\_\_\_\_  
(attach evidence such as receipts, contracts, invoices etc.)

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

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

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

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

Signed: _____	Company Name: _____
Name: _____	Address: _____
Title: _____	Phone: _____
Date: _____	Fax: _____
	Email: _____

**Acknowledgment to be completed by a Notary Public:**

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

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

NOTARY PUBLIC (Please sign and affix stamp)

\_\_\_\_\_

**RETURN TO:**

**NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
1 WEST STREET- 4TH FLOOR  
MINEOLA, NY 11501  
ATTN: ADMINISTRATIVE DIRECTOR  
NO LATER THAN FEBRUARY 10, 20\_\_**



EXHIBIT H

FORM OF SALES TAX SUB-AGENT AUTHORIZATION LETTER

**SALES TAX SUB-AGENT AUTHORIZATION LETTER**

[ ], 20[ ]

[*Sub-Agent Name*]

[*Sub-Agent Address*]

Re: Nassau County Industrial Development Agency  
(2023 First Playhouse Project)

Ladies and Gentlemen:

**NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the “Agency”),  
**FIRST PLAYHOUSE OF GREAT NECK CORP.** (the “Company”) and [ ] (the  
“Sub-Agent”) agree 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 May 18, 2023 (the “Authorizing Resolution”) and a Sublease Agreement (Uniform Project Agreement), dated as of June 1, 2023 between the Agency and the Company (the “Project Agreement”), the Agency has authorized the Company to act as its agent to undertake a project consisting of the following: (1) the acquisition of an interest in an approximately 0.27 acre parcel of land located at 102-112 Middle Neck Road, Village of Great Neck Estates, Town of North Hempstead, Nassau County, New York (Section: 2; Block: 38; Lot: 116) (the “Land”), (2) the construction of an approximately 43,262 square foot four-story building (the “Building”) on the Land, together with related improvements to the Land, including on-site parking spaces, and (3)

the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project Facility"), all of the foregoing for use by the Company as a mixed-use facility consisting of approximately 3,000 square feet of retail space on the first floor and twenty (20) residential rental units, of which at least two (2) residential rental units shall be affordable units. Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Project Agreement.

3. At the Company's request, the Agency has appointed the Sub-Agent, pursuant to this Sales Tax Agent Authorization Letter (this "Sales Tax Sub-Agent Authorization Letter"), to act as the Agency's agent for the purpose of effecting purchases or leases exempt from sales or use tax in accordance with the terms and provisions of this Sales Tax Agent Authorization Letter and the Project Agreement.

4. THE ACQUISITION OF CAPITAL IMPROVEMENTS, MATERIALS, MACHINERY, EQUIPMENT, TRADE FIXTURES, FURNITURE, FURNISHINGS AND OTHER TANGIBLE PERSONAL PROPERTY NECESSARY FOR THE COMPLETION OF THE PROJECT FACILITY (COLLECTIVELY, THE "PROPERTY") 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 ITEMS OF PROPERTY ARE SEPARATELY IDENTIFIABLE PROPERTY OF THE AGENCY, AND (II) EACH ITEM OF PROPERTY SHALL HAVE A USEFUL LIFE OF ONE YEAR OR MORE, AND SHALL SOLELY BE FOR THE USE OF THE COMPANY AT AND IN THE PROJECT FACILITY, AND FOR NO OTHER ENTITY AND AT NO OTHER LOCATION, AND SHALL BE EFFECTED BY AND AT THE SOLE COST OF THE COMPANY OR THE SUB-AGENT. THE EXEMPTION PROVIDED PURSUANT TO THE PROJECT AGREEMENT 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.

5. The effectiveness of the appointment of the Sub-Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project Operator or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which is to be completed by the Agent and the Company).

6. The Sub-Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR

COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY THE SUB-AGENT, THE COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY-EIGHT AND THIRTY-SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

7. The Agency shall have no liability or performance obligations under any contract, agreement, lease, invoice, bill or purchase order entered into by the Company, as agent for the Agency pursuant to the Project Agreement or by the Sub-Agent, as sub-agent for the Agency pursuant to this Sales Tax Sub-Agent Information Letter, and in the event liability should arise under any such contract, agreement, lease, invoice, bill, or purchase order, the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, lease, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company and the Sub-Agent shall be the sole parties liable thereunder.

8. BY EXECUTION OF ITS ACCEPTANCE OF THE TERMS OF THIS SALES TAX SUB-AGENT INFORMATION LETTER, THE SUB-AGENT AGREES TO ACCEPT THE TERMS HEREOF AND REPRESENTS AND WARRANTS TO THE AGENCY THAT THE USE OF THIS SALES TAX SUB-AGENT INFORMATION LETTER BY THE SUB-AGENT IS AND WILL BE STRICTLY FOR THE PURPOSES ABOVE STATED.

9. UNTIL THE EARLIEST OF (I) DECEMBER 1, 2024, (II) THE . COMPLETION OF THE PROJECT AS PROVIDED IN THE PROJECT AGREEMENT, (III) THE RECEIPT BY THE COMPANY OF THE MAXIMUM SALES TAX BENEFIT (AS DEFINED IN THE PROJECT AGREEMENT), WHICH SHALL INCLUDE PURCHASES AND LEASES HEREUNDER BY THE SUB-AGENT, AND (IV) THE TERMINATION OF THE PROJECT AGREEMENT AND/OR REVOCATION OF THE APPOINTMENT OF THE COMPANY AS AGENT OF THE AGENCY OR THE SUB-AGENT AS SUB-AGENT OF THE AGENCY (SUCH EARLIEST DATE, THE "TERMINATION DATE"), ALL VENDORS, LESSORS, LICENSORS, CONTRACTORS AND SUBCONTRACTORS ARE HEREBY AUTHORIZED TO RELY ON THE ST-123 FORM (AS DEFINED BELOW) PREPARED BY THE SUB-AGENT AND ISSUED TO SUCH VENDOR, LESSOR, LICENSOR, CONTRACTOR OR SUBCONTRACTOR PURSUANT TO THIS SALES TAX SUB-AGENT INFORMATION LETTER AS EVIDENCE THAT PURCHASES AND LEASES OF PROPERTY, AND IMPROVEMENT AND INSTALLATION CONTRACTS RELATING TO THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF THE PROJECT FACILITY (BUT NOT THE OPERATION THEREOF), TO THE EXTENT EFFECTED BY THE SUB-AGENT, AS SUB-AGENT FOR THE AGENCY, ARE EXEMPT FROM ALL NEW YORK STATE AND NASSAU COUNTY SALES AND USE TAXES. UPON THE TERMINATION DATE, THE AGENCY RELATIONSHIP BETWEEN THE AGENCY AND THE SUB-AGENT SHALL TERMINATE.

10. The Sub-Agent agrees to provide a completed Form ST-123, *IDA Agent or Project Operator Exempt Purchase Certificate* (“Form ST-123”), to each vendor, lessor, licensor, contractor or subcontractor from which the Sub-Agent purchases and/or leases Property, or with which the Sub-Agent enters into an improvement or installation contract relating to the acquisition, construction, installation and equipping of the Project Facility. All vendors, lessors, licensors, contractors and subcontractors are authorized to rely on such completed Form ST-123 as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Sub-Agent as sub-agent for the Agency pursuant to the Project Agreement, are exempt from all New York State and Nassau County sales and use taxes. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Project Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency, the Sub-Agent or the Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice must state, “I, [Company/Agent], certify that I am duly appointed agent of the Nassau County Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the 2023 First Playhouse Project located at 102-112 Middle Neck Road, Village of Great Neck Estates, Town of North Hempstead, Nassau County, New York, IDA Project Number 2803 23 05A.” The Form ST-123 shall be completed as follows: (i) the “Project Information” section of Form ST-123 should be completed using the name and address of the Project Facility as indicated on the Form ST-60 used to appoint the Sub-Agent; (ii) the date that the Sub-Agent was appointed as an agent should be completed using the date of this Sales Tax Sub-Agent Authorization Letter; and (iii) the “Exempt purchases” section of Form ST-123 should be completed by marking “X” in box “A” only. The Sub-Agent agrees to provide the Agency and Company with a copy of each such Form ST-123 within five (5) days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor. The Company shall remain responsible and liable for the performance of the Sub-Agent and shall cause the Sub-Agent to comply with the provisions of this Sales Tax Sub-Agent Information Letter in connection therewith.

11. Any vendor, lessor, licensor, contractor or subcontractor that does not collect otherwise applicable sales or use tax in reliance upon this Sales Tax Sub-Agent Information Letter and the ST-123 Form issued by the Sub-Agent to such vendor, lessor, licensor, contractor or subcontractor, shall be deemed to have acknowledged and agreed to the provisions of this Sales Tax Sub-Agent Information Letter hereof regardless of whether or not the provisions thereof are inserted in the contract, agreement, lease, invoice, bill or purchase order entered into with the Sub-Agent.

12. The Sub-Agent shall retain for at least six (6) years from the date of expiration of its contract, agreement, lease, invoice, bill or purchase order, copies of (a) such contract, agreement, lease, invoice, bill or purchase order with the Company to provide services in connection with the Project Facility, (b) all contracts, agreements, leases, invoices, bills or purchase orders entered into or made by such Sub-Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Sub-Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable

notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

13. This Sales Tax Sub-Agent Information Letter and the ST-123 Form issued by the Sub-Agent to a vendor, lessor, licensor, contractor or subcontractor are provided solely for the purposes described herein and therein. No other principal/agent relationship is intended or may be implied or inferred from this Sales Tax Sub-Agent Information Letter or the issuance of such ST-123 Form.

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

(b) The Sub-Agent acknowledges and agrees that the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Sub-Agent exemptions from sales and use taxes taken or purported to be taken by the Sub-Agent or any other person or entity acting on behalf of the Sub-Agent (i) in a manner that is not authorized or for which the Company or the Sub-Agent is not entitled to claim an exemption, (ii) in excess of the Maximum Sales Tax Benefit, (iii) to purchase or lease goods or services that are not authorized under the Project Agreement or this Sales Tax Sub-Agent Authorization Letter, or (iv) in a manner that violates the provisions of the Project Agreement or this Sales Tax Sub-Agent Authorization Letter. The Sub-Agent shall, and shall require any other person or entity acting on behalf of the Sub-Agent to, cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such sales and use tax exemptions and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner") to assess and determine State Sales and Use Taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

*[The Balance of This Page Intentionally Left Blank]*

*[Signature Page to Sales Tax Sub-Agent Authorization Letter]*

The signature of representatives of the Company and the Sub-Agent where indicated below will indicate that the Company and the Sub-Agent have accepted the terms hereof.

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

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

Name:

Title:

ACCEPTED AND AGREED TO BY:

**FIRST PLAYHOUSE OF GREAT NECK CORP.**

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

Name:

Title:

*[Sub-Agent]*

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

Name:

Title:

EIN:

PH#:

EXHIBIT I

CERTIFICATION UNDER SECTION 224-a(8)(a)  
OF THE NEW YORK STATE LABOR LAW

I, \_\_\_\_\_, as [\_\_\_\_\_] of [\_\_\_\_], a [type of entity] duly organized and validly existing under the laws of the State of [\_\_\_\_][and qualified to do business in the State of New York as a foreign \_\_\_\_\_] (the “Company”), HAVING BEEN DULY SWORN, DO DEPOSE AND SAY, UNDER PENALTY OF PERJURY, as follows:

1. The Company is the owner or developer of a project (the “Project”) being undertaken by Nassau County Industrial Development Agency (the “Agency”) consisting of: [project description].
2. The Project [is][is not] a “covered project” within the meaning of Section 224-a of the New York State Labor Law and [is][is not] subject to the provisions of Section 224-a of the New York State Labor Law.

Dated: \_\_\_\_\_, 20\_\_ [must be within 5 days of commencement of construction work]

\_\_\_\_\_  
[Name]  
[Title]

Sworn to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

EXHIBIT J

STATEMENT OF DETERMINATION UNDER  
SECTION 224-a(8)(d) OF THE NEW YORK STATE LABOR LAW

I, [ ], the Executive Director of the Nassau County Industrial Development Agency (the “Agency”), DO HEREBY STATE, as follows:

1. The Agency is an industrial development agency duly established under Title One of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 674 of the Laws of 1975 the State of New York (collectively, the “Act”) and is a corporate governmental agency constituting a public benefit corporation of the State of New York.

2. In accordance with the Act, the Agency intends to undertake a project (the “Project”) on behalf of [ ] (the “Company”) consisting of the following: [*project description*]. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sublease Agreement (Uniform Project Agreement) dated as of [ ] 1, 2023 between the Agency and the Company (the “Agency Lease”).

3. Pursuant to the requirements of Section 224-a(8)(d) of the New York State Labor Law, the Agency hereby identifies the nature and dollar value of the following “public funds” being provided by the Agency to the Company with respect to the Project (collectively, the “Public Funds”):

- a. Savings from mortgage recording tax exemptions in the maximum amount of \$\_\_\_\_\_;
- b. Savings from sales and use tax exemptions in the maximum amount of \$\_\_\_\_\_;
- c. Interest rate savings on tax-exempt and/or taxable obligations issued by the Agency with respect to the Project, which the Agency estimates to have a dollar value of \$\_\_\_\_\_; and
- d. Savings from payments in lieu of real property taxes, which the Agency estimates to have a dollar value of \$\_\_\_\_\_.

4. The following portions of the Public Funds are excluded under Section 224-a(3) of the New York State Labor Law for purposes of calculating the portion of “construction work done under contract which is paid for in whole or in part out of the public funds” (as such quoted term is used in Section 224-a(1) of the New York State Labor Law): \_\_\_\_\_.

5. THIS STATEMENT OF DETERMINATION IS BEING DELIVERED TO THE COMPANY PURSUANT TO SECTION 224-a(8)(d) OF THE NEW YORK STATE



LABOR LAW AND THE COMPANY IS HEREBY NOTIFIED OF ITS OBLIGATIONS UNDER SECTION 224-a(8)(a) OF THE NEW YORK LABOR LAW.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, 2023.

---

[Name]  
[Title]

## EXHIBIT K

### MORTGAGE REQUIREMENTS

Any Mortgage or related document which shall be entered into by the Agency and the Company shall contain the following required provisions or such provisions shall be set forth in a Mortgage Rider, as follows:

The terms contained in this Mortgage Rider shall be incorporated into and be a part of the terms contained in the [Mortgage and Security Agreement] (the "Mortgage") to which this Mortgage Rider is attached. The terms of this Mortgage Rider shall control and prevail in the event of any inconsistencies between the terms of the Mortgage and this Mortgage Rider. All references herein to the Mortgage shall be deemed to refer to the Mortgage, as supplemented by this Mortgage Rider.

Representations and Warranties of the Agency. The Agency represents and warrants only that it has the power to enter into and perform this Mortgage, to create, pledge and grant this Mortgage, pledge, assignment and security interest in the Mortgaged Property as provided in this Mortgage and to own its property and assets, has duly authorized the execution and delivery of this Mortgage by proper corporate action, and neither this Mortgage, the authorization, execution, delivery and performance thereof, the performance of the agreements therein contained nor the consummation of the transactions therein contemplated will violate any provision of law, any order of any court or agency of government or any agreement, indenture or other instrument to which the Agency is a party or by which it or any of its property is subject or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any indenture, agreement or other instrument or any provision of its by-laws or any other requirement of law. This Mortgage constitutes the legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Limitation on Agency Liability. With respect to the Agency, it is agreed that the Agency and its officers, members, employees, attorneys, servants, agents (other than Borrower) and directors shall have no personal liability under this Mortgage, nor in their capacity as officers, members, employees, attorneys, servants, agents and directors. The Agency has executed this Mortgage to subject its interest in the Mortgaged Property to the lien of this Mortgage; however, this Mortgagee shall have no recourse to the Agency but shall have recourse only against the Mortgaged Property and Borrower. No provision, covenant or agreement contained in this Mortgage or any obligations herein imposed upon the Agency or the breach thereof shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit. In making the agreements, provisions and covenants set forth in this Mortgage, the Agency has not obligated itself except with respect to the Mortgaged Property. All covenants, stipulations, promises, agreements and obligations of the Agency contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, director,

officer, employee, attorney, servant or agent (other than Borrower) of the Agency in his or its individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or any of the obligations or for any claim based thereon or hereunder against any member, director, officer, employee, attorney, servant or agent (other than Borrower) of the Agency or any natural person executing this Mortgage. No covenant herein contained shall be deemed to constitute a debt of the State of New York or of the County of Nassau and neither the State of New York nor the County of Nassau shall be liable on any covenant herein contained, nor shall the obligations secured by this Mortgage be payable out of any funds of the Agency other than those expressly pledged therefor.

The Agency is executing this Mortgage in order to mortgage and grant a security interest to Lender in all of the Agency's leasehold interest in the Mortgaged Property and the Agency's right, title and interest in and to the [Project Agreement] except the Agency's rights to receive payment under or enforce the obligations of Borrower under the [Project Agreement] as follows: (A) the rights of the Agency granted pursuant to Sections 2.2, 3.1, 3.2, 3.3, 4.1, 5.2, 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, 8.16, 9.1, 9.3, 10.2, 10.4, 11.2, 11.3, 12.4, 12.7, 12.9 and 12.19 of the [Project Agreement], (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 the [Project Agreement], including, without limitation, any and all rights of indemnification, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.6 of the [Project Agreement] and as Recapture of Benefits pursuant to Section 11.3 of the [Project Agreement], (D) the right of the Agency in its own behalf to enforce the obligation of the Company to undertake and complete the Project and to confirm the qualification of the Project as a "project" under the Act, and (E) the right to enforce the foregoing pursuant to the PILOT Agreement, the PILOT Mortgage, and Section 5.5 and Article X of the [Project Agreement] (collectively, the "Agency's Unassigned Rights").

Recordation of Mortgage. The Agency covenants that it will record or cause this Mortgage to be duly recorded in all offices where recordation thereof is necessary at the sole cost and expense of Borrower.

Borrower's Representations and Covenants. The Agency is not obligated and shall not be liable to any extent for the representations and covenants of Borrower made in or contained in this Mortgage.

Amendments. This Mortgage cannot be changed, amended, modified, or revised in any manner whatsoever, except by an instrument in writing duly executed by all of the parties to this Mortgage. Nothing in this Mortgage shall be deemed to amend any of the terms of the [Project Agreement] or any other document, instrument or agreement between Borrower and the Agency as between Borrower and the Agency.

Agency Is Acting at Borrower's Direction. Borrower directs the Agency to execute and deliver this Mortgage to the Lender and further agrees to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency (and its members, officers, directors, agents, attorneys, servants and employees) from all loss, cost or damage (including legal fees and expenses) in connection with the execution, delivery, recording, performing and

enforcement of this Mortgage. Termination of Lease Agreement. Upon the termination of the Lease Agreement for any reason whatsoever, and at the sole cost and expense of Borrower, the Mortgagee shall prepare, execute and deliver to the Agency and Borrower, and the Agency and Borrower shall execute, any documents necessary to amend this Mortgage remove the Agency as a party hereto.

PILOT Mortgage and Subordination. This Mortgage (including all amounts advanced thereunder and all renewals, replacements and modifications thereof) shall be subject and subordinate to the PILOT Agreement and the PILOT Mortgage (as such capitalized terms are defined in the [Project Agreement]) and the Mortgage (including all amounts advanced thereunder and all renewals, replacements and modifications thereof) shall be subject and subordinate to the Agency's rights with respect to the Agency's Unassigned Rights.

Notices. The Notice provisions of the Mortgage are hereby deemed amended to provide that a copy of any notice, request, demand, statement, authorization, approval or consent given by the Borrower or the Mortgagee shall be simultaneously delivered to the Agency at its offices at One West Street, Mineola, NY 11501, Attention: Executive Director, with a copy to Phillips Lytle LLP, 1205 Franklin Avenue, Suite 390, Garden City, NY 11530, Attention: Paul V. O'Brien, Esq.

Mortgagee's Agreement. The Mortgagee, by its acceptance of the Mortgage, shall be deemed to have accepted and agreed to the terms and provisions of this Mortgage Rider.

EXHIBIT K

FORM OF TENANT AGENCY COMPLIANCE AGREEMENT

TENANT AGENCY COMPLIANCE AGREEMENT

THIS TENANT AGENCY COMPLIANCE AGREEMENT, dated as of \_\_\_\_\_, 20[ ] (this “**TACA**”), is by and between the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at One West Street, 4th Floor, Mineola, New York 11501 (the “**Agency**”) and [ ], a [ ] duly organized and existing under the laws of the State of [ ], having an office at [ ] (the “**Tenant**”).

**WITNESSETH**

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “**Enabling Act**”) and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act, as in effect as of this TACA, 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 (the “**State**”), 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, [ ], a [ ] duly organized and existing under the laws of the State of New York (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 [ ] acre parcel of land located at [ ], Town of [ ], Nassau County, New York (Section: [ ]; Block: [ ]; Lots: [ ]) (the “**Land**”) (2) the [*demolition/construction/renovation*] of an approximately [ ] square foot building (collectively, the “**Building**”) on the Land, together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the “**Equipment**”) necessary for the completion thereof (collectively, the “**Project Facility**”), all of the foregoing for use by the Company as a [ ]; (B) the granting of certain “**financial assistance**” (within the meaning of Section 854(14) of the Act) with respect to the foregoing in the form of exemptions or partial exemptions from [*real property taxes*,

*mortgage recording taxes and sales and use 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 Company has executed and delivered to the Agency that certain Company Lease Agreement, dated [ ] 1, 20[ ], by and between Company, as lessor, and the Agency, as lessee (the “**Company Lease**”), which conveyed to the Agency a leasehold interest in and to the Project Facility; and

WHEREAS, the Agency has executed and delivered to the Company that certain Sublease Agreement (Uniform Project Agreement), dated [ ] 1, 20[ ], by and between the Agency, as sublessor, and the Company, as sublessee (the “**Lease Agreement**”), which conveyed to the Company a subleasehold interest in and to the Project Facility; and

WHEREAS, the Company has sub-subleased a portion of the Project Facility to the Tenant and the Tenant desires to rent that portion of the Project Facility consisting of [ ] of that certain building commonly known by street address as [ ] (the “**Subleased Premises**”) from the Company, upon the terms and conditions set forth in a certain Lease Agreement, dated as of [ ], 20[ ], by and between the Company and the Tenant (the “**Tenant Sublease Agreement**”); and

NOW, THEREFORE, the parties hereto hereby agree as follows:

## ARTICLE I

### REPRESENTATIONS AND COVENANTS OF TENANT

#### Section 1.1 Representations and Covenants of Tenant.

Tenant makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) Tenant is a [ ], duly organized and existing under the laws of the State of [ ], [is in good standing under the laws of the State of New York], and has full legal right, power and authority to execute, deliver and perform this TACA. This TACA has been duly authorized, executed and delivered by Tenant.

(b) Neither the execution and delivery of this TACA nor the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions hereof will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, Tenant’s organizational documents, as amended, or any restriction or any agreement or instrument to which Tenant is a party or by which it is bound.

(c) Any and all leasehold improvements undertaken by the Tenant with respect to the Subleased Premises and the design, acquisition, construction, equipping and operation thereof by the Tenant will conform with all applicable zoning, planning, building and environmental laws,

ordinances, rules and regulations of governmental authorities having jurisdiction over the Subleased Premises. The Tenant shall defend, indemnify and hold the Agency harmless from any liability or expenses, including reasonable attorneys' fees, resulting from any failure by Tenant to comply with the provisions of this subsection.

(d) This TACA constitutes a legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms.

(e) There is no action or proceeding pending or threatened by or against Tenant by or before any court or administrative agency that would adversely affect its ability to perform its obligations under this TACA or the Tenant Sublease Agreement and each other Transaction Document to which Tenant is a party and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by Tenant as of the date hereof in connection with the execution and delivery of this TACA or the Tenant Sublease Agreement and each other Transaction Document to which Tenant is a party or in connection with the performance of its obligations hereunder and under each of the Transaction Documents to which Tenant is a party have been obtained.

(f) The Subleased Premises constitutes a "project" under the Act, and the Tenant intends to operate the Subleased Premises, or cause the Subleased Premises to be operated, in accordance with this TACA and the Tenant Sublease Agreement, as a facility to be used for the purposes set forth in the recitals hereto and in the Lease Agreement, and as a qualified "project" in accordance with and as defined under the Act. The Subleased Premises shall not be used in violation of any Applicable Laws, including, without limitation, Section 859(a), Section 862(2) or Section 862(1) of the Act.

(g) Neither the Tenant nor any Affiliate of any of the Tenant 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 TACA upon an agreement of understanding for a commission or percentage, brokerage or contingent fee.

(h) The Tenant 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 Tenant or any of its property is subject.

(i) The Subleased Premises and the operation thereof will comply with all Applicable Laws, and the Tenant will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Tenant), 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. The Tenant shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause material compliance with all Applicable Laws applying to or affecting the conduct of work in or related to the Subleased Premises or the operation of the Subleased Premises, and the Tenant will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Tenant), 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. 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 Tenant), attorneys, servants or employees, and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(j) Neither this TACA nor any other document, certificate, agreement or instrument furnished by or on behalf of the Tenant 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.

## ARTICLE II

### INSURANCE

#### Section 2.1 Insurance Required.

Tenant shall, at its sole cost and expense maintain or cause to be maintained insurance against such risks and for such amounts in the Agency's reasonable judgement as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to, but without duplications of insurance provided by the Company pursuant to the Lease Agreement covering the same risks and insured(s):

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

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

(c) Commercial general liability insurance and professional liability insurance protecting the Tenant, as insured, and the PILOT Mortgagee and the Agency, as additional insureds, against loss or losses from liabilities imposed by law or assumed in any written contract or arising from personal injury or death or damage to the property of others caused by



any accident or occurrence, with limits of not less than \$1,000,000.00 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000.00 per accident or occurrence on account of damage to the Property of others, and \$2,000,000.00 general aggregate, excluding liability imposed upon the Tenant by any applicable workers' compensation law, and a separate excess liability policy (written on a "follow form" basis to the commercial general liability policy) protecting the Tenant, as named insured, and the Agency and the PILOT Mortgagee, as additional insureds, with a limit of not less than \$10,000,000.00, as said amounts may be adjusted by the Agency from time to time in its reasonable 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 Tenant, the PILOT Mortgagee and the Agency in a minimum amount of \$10,000,000.00 aggregate coverage for personal injury and property damage.

(e) 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 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 2.1 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Tenant 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 Tenant is engaged, but in no event to exceed \$100,000, 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 Tenant, as named insured, and the Agency and the PILOT Mortgagee, as additional insureds as additional insureds on a primary and non-contributory basis (via ISO endorsements CG 20 26 and CG 20 37 or their equivalents), with respect to liability policies, and name the Agency as loss payee and the PILOT Mortgagee as mortgagee, with respect to casualty policies, and provide for at least thirty (30) days' written notice to the Tenant, the PILOT Mortgagee and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance shall be written on an occurrence basis or a claims made basis; provided, however, that if any insurance is written on a claims made basis, the Tenant agrees to maintain coverage for an adequate period of time to report losses, but in no event shall such period be less than three (3) years after the Stated Expiration Date. 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 date of execution and delivery of this TACA. The Tenant 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 Section 2.1 hereof. At least fifteen (15) days prior to the expiration of any policy required by Section 2.1 hereof, the Tenant shall furnish to the Agency (i) a

certificate of insurance with respect to such policy evidencing the renewal of such policy for a period of at least one (1) year, which certificate shall be in form and substance reasonably satisfactory to the Agency, and (ii) written evidence of the applicable payment required by Tenant's insurance carrier upon renewal of such policy for the next succeeding one (1) year period.

(b) All premiums with respect to the insurance required by Section 2.1 hereof shall be paid by the Tenant; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Tenant shall pay to the Agency immediately upon demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate from the date of payment by the Agency.

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

(d) Each of the policies evidencing the insurance required by Section 2.1 hereof shall provide that: (i) there shall be no recourse against the Agency or the PILOT Mortgagee for the payment of premiums or commissions or, if such policies provide for the payment thereof, additional premiums or assessments; (ii) in respect of the interest of the Agency or the PILOT Mortgagee in such policies, the insurance shall not be invalidated by any action or inaction of the Tenant or any other Person and shall insure the Agency and the PILOT Mortgagee regardless of, and any losses shall be payable notwithstanding, any such action or inaction; (iii) if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or if there shall occur any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency or the PILOT Mortgagee until at least thirty (30) days after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration, reduction or change; and (iv) the insurers waive subrogation thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or other deduction, in respect of any liability of any Person insured under such policy.

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

(f) Any provision of this TACA to the contrary notwithstanding, at any time during the term of this TACA that a Lender Mortgage remains a Lien on the Subleased Premises and that any portion of the indebtedness secured thereby remains outstanding, the Agency agrees that (i) the Lender and not the Agency shall be the loss payee with respect to the Net Proceeds of the insurance required by Sections 2.1(A) and (E) hereof, and (ii) the provisions of Section 2.3 shall be superseded and replaced by the applicable provisions of the Lender Mortgage, if any.

Section 2.3      Application of Net Proceeds of Insurance.

The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1 hereof shall be applied as follows: (A) the Net Proceeds of the insurance required by Section 2.1(A) hereof shall be applied as provided in Section 7.1 of the Lease Agreement, and (B) the Net Proceeds of the insurance required by Sections 2.1(B), 2.1(C) and 2.1(D) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 2.4      Right of Agency to Pay Insurance Premiums.

If the Tenant fails to maintain or cause to be maintained any insurance required to be maintained by Section 2.1 hereof, the Agency may pay or cause to be paid the premium for such insurance. No such payment shall be made by the Agency until at least ten (10) days shall have elapsed since written notice shall have been given by the Agency to the Tenant. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Tenant. The Tenant shall, on demand, reimburse the Agency for any amount so paid pursuant to this Section 2.4, together with interest thereon from the date of payment of such amount by the Agency.

ARTICLE III

SPECIAL COVENANTS

Section 3.1      No Warranty of Condition or Suitability by Agency.

THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE PROJECT FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE PROJECT FACILITY, OR THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE PURPOSES OR NEEDS OF THE TENANT OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE TENANT WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE SUBLEASED PREMISES. THE TENANT ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF ANY EQUIPMENT IN OR RELATED TO SUBLEASED PREMISES NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE TENANT, ON BEHALF OF ITSELF IS SATISFIED THAT THE SUBLEASED PREMISES IS SUITABLE AND FIT FOR PURPOSES OF THE TENANT. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE TENANT OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY

ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 3.2      Hold Harmless Provisions.

(a) The Tenant agrees that the Agency and its directors, members, officers, agents (except the Tenant) and employees shall not be liable for, and agrees to defend, indemnify, release and hold the Agency and its directors, members, officers, agents and employees harmless from and against, any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Subleased Premises or to common areas or other portions of the Subleased Premises to which the Tenant has regular access, or arising by reason of or in connection with the occupancy or the use thereof or the presence of any Person or Property on, in or about the Subleased Premises, and (ii) liability arising from or expense incurred in connection with the Agency's participation in the subleasing of the Subleased Premises to the Tenant by the Company, including, without limiting the generality of the foregoing, all claims arising from the breach by the Tenant of any of its covenants contained herein, the exercise by the Tenant of any authority conferred upon it pursuant to this TACA and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this TACA (including without limitation this Section 3.2) or any other documents delivered by the Agency in connection with this TACA), and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, to the extent that any such losses, damages, liabilities or expenses of the Agency are not incurred and do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, agents or employees. Except as otherwise provided herein, the foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this TACA, the obligations of the Tenant pursuant to this Section 3.2 shall remain in full force and effect after the termination of this TACA 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 payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Agency or its members, directors, officers, agents and employees relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents or employees by any employee or contractor of the Tenant 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 Tenant hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 3.3      Right to Inspect Facility.

The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to inspect the Subleased Premises.

Section 3.4      Tenant to Maintain Its Existence.

Tenant agrees that during the term of the Tenant Sublease Agreement it will notify the Agency of any (i) change in its existence, (ii) dissolution proceeding, liquidation or disposal of substantially all of its assets, or (iii) consolidation with or merger into another corporation.

Section 3.5      Qualification as Project.

(a)      The Tenant will not take any action, or fail to take any action, which action or failure to act would cause the Subleased Premises not to constitute a “project” as such quoted term is defined in the Act. Without limiting the generality of the foregoing, the Tenant will in no event use the Subleased Premises in such a way as to cause or permit the Subleased Premises to be used in violation of Section 862(2)(a) or 862(1) of the Act.

(b)      The occupancy of the Demised Premises has not and will not result in the removal of a facility or plant of the Tenant 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 Tenant located within the State.

Section 3.6      Reserved.

Section 3.7      Compliance with Orders, Ordinances, Etc.

(a)      Tenant, throughout the term of the Tenant Sublease Agreement, agrees that it will promptly comply, and cause any permitted sub-sublessee or occupant of the Subleased Premises to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Subleased Premises or any part thereof, or to the design, development, construction and equipping thereof, or to any use, manner of use or condition of the Subleased Premises or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction over the Subleased Premises and of any companies or associations insuring the premises.

(b)      Tenant shall keep or cause the Subleased Premises to be kept free of Hazardous Materials except as permitted by law and in furtherance of Tenant’s business. Without limiting the foregoing, Tenant shall not cause or permit the Subleased Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations, nor shall Tenant cause or permit, as a result of any intentional or unintentional act or omission on the part of Tenant or any contractor, subcontractor, tenant or subtenant, a release of Hazardous Materials onto the Subleased Premises or onto any other property. Tenant shall comply with, and ensure compliance by all contractors, subcontractors, tenants and subtenants with, all applicable federal, state and local laws, ordinances, rules and regulations, whenever and

by whomever triggered, and shall obtain and comply with, and ensure that all contractors, subcontractors, tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. Tenant shall (i) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Subleased Premises (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the reasonable satisfaction of the Agency, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities; and (ii) defend, indemnify and hold harmless the Agency, its employees, agents, officers, members and directors, 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 by the Tenant (or any officers, members, employees, agents, representatives, invitees, contractors and subcontractors of the Tenant or any person acting at the direction or control of the Tenant) which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to the presence, disposal, release or threatened release of Hazardous Materials by the Tenant (or any officers, members, employees, agents, representatives, invitees, contractors and subcontractors of the Tenant or any person acting at the direction or control of the Tenant), (C) any lawsuit brought or threatened, settlement reached or government order relating to the presence, disposal, release or threatened release of Hazardous Materials by the Tenant (or any officers, members, employees, agents, representatives, invitees, contractors and subcontractors of the Tenant or any person acting at the direction or control of the Tenant), and/or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or of any policies or requirements of the Agency, which are based upon or in any way related to the presence, disposal, release or threatened release of Hazardous Materials, by the Tenant (or any officers, members, employees, agents, representatives, invitees, contractors and subcontractors of the Tenant or any person acting at the direction or control of the Tenant), including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. The provisions of this Section 3.7 shall be in addition to any and all other obligations and liabilities Tenant may have to the Agency at common law and shall survive the transactions contemplated herein.

(c) Notwithstanding the provisions of subsections (a) and (b) hereof, Tenant may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, Tenant may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify Tenant that, by failure to comply with such requirement or requirements, the Subleased Premises or any part thereof may be subject to loss, penalty or forfeiture, in which event Tenant shall promptly take such action with respect thereto or provide such security as shall be reasonably satisfactory to the Agency. If at any time the then existing use or occupancy of the Subleased Premises shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, Tenant shall use its best efforts not to cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency.

(d) Notwithstanding the provisions of this Section 3.7, if, because of a breach or violation of the provisions of subsection (a) or (b) hereof (without giving effect to subsection (c) hereof), the Agency, or any of its members, directors, officers, agents, or employees shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Tenant shall immediately provide legal protection and/or pay amounts necessary in the opinion of the Agency, and of its members, directors, officers, agents and employees, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(e) Notwithstanding any provisions of this Section 3.7, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to the presence, disposal, release or threatened release of Hazardous Materials by the Tenant (or any officers, members, employees, agents, representatives, invitees, contractors and subcontractors of the Tenant or any person acting at the direction or control of the Tenant). In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by Tenant.

#### Section 3.8 Discharge of Liens and Encumbrances.

(a) Tenant, throughout the term of the Tenant Sublease Agreement, shall not permit or create or suffer to be permitted, or created any lien, except for Permitted Encumbrances, upon the Project Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Project Facility or any part thereof, at the request of the Tenant.

(b) Notwithstanding the provisions of subsection (a) hereof, Tenant may in good faith contest any such lien. In such event, Tenant may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify Tenant that, by nonpayment of any such item or items or the Project facility or any part thereof may be subject to loss or forfeiture, in which event Tenant shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Agency, thereby causing such lien to be removed, or by taking such other actions as may be satisfactory to the Agency to protect its interests. Mechanics' liens shall be discharged or bonded within thirty (30) days of the notice to Tenant of filing or perfection thereof.

#### Section 3.9 Employment Opportunities; Notice of Jobs; Job Reporting.

(a) The Tenant shall ensure that all employees and applicants for employment with regard to the Subleased Premises, including, without limitation, the employees of and applicants for employment with the Tenant, 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 Tenant agrees (1) to list or cause to be listed all new

employment opportunities created in connection with the Subleased Premises 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 Subleased Premises is located, and (2) where practicable, to first consider and to cause to be first considered for such new employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.

(c) The Company agrees to file with the Agency on a calendar year basis not later than February 10 of each year during the term of this TACA, measured as of December 31st of the immediately preceding calendar year, reports (i) certifying the full-time equivalent jobs retained and the full time equivalent jobs created as a result of the granting of the Financial Assistance, by category, including full-time equivalent independent contractors and employees of independent contractors that work at the Subleased Premises, and (ii) certifying that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were set forth in the Application are then still accurate or, if not then still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Said annual report shall be in substantially the form promulgated from time to time by the Agency. The Tenant shall provide such annual reports (and supporting documentation) with respect to its employees as requested in writing by the Company, and shall cause its Affiliates, contractors and agents to provide such reports (and supporting documentation) with respect to their respective employees, if any, at the Subleased Premises, as may be necessary for the Company to fulfill its obligations to the Agency. The Agency shall have the right, at the Tenant's expense, to audit, confirm and/or require additional information with regard to Tenant's information requested hereto and the Tenant agrees to reasonably cooperate with and to cause its Affiliates and such third parties to cooperate with the Agency in connection therewith.

(d) The parties recognize that the jobs created by the Tenant at the Subleased Premises may be used to satisfy, in whole or in part, the Minimum Employment Requirement contained in the Lease Agreement. The Tenant agrees to give the Agency written notice of the occurrence of any default under this Section 3.9 within five (5) days after the Tenant becomes aware of the occurrence of such default.

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

Section 3.10 Assignment Prohibited.

The Tenant may not assign the Tenant Lease Agreement or sub-lease the Subleased Premises without the prior written consent of the Agency. Any assignment or sub-lease shall conform with the restrictions and requirements set forth in Section 9.3 of the Lease Agreement.

Section 3.11 Definitions.



All capitalized terms used in this TACA and not otherwise defined herein shall have the meanings assigned thereto in Section 1.1 of the Lease Agreement, provided, however, any reference to the “Project Facility” in the Lease Agreement having been incorporated into this TACA, shall, as applied herein, be limited to strictly refer to the Subleased Premises as defined in this TACA and shall include no other real property.

Section 3.12                    Execution of Counterparts.

This TACA 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.

*(Remainder of Page Intentionally Left Blank – Signature Page Follows)*

*[Signature page to Tenant Agency Compliance Agreement]*

IN WITNESS WHEREOF, the Agency and Tenant have caused this TACA to be executed in their respective names by their duly authorized officers, all as of [\_\_ \_\_], 20[\_\_].

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Sheldon L. Shrenkel  
Chief Executive Officer / Executive Director

[ ]

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