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NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
as Sublessor

AND

STELLA MEYER and PETER MEYER III,  
as Sublessee

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SUBLEASE AGREEMENT

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DATED AS OF DECEMBER 1, 2006

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ADDRESS:	146 Piquet Lane
TOWN:	Oyster Bay
COUNTY:	Nassau
STATE:	New York
SECTION:	15
BLOCK:	D
LOTS:	515, 516 & 524

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Prepared by:

Phillips Lytle LLP  
1100 Franklin Avenue, 4<sup>th</sup> Floor  
Garden City, NY 11530  
Attention: Milan K. Tyler, Esq.



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## SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT dated as of March 1, 2007 (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 1100 Franklin Avenue, Suite 300, Garden City, NY 11530 (the "Agency"), and STELLA MEYER and PETER MEYER III, each a natural person, having an address at 131 Piquet Lane, Woodbury, NY 11797 (individually or collectively, as the context may require, the "Lessee").

### 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 amended from time to time, 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, recreation and civic 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, on or about October 25, 2006, the Lessee presented an application for financial assistance (the "Application"), which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A) the acquisition of an interest in an approximately 8.5 acre parcel of land located at 146 Piquet Lane, Woodbury, Town of Oyster Bay, Nassau County, New York (the "Land"), together with the buildings and other improvements thereon, all of the foregoing to constitute a farm (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from real property taxes (but not including special assessments and ad valorem levies) (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Lessee or such entity(ies) as may be designated by the Lessee and agreed upon by the Agency; and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to

the Project, to be mailed on November 17, 2006 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 November 17, 2006 in the Nassau edition of *Newsday*, a newspaper of general circulation available to residents of the Town of Oyster Bay and the County of Nassau, New York, (C) conducted or caused to be conducted the Public Hearing on December 18, 2006 at 2:45 p.m., local time, at 54 Audrey Avenue, Town of Oyster Bay, Nassau County, New York, and (D) prepared a report of the Public Hearing (the "Report") which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, the Executive Director of the Agency (A) caused notice of a meeting of the Agency (the "IDA Meeting") with respect to the proposed deviation from the Agency's uniform tax exemption policy and guidelines to be mailed on November 17, 2006 to the chief executive officer of each affected tax jurisdiction, and (B) conducted the IDA Meeting on December 18, 2006 and reviewed and responded to any comments or correspondence received from the affected tax jurisdictions at or before the IDA Meeting regarding the proposed deviation from the Agency's uniform tax exemption policy; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Lessee and made any necessary comments to members of the Agency, and by resolution of the members of the Agency adopted on December 18, 2006, the Agency determined to undertake an uncoordinated review of the Project and determined that the Project is a Type II Action under SEQRA and that, by definition, the Project will not have a significant adverse effect on the environment; and

WHEREAS, by resolution adopted by the members of the Agency on December 18, 2006 (the "Inducement Resolution"), the Agency, following a review of the Report, made a determination to proceed with the Project and to grant the Financial Assistance; and

WHEREAS, by resolution adopted by the members of the Agency on December 18, 2006 (the "Authorizing Resolution"), the Agency determined to enter into the "straight lease transaction" (as such quoted term is defined in the Act) contemplated by this Lease and the other Transaction Documents (as hereinafter defined); and

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

WHEREAS, the acquisition of the Project Facility, the sublease of the Project Facility and the granting of the Financial Assistance to the Lessee are for proper purposes, including,

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

WHEREAS, the granting of the financial assistance by the Agency to the Lessee has been determined by the Agency to be necessary to induce the Lessee to proceed with the Project; and

WHEREAS, the Lessee is the fee owner of the Premises (as hereinafter defined); and

WHEREAS, immediately prior to the execution and delivery of this Lease, the Lessee will execute and deliver or cause to be executed and delivered to the Agency a certain company lease agreement dated of even date herewith (the "Company Lease") from the Lessee to the Agency, which conveys to the Agency a leasehold interest in and to the Premises; and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement of even date herewith between the Lessee and the Agency, the Lessee 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 Lessee and the Agency, as mortgagor, to the County of Nassau, as mortgagee (in such capacity, the "PILOT Mortgagee"), pursuant to which the Agency and the Lessee grant a first mortgage on the Premises to the PILOT Mortgagee;

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

#### ARTICLE I DEFINITIONS

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

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

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

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

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

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

"Applicable Laws" means 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 the interests in the Project Facility and as if the Lessee and not the Agency were the owner of the interests in the Project Facility), including but not limited to (1) applicable health, building, zoning, use, rent, accessibility, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, (3) judgments, decrees, orders or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority, and (4) applicable covenants and restrictions relating in any way to the Project Facility.

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

"Authorizing Resolution" means the resolution duly adopted by the Agency on December 18, 2006 authorizing and directing the undertaking of the Project and the execution and delivery of the Transaction Documents to which the Agency is a party.

"Authorized Representative" means the Person or Persons at the time designated to act on behalf of the Agency or the Lessee the case may be, by written certificate furnished to the Agency or the Lessee, 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 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 Lessee by any person named herein as the Lessee.

"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 Lessee, 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.

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

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

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

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

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

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

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

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

"Governmental Authority" means the United States of America, the State, any other state, the County, and any political subdivision thereof, 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.

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

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

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

“Indebtedness” means (1) the monetary obligations of the Lessee to the Agency or to any of its members, officers, agents, 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.

“Index” means the “Consumer Price Index for All Urban Consumers (1982-84 = 100), U.S. City Average, All Items,” as published by the Bureau of Labor Statistics of the United States Department of Labor. If the Index is not published by the Bureau of Labor Statistics or other governmental agency at any time during the term of this Lease, then the calculations based on the Index shall be made using the most closely comparable statistics on the purchasing power of the consumer dollar as published by a responsible financial authority selected by the Agency.

“Inducement Resolution” means the resolution of the Agency adopted on December 18, 2006, offering to undertake the Project.

“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.

“Lessee” means, individually or collectively, as the context may require, Stella Meyer and Peter Meyer III, each a natural person.

“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 Lessee. 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.

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

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

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

"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 Lessee and the Agency, pursuant to which the Lessee shall make certain payments in lieu of real property taxes.

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

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

"Premises" means the Land, together with 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.

"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 pursuant to the Company Lease, (B) the granting of the Financial Assistance, and (C) the subleasing of the Project Facility to the Lessee, 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.

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

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

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

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

"State" means the State of New York.

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

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

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

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

"Transaction Documents" means the Company Lease, the PILOT Agreement, the PILOT Mortgage, this Lease, the Environmental Indemnification and all other instruments, agreements, certificates and documents related thereto and executed in connection therewith, and any other instrument, agreement, certificate or document supplemental thereto.

"Unassigned Rights" means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.2, 3.3, 4.1(D), 4.1(E), 4.1(F), 4.1(G), 5.2 (A), 5.3 (B) and (C), 5.4, 6.1, 6.2, 6.3, 6.4, 6.5,

6.6, 7.1, 7.2, 8.1, 8.2, 8.3, 8.5, 8.6, 8.7, 8.8, 8.9, 8.14, 9.1, 9.3, 11.2, 11.4, 12.4, 12.7 and 12.9 of this Lease, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents, servants and employees, past, present and future, of the Agency for their own account pursuant to Sections 2.2(G), 3.3, 4.1, 5.3(B), 5.3(C), 6.4(B), 8.2, 9.3, 10.2, 10.4 and 11.2(B) of this Lease, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.6 of this Lease and as recapture of benefits pursuant to Section 11.4 of this Lease, and (D) the right to enforce the foregoing pursuant to the PILOT Agreement, the PILOT Mortgage and Article X of this Lease.

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

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

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

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

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

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

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

## ARTICLE II REPRESENTATIONS, WARRANTIES, AND COVENANTS

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

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

proper official action, the Agency has been duly authorized to execute, deliver and perform this Lease and the other Transaction Documents to which the Agency is a party.

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

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

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

(A) No consent or approval (governmental or otherwise) or the taking of any other action is required as a condition to the validity or enforceability of this Lease or any of the other Transaction Documents.

(B) Neither the execution and delivery of this Lease or any of the other Transaction Documents to which the Lessee 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 Lessee is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of any restriction, order, judgment, agreement, document or instrument to which the Lessee is a party or by which the Lessee or any of the Lessee's Property is bound, or constitute a default by the Lessee 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 the 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 agreement or instrument to which the Lessee is a party or by which the Lessee or any of the Lessee's 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 Lessee or any of the Lessee's Property.

(C) Neither the acquisition of the Project Facility by the Agency, the lease thereof by the Agency to the Lessee, nor the operation thereof by the Lessee will result in the removal of a

facility or plant of the Lessee 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 Lessee located in the State.

(D) The Project Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project Facility.

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

(F) The Project constitutes a commercial facility and will advance the Agency's purposes by promoting employment opportunities and preventing economic deterioration in the County. The Project Facility is, and so long as this Lease shall remain in effect, the Project Facility will continue to be a "project", as such quoted term is defined in the Act, and the Lessee 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.

(G) The Project Facility and the operation thereof will comply with all Applicable Laws, and the Lessee will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents, attorneys, servants and employees, past, present and future, harmless from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure to comply therewith. The Lessee shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project or the operation of the Project Facility, and the Lessee will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents, attorneys, servants and employees, past, present and future harmless, from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure to comply therewith.

(H) The Project will not have a "significant effect on the environment" (as such term is used in SEQRA) and the Lessee hereby covenants to comply with all mitigating measures, requirements and conditions enumerated in the resolution adopted by the Agency on December 18, 2006 under SEQRA applicable to the acquisition and operation of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project Facility. No material changes with respect to any aspect of the Project Facility have arisen from the date of such resolution which would cause the determination contained therein to be untrue.

(I) Intentionally omitted.

(J) Intentionally omitted.

(K) There are no actions, suits, investigations or proceedings of or before any Governmental Authority, pending or threatened against the Lessee or any of the Lessee's

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 Lessee, or (ii) question the validity of any of the Transaction Documents or any action to be taken in connection with the transactions contemplated thereby.

(L) The Lessee 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 Lessee or any of the Lessee's Property is subject.

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

(N) The Lessee shall maintain at least 3.5 full-time equivalent, private sector jobs in the State of New York throughout the term of this Lease; all of which jobs shall, at all times during the term of this Lease, be located at the Project Facility (collectively, the "Minimum Employment Requirement").

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

(P) The Lessee is not a Prohibited Person and no Affiliate of the Lessee is a Prohibited Person.

(Q) Neither this Lease nor any other Transaction Document nor any other document, certificate, agreement or instrument furnished by or on behalf of the Lessee 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) Intentionally omitted.

(T) The Project Facility is located entirely within the boundaries of the Town of Oyster Bay, Nassau County, New York, is not located within the boundaries of any incorporated village, and is located only within the Syosset Union Free School District.

(U) The Lessee has not conveyed, assigned, transferred, mortgaged, hypothecated, pledged or granted a security interest in the Project Facility pursuant to a mortgage, security agreement, pledge or other agreements that prohibits the Lessee from executing and delivering the Company Lease, this Lease or any other Transaction Document. The Lessee covenants and agrees that it shall not enter into a mortgage, security agreement, pledge or other agreement that prohibits the Lessee from executing and delivering the Company Lease, this Lease or any other Transaction Document.

### ARTICLE III CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1 CONVEYANCE TO THE AGENCY. Pursuant to the Company Lease, the Lessee has conveyed or will convey, or will cause to be conveyed, to the Agency a good and valid leasehold interest in and to the Premises for the purpose of undertaking the Project. The Lessee 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 Lessee 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.

SECTION 3.2 USE OF PROJECT FACILITY. Subsequent to the Closing Date, the Lessee 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 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 as a commercial farming facility in connection with the Lessee's business, 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 Lessee shall not occupy, use or operate the Project Facility, or any part thereof, or allow 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, or (5) by any tenant, subtenant or occupant whose use, occupancy or operation of the facility would be in violation of Applicable Laws. All permits and licenses necessary for the operation of the Project Facility as contemplated by this Section 3.2 shall be procured promptly by the Lessee. Any provision of this Lease to the contrary notwithstanding, the Lessee shall be liable at all times for all risk, loss and damage with respect to the Project Facility.

### SECTION 3.3 HAZARDOUS MATERIALS.

(A) The Lessee represents, warrants and covenants that (i) the Lessee 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, (ii) the environmental and ecological condition of the Project Facility is not in violation of any Applicable Law, including, without limitation, those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials (collectively, the "Environmental Laws"), (iii) the Lessee 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 Lessee 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 Lessee'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 best of the Lessee's knowledge, threatened relating to a violation of Environmental Law or the disposal, discharge or release of Hazardous Materials, and (viii) to the best of the Lessee'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 Lessee shall keep and shall cause the Project Facility to be kept free of Hazardous Materials except in compliance with Environmental Laws. Without limiting the foregoing, the Lessee 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 Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee, 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 Lessee shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or its shareholders, directors, officers, agents, servants, employees or representatives, a release of Hazardous Materials on, under or from the Project Facility.

(C) The Lessee shall comply with, and ensure compliance by all tenants, subtenants and occupants of the Project Facility with, all Environmental Laws whenever and by whomever triggered, and shall obtain and comply with, and ensure that all tenants, subtenants, operators and occupants of the Project Facility obtain and comply with, any and all approvals, registrations or permits required thereunder. The Lessee agrees to provide the Agency with copies of any notifications given by the Lessee to any Governmental Authorities or received by the Lessee from any Governmental Authorities with respect to the environmental or ecological condition of the Project Facility.

(D) The Lessee 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, attorney and consultant fees, costs of remediation, investigation and laboratory fees, court costs and litigation expenses. Costs under this subsection (D) will be repaid immediately with interest at the Default Interest Rate.

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

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

**SECTION 3.4 NON-MERGER.** During the term of this Lease, there shall be no merger of this Lease nor of the subleasehold estate created by this Lease with the Company Lease nor the leasehold estate created by the Company Lease 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 subleasehold estate created by this Lease or any interest in this Lease or in any such subleasehold estate and (2) the Company Lease or the leasehold estate created by Company Lease or any interest in the Company Lease or in any such leasehold estate, and no such merger shall occur unless and until all corporations, firms and other entities, including any mortgagee having any interest therein 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 Lessee will obtain and deliver to the Agency, in form, amount and substance satisfactory to the Agency, (a) an owner's policy of title insurance (the "Title Policy") insuring the Agency's leasehold estate in the Premises against loss as a result of defects in title, subject only to Permitted Encumbrances, (b) a mortgagee title insurance policy insuring the PILOT Mortgagee's mortgage interest in the Premises against loss as a result of defects in title, subject only to Permitted Encumbrances, and

(c) a current survey of the Premises certified to the Agency, the Lessee, the PILOT Mortgagee and the title insurance company issuing the Title Policy. Any proceeds of the Title Policy shall be paid to the Lessee and applied by the Lessee 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 Lessee for any company purpose.

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

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

(A) Intentionally omitted.

(B) Intentionally omitted.

(C) Intentionally omitted.

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

(E) The Agency hereby appoints the Lessee, and the Lessee 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 the Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be required or proper, all for the acquisition 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 Lessee and advanced for such purposes by the Lessee pursuant to Section 4.1(H) of this Lease, (3) to pay all fees, costs and expenses incurred in the acquisition 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 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 Lessee has given or will give or cause to be given all notices and has complied and will comply or cause compliance with all Applicable Laws applying to or affecting the conduct of any work on the Project Facility, and the Lessee will defend (with counsel selected by the Agency), indemnify and save the Agency and its officers, members, agents, attorneys, servants and employees, past, present and future, harmless from all fees, expenses, fines and

penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of any work on the Project Facility shall be procured promptly by the Lessee.

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

(H) The Lessee 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. Title to portions of the Project Facility acquired at the Lessee's cost shall immediately upon such acquisition vest in the Agency. The Lessee shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's title to such portions of the Project Facility.

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

(J) The Lessee agrees, (i) at the option of the Agency and at the sole expense of the Lessee, to erect signage at the Project Facility, which signage shall be in form and content satisfactory to the Agency and shall identify the Agency and its role in the Project, and (ii) that the Agency may otherwise publicize the Agency's role in the Project.

(K) Nassau-County Based Contractors. The Lessee agrees to solicit bids from at least one (1) contractor or vendor based in the County for each contract the Lessee (or any Affiliate thereof) proposes to enter into with respect to the Project Facility, including, without limitation, contracts for renovation, alteration, management, purchase of goods or services, maintenance and repair. Further, the Lessee covenants to use commercially reasonable efforts to let such contracts, where practicable, to contractors or vendors based in the County.

(L) W/MBE Contractors.

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

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