

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY
(TOWN OF HEMPSTEAD, NEW YORK)

and

ESTELLA HOUSING LLC
as Company

and

CONCERN ESTELLA HOUSING DEVELOPMENT FUND CORP.
as Nominee

LEASE AND PROJECT AGREEMENT

Dated as of March 1, 2023

Town of Hempstead Industrial Development Agency
(Estella Housing LLC 2023 Facility)

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THIS LEASE AND PROJECT AGREEMENT, dated as of March 1, 2023 (this “**Lease Agreement**”), is among the TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 350 Front Street, 2nd Floor, Hempstead, New York 11550 (the “**Agency**”), ESTELLA HOUSING LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having its principal office c/o Concern for Independent Living, Inc., 312 Expressway Drive South, Medford, New York 11763 (the “**Company**”), and CONCERN ESTELLA HOUSING DEVELOPMENT FUND CORP., a not-for-profit corporation duly organized and validly existing under the laws of the State of New York, having its principal office c/o Concern for Independent Living, Inc., 312 Expressway Drive South, Medford, New York 11763 (the “**Nominee**”).

RECITALS

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the “**State**”); and

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State; and

WHEREAS, the aforesaid act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act, as amended, and Chapter 529 of the Laws of 1971 of the State, as amended (collectively, the “**Act**”), the Agency was created and is empowered under the act to undertake the Project Work defined below and the leasing of the Facility defined below; and

WHEREAS, the Company submitted an application for financial assistance requesting that the Agency assist in the acquisition of an interest in an approximately 0.6193 acre parcel of land located at 176 Main Street, Village of Hempstead, Town of Hempstead, Nassau County, New York, as more particularly described in Exhibit A attached hereto (the “**Land**”), the construction of one (1) five-story approximately 125,911 square foot building consisting of approximately 96 residential rental units (consisting of approximately 42 studio apartments, 34 one-bedroom apartments, 19 two-bedroom apartments and 1 superintendent’s unit), approximately 10,468 square feet of residential amenity and support service space for tenants, 5,538 square feet of community service facility space, and parking spaces for 92 vehicles (the “**Improvements**”), and the acquisition of certain fixtures, equipment and personal property necessary for the completion thereof, as more particularly described in Exhibit B attached hereto

(the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company and Nominee and further sub-subleased by the Company to future tenants for use as a transit-oriented, affordable, mixed-use multifamily housing and commercial complex (the “**Project**”); and

WHEREAS, as of the Closing Date, the Village of Hempstead has issued a final street address of 150 Bedell Street for the Land and the parties desire to make clear that the Land is the same parcel described in the Company’s application for financial assistance to the Agency and is more particularly described in Exhibit A attached hereto; and

WHEREAS, as of the Closing Date, the parties have finalized the unit mix and other elements of the Facility as follows and the Facility shall be deemed to mean: an approximately 125,991 gross square foot four-story residential building above a ground floor-level parking garage, with approximately 96 residential rental units (consisting of approximately 35 studio apartments, 49 one-bedroom apartments and 12 two-bedroom apartments, one of which will be a superintendent’s unit), 5,538 square feet of community service facility space, and on-site parking spaces for 77 vehicles; and

WHEREAS, the Company and the Nominee have agreed to lease the Land and the Improvements to the Agency pursuant to the terms of a certain Company Lease Agreement, dated as of March 1, 2023 (the “**Company Lease**”), by and among the Company, the Nominee and the Agency; and

WHEREAS, the Company has agreed to transfer title to the Equipment to the Agency pursuant to a certain Bill of Sale, dated the Closing Date (the “**Bill of Sale**”); and

WHEREAS, the Agency has agreed to sublease and lease the Facility to the Company and the Nominee, and the Company and the Nominee desire to rent the Facility from the Agency, upon the terms and conditions set forth in this Lease Agreement; and

WHEREAS, the Company and the Nominee have agreed with the Agency, on behalf of the Agency, to complete the Project Work;

AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

ARTICLE I DEFINITIONS

All capitalized terms used in this Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A, and words and phrases set forth therein shall be interpreted as provided therein.

ARTICLE II REPRESENTATIONS AND COVENANTS

Section 2.1 Representations and Covenants of Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established and validly existing under the provisions of the Act and has full legal right, power and authority to execute, deliver and perform each of the Agency Documents and the other documents contemplated thereby. Each of the Agency Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Agency.

(b) The Agency will acquire a leasehold interest in the Land and Improvements, cause the Improvements to be constructed and the Equipment to be acquired and installed and will lease and sublease the Facility to the Company and the Nominee pursuant to this Lease Agreement, all for the Public Purposes of the State.

(c) By resolution adopted on January 31, 2022, the Agency decided to conduct an uncoordinated review of the Project and, based upon the review by the Agency of the materials submitted and the representations made by the Company relating to the Facility, determined that the Project is an "Unlisted" type action under the SEQRA Act and that the Project will not have a significant adverse effect on the environment and the Agency issued a "negative declaration" with respect to the Project.

(d) Neither the execution and delivery of any of the Agency Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Agency Documents and the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof, the Agency's Certificate of Establishment or By-Laws, as amended, or any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument, except for Permitted Encumbrances.

(e) Each of the Agency Documents and the other documents contemplated thereby to which the Agency is a party constitutes a legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms.

(f) The Agency has been induced to enter into this Lease Agreement by the undertaking of the Company and the Nominee to acquire, construct, equip and utilize the Facility in the Town of Hempstead, New York, in furtherance of the Public Purposes of the Agency.

(g) The Agency will execute, acknowledge (if appropriate) and deliver from time to time such instruments and documents which the Agency deems necessary or desirable to carry out the intent and purposes of this Lease Agreement.

(h) The undertaking of the Project is anticipated to serve the Public Purposes of the State by preserving permanent, private sector jobs and/or increasing the overall number of permanent, private sector jobs in the State.

(i) In accordance with the provisions of Section 905(2) of the Act, the Agency acknowledges receipt of the Economic and Fiscal Impact Analysis dated January 7, 2022 prepared by Camoin Associates with respect to the Project.

Section 2.2 Representations and Covenants of Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized and existing under the laws of the State of New York, 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 each of the Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

(b) Neither the execution and delivery of any of the Company Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Company Documents and the other documents contemplated thereby 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, the Company's Organizational Documents, as amended, or any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company under the terms of any such law, ordinance, Organizational Documents, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

(c) The Facility, the Project Work and the design and operation of the Facility will conform in all material respects with all applicable zoning, planning, building and Environmental Laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. Under penalty of perjury, the Company certifies that it is in substantial compliance with all local, state, and federal tax, worker protection and environmental laws, rules and regulations.¹

(d) Each of the Company Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(e) The Facility is and will continue to be a "project" as such quoted term is defined in the Act as in effect on the Closing Date. The Company will not take any action, or fail to take any action, which action or failure to act would cause the Facility not to constitute a "project" as such quoted term is defined in the Act as in effect on the Closing Date.

¹ Required by GML Section 895-a(6)(g); cannot be deleted or edited.

(f) The transactions contemplated by this Lease Agreement shall not result in the removal of any facility or plant of any Facility occupant(s) from one area of the State to another area of the State or in the abandonment of one or more facilities or plants of the Facility occupant(s) located within the State.

(g) The Company agrees to take any actions reasonably deemed necessary by the Agency, or its Chairman, Vice Chairman, Executive Director, Chief Executive Officer, Deputy Executive Director, Chief Financial Officer, or any member or officer of the Agency, counsel to the Agency or Transaction Counsel, in order to ensure compliance with Sections 2.2(e) and (f) and 9.3 of this Lease Agreement provided that the Company receives duly acknowledged written confirmation from the Agency setting forth the reason(s) for said action(s). Without limiting the generality of the foregoing, the Company will promptly provide the Agency with any and all information and materials describing proposed non-residential occupants of the Facility, or any portion thereof, as necessary.

(h) The Company will sublease and lease the Facility in accordance with the provisions hereof, including, but not limited to, Section 9.3 hereof, and will cause future non-residential sublessees of the Facility, or any portion thereof, that are approved by the Agency, to execute and deliver to the Agency a Tenant Agency Compliance Agreement substantially in the form attached hereto as Exhibit I, prior to the occupancy of the Facility, or a portion thereof, by such sublessee, in accordance with the provisions of Section 9.3 hereof.

(i) The Company hereby represents to the Agency that facilities and property that are primarily used in making retail sales of goods and services to customers who personally visit the Facility will not constitute more than one-third (1/3) of the total costs of the Facility, as required by New York General Municipal Law (the “GML”) Section 862.

(j) There is no action or proceeding pending or, to the best of the Company’s knowledge, after diligent inquiry, threatened, by or against the Company by or before any court or administrative agency that would adversely affect the ability of the Company to perform its obligations under this Lease Agreement or any other Company Document.

(k) The Company has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the Closing Date in connection with the execution and delivery of this Lease Agreement and each other Company Document or in connection with the performance of its obligations hereunder and under each Company Document.

(l) The Project Application Information was true, correct and complete as of the date submitted to the Agency, and no event has occurred or failed to occur since such date of submission which could cause any of the Project Application Information to include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make such statements not misleading.

(m) The Company shall not use or permit any use of the Facility 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 to by the Agency. Without limitation of the

foregoing, the Company shall at all times cause not less than one hundred percent (100%) of the residential rental units in the Project Facility other than the superintendent's unit (collectively, the "**Affordable Units**") to be developed for, marketed to and made available to, and rented and occupied by individuals/families whose annual income is less than the applicable percentage of the Nassau-Suffolk area median income for its household size (based on U.S. Census data and as updated by the U.S. Department of Housing and Urban Development from time to time) ("**AMI**"), all as set forth below:

<u>Number of Units</u>	<u>Percentage of AMI</u>
40	60%
55	50%

The Affordable Units shall not be deemed to mean or include one (1) unit assigned to the superintendent of the Facility, which shall be a non-rent bearing unit.

(n) No representation or warranty by or on behalf of the Company herein nor any statement, certificate or application furnished or to be furnished by or on behalf of the Company to the Agency in connection herewith or in connection with the transactions contemplated hereby, contain nor will contain any untrue statement or a material fact nor will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

Section 2.3 Representation and Covenants of Nominee. The Nominee makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) It is a not for profit corporation duly organized and existing under the laws of the State of New York.

(b) It has full power and authority to execute, deliver and perform the Nominee Documents and to enter into and carry out the transactions on its part contemplated by those documents. The execution, delivery and performance by it of the Nominee Documents do not, and will not, violate any provision of law applicable to the Nominee and do not, and will not, conflict with or result in a default under any agreement or instrument to which the Nominee or the Company is a party or by which the Nominee or the Company is bound. The Nominee Documents have, by proper action, been duly authorized, executed and delivered by the Nominee and all steps necessary have been taken to constitute the Nominee Documents valid and binding obligations of the Nominee.

(c) The provision of financial assistance to be made available to the Company under this Agreement and the commitments therefor made by the Agency have induced the Nominee to undertake the transactions contemplated by this Agreement.

(d) Upon the execution and delivery thereof by the other parties thereto, each of the Nominee Documents will constitute valid and binding obligations of the Nominee, enforceable against the Nominee in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions

affecting creditors' rights generally and by judicial discretion in the exercise of equitable remedies.

(e) The Nominee acknowledges, represents and warrants that it understands the nature and structure of the Facility; that it is familiar with the provisions of all of the documents and instruments relating to the financing of the Facility to which it is a party; that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Facility; and that it has not relied on the Agency for any guidance or expertise in analyzing the financial or other consequences of such financing transactions.

(f) No representation or warranty by or on behalf of the Nominee herein nor any statement, certificate or application furnished or to be furnished by or on behalf of the Nominee to the Agency in connection herewith or in connection with the transactions contemplated hereby, contain nor will contain any untrue statement or a material fact nor will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

ARTICLE III CONVEYANCE OF FACILITY SITE; PROJECT WORK AND COMPLETION

Section 3.1 Agreement to Convey to Agency. The Company and/or the Nominee have conveyed or has caused to be conveyed to the Agency (i) a leasehold interest in the Land, including any buildings, structures or other improvements thereon, and (ii) lien-free title to the Equipment, and will convey or cause to be conveyed to the Agency lien-free title to or a leasehold interest in the Equipment and Improvements acquired after the date hereof, in each case free and clear of all Liens except for Permitted Encumbrances.

Section 3.2 Title Report and Survey. The Company and the Nominee have obtained and delivered to the Agency (i) a title report (in form and substance acceptable to the Agency) reflecting all matters of record with respect to the Land and existing Improvements, including municipal searches, and (ii) a current or updated survey of each of the Land and the existing Improvements certified to the Agency.

Section 3.3 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Facility and the interest therein to be conveyed by this Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the financial obligations of the Company and the Nominee. The Facility and the leasehold interests therein secure the obligations of the Company and the Nominee to the Agency under this Lease Agreement, including the Company's and the Nominee's obligations to acquire, construct and maintain the Facility and complete the Project Work on behalf of the Agency and the Company's and the Nominee's obligations to indemnify and hold harmless the Agency.

Section 3.4 Project Work.

(a) The Company agrees that, on behalf of the Agency, it will complete the Project Work in substantial accordance with the Plans and Specifications and pay all costs and expenses therefor.

(b) The Company may revise the Plans and Specifications from time to time without the consent or approval of the Agency; provided that the Facility shall substantially retain its overall configuration and intended purposes and shall remain a "project" as defined in the Act.

(c) Except as set forth in Section 6.2 hereof, fee or leasehold title, as applicable, to all materials, equipment, machinery and other items of Property incorporated or installed in or placed in, upon, or under the Facility shall vest in the Agency immediately upon the Company's obtaining an interest in or to the materials, equipment, machinery and other items of Property. The Company shall execute, deliver and record or file all instruments necessary or appropriate so to vest such title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(d) Intentionally omitted.

(e) The Company shall comply with all provisions of the Labor Law, the Executive Law and the Civil Rights Law of the State applicable to the completion of the Project Work and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions. The Company shall comply with the relevant policies of the Agency with respect to such laws which are set forth as Exhibit G attached hereto. The Company further agrees to ensure that ninety percent (90%) of the workers hired by the Company, its contractors or sub-contractors for the performance of the Project Work shall be hired from within Nassau or Suffolk Counties, and that ninety percent (90%) of the building materials purchased by the Company, its contractors or sub-contractors used in connection with the completion of the Project Work shall be purchased from within Nassau or Suffolk Counties. In the event the Company incurs difficulty complying with the 90% threshold with respect to workers and/or building materials as required herein, the Company shall present to the Agency the particulars of the difficulty complying with said 90% threshold and the Agency shall consider the circumstances, and, in its sole and absolute discretion, may consider a lower compliance threshold. Except as expressly provided herein, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 3.5 Identification of Equipment. All Equipment which is or may become the Property of the Agency pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency, such approval not to be unreasonably withheld. The Agency may request, and the Company shall deliver to the Agency, within ten (10) days of such request, a schedule listing all such Equipment. All Property of whatever nature affixed or attached to the Land or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Lease Agreement and such Property was properly identified by such appropriate records as were approved by the Agency.

Section 3.6 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Agency (i) a certificate signed by an Authorized Representative of the Company in the form set forth in Exhibit J attached hereto, together with all attachments required thereunder stating (a) that the Project Work has been completed substantially in accordance with the Plans and Specifications therefor, and (b) that payment for all labor, services, materials and supplies used in such Project Work has been made or provided for; (ii) the Final Project Cost Budget, which budget will include a comparison with the project cost budget information listed in the Project Application Information and shall include all costs paid or incurred by the Company and the Nominee in connection with the Facility, and (iii) such other certificates and information as may be reasonably satisfactory to the Agency. The Company shall not be entitled to any refund or credit of the Agency's fee in the Final Project Cost Budget is lower than provided in the Project Application Information. The Company agrees that the Completion Date shall be no later than January 30, 2026.

Section 3.7 Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman, surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's sole cost and expense, hereby agrees 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, provided that the Agency, its members, officers, directors, employees and agents shall not thereby be subjected to risk of loss, liability or expense. The Net Proceeds of any recovery from a contractor or subcontractor or materialman or other person shall be paid to the Company.

Section 3.8 Construction Signage. During the Construction Period, the Agency shall have the right to erect on the Facility site at the Agency's own cost and expense a standard sign stating that economic benefits in connection with the Facility have been provided through the Agency. The sign shall be located on the site in an area consented to by the Company.

ARTICLE IV LEASE OF FACILITY; RENTAL PROVISIONS

Section 4.1 Lease of Facility. The Agency hereby subleases and leases the Facility, consisting of the Land, the Improvements and the Equipment, to the Company and the Nominee and the Company and the Nominee hereby take the Facility from the Agency upon the terms and conditions of this Lease Agreement.

Section 4.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company and the Nominee sole and exclusive possession of the Facility (subject to Sections 8.1 and 10.2 hereof), and the leasehold and subleasehold estate created hereby shall commence, and the Company shall accept possession of the Facility on the Closing Date.

(b) Except as provided in Sections 10.2 and 11.1 hereof, the estate created hereby shall terminate at 11:58 p.m. on December 31, 2054 (the “**Lease Term**”).

(c) Except as provided in Sections 8.1 and 10.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Company and the Nominee during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company’s sole cost and expense, cooperate with the Company in order that the Company and the Nominee may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

Section 4.3 Rents and Other Amounts Payable.

(a) The Company shall pay to the Agency on the Closing Date the balance of the Agency’s administrative fee in the amount of \$193,925.89 (equal to the administrative fee of \$189,743.39 plus the public hearing notice and transcript costs of \$1,182.50, plus the initial compliance fee of \$3,000). The Company and the Nominee shall pay basic rent for the Facility as follows: One Dollar (\$1.00) per year commencing on the Closing Date and on each and every January 1 thereafter during the term of this Lease Agreement. In addition, the Company and the Nominee shall pay to the Agency an annual compliance fee of \$1,500 on or before January 1 of each year commencing January 1, 2024 and continuing through the Lease Term.

(b) In addition to the payments of basic rent pursuant to Section 4.3(a) hereof, throughout the Lease Term, the Company and the Nominee shall pay to the Agency as additional rent, within ten (10) days of receipt of written demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof, including reasonable attorneys’ fees, incurred (i) by reason of the Agency’s ownership, leasing, subleasing, or financing of the Facility, or (ii) in connection with the carrying out of the Agency’s duties and obligations under the Agency Documents, the payment of which is not otherwise provided for under this Lease Agreement. The foregoing shall be in addition to any annual or continuing administrative or management fee imposed by the Agency now or hereafter.

(c) The Company and the Nominee, under the provisions of this Section 4.3, agree to make the above-mentioned payments and all other payments due to the Agency, without set-off or deduction, in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Company or the Nominee shall fail to timely make any payment required in Section 4.3(a) or 4.3(b), the Company and the Nominee shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

(d) The Company and the Nominee, under the provisions of Section 5.1 of this Lease Agreement, agree to make PILOT Payments as described in Section 5.1 and on Exhibit C

attached hereto. In the event a PILOT Payment is made after a due date (as defined in Section 5.1 hereof), in addition to the late fees assessed for late PILOT Payments that are payable to the taxing jurisdictions, the Agency will charge an additional 1.5% administrative late fee per month on the total amount due.

Section 4.4 Obligations of Company Hereunder Unconditional. The obligations of the Company and the Nominee to make the payments required in Section 4.3 hereof, and to perform and observe any and all of the other covenants and agreements on their part contained herein, shall be general obligations of the Company and the Nominee, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company and the Nominee agree they will not (i) suspend, discontinue or abate any payment required hereunder, or (ii) fail to observe any of their other covenants or agreements in this Lease Agreement.

Section 4.5 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 FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY AND THE NOMINEE OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY OR THE NOMINEE WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT WORK. THE COMPANY AND THE NOMINEE ACKNOWLEDGE THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY AND THE NOMINEE, ON BEHALF OF THEMSELVES, ARE SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY AND THE NOMINEE. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY, THE NOMINEE 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.

ARTICLE V PILOT PAYMENTS; RECAPTURE OF BENEFITS

Section 5.1 PILOT Payments.

(a) As long as this Lease Agreement is in effect, the Company and the Nominee agree to make payments in lieu of all real estate taxes and assessments (the "**PILOT Payments**") (in addition to paying all special ad valorem levies, special assessments or Special District Taxes and service charges against real property located in the Village of Hempstead, Town of

Hempstead, Hempstead Union Free School District #1, Nassau County (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) (the “**Taxing Authorities**”) which are or may be imposed for special improvements or special district improvements) which would be levied upon or with respect to the Facility if the Facility were owned by the Company or the Nominee exclusive of the Agency’s leasehold interest (the “**Taxes on the Facility**”). The periods, amounts and method of payment for such PILOT Payments are set forth in Exhibit C attached hereto. PILOT Payments shall be allocated among the Taxing Authorities in proportion to the amount of real property tax and other taxes which would have been received by each Taxing Authority if the Facility was owned by the Company or the Nominee exclusive of the Agency’s leasehold interest.

(b) After the effective date of this Lease Agreement and until the provisions of paragraph 5.1(c) become effective, the Company and the Nominee shall pay, as PILOT Payments, one hundred percent (100%) of the taxes and assessments that would be levied upon the Facility by the respective Taxing Authorities if the Facility were owned by the Company or the Nominee exclusive of the Agency’s leasehold interest.

(c) Commencing with the 2024/25 School Tax Year, the 2024/25 Village Tax Year and the 2025 General Tax Year, the Company and the Nominee shall pay, as PILOT Payments, the amounts set forth on Exhibit C attached hereto and made a part hereof, less any amounts payable by the Company and the Nominee in connection with any special ad valorem levies, special assessments, Special District Taxes and service charges levied against the Facility.

(d) The Company and the Nominee shall pay, or cause to be paid, the amounts set forth in subsections (a), (b) and (c) above, as applicable, as set forth in tax bills from the Agency or the Taxing Authorities, as the case may be. Failure to receive a tax bill shall not relieve the Company or the Nominee of their obligations to make all payments provided for hereunder. If, for any reason, the Company or the Nominee does not receive an appropriate tax bill, the Company and the Nominee shall have the responsibility and obligation to make all reasonable inquiries to the Agency and the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided therein. PILOT Payments shall be made directly to the Agency or, to the extent directed by the Agency, to the Taxing Authorities. PILOT Payments made after the due date(s) as set forth in the applicable tax bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the GML, including Section 874(5) thereof, which currently provides for an initial penalty of five percent (5%) of the amount due and an additional penalty of one percent (1%) per month on payments more than one (1) month delinquent. Anything contained in this paragraph (d) to the contrary notwithstanding, the Company and the Nominee shall have the obligation to make all annual payments required by this paragraph (other than payments of penalties, if any) in the following installments: (i) with respect to the school taxes, two equal semi-annual installments on or prior to November 10 and May 10 of each year of the Lease Term or on such other due dates as may be established from time to time during the Lease Term, (ii) with respect to the general taxes, two equal semi-annual installments on or prior to February 10 and August 10 of each year of the Lease Term or on such other due dates as may be established from time to time during the Lease Term, and (iii) with respect to the village taxes, two equal semi-annual installments on or prior to June 1 and

December 1 of each year of the Lease Term or on such other due dates as may be established from time to time during the Lease Term.

(e) During the Lease Term, the Company and the Nominee shall continue to pay all special ad valorem levies, special assessments, Special District Taxes, and service charges levied (or would be levied except for the Agency's leasehold interest) against the Facility for special improvements or special district improvements.

(f) In the event that any structural addition that increases the footprint or height of the Facility or increases the assessed value of the Facility shall be made to the building or buildings included in the Facility subsequent to the Completion Date, or any additional building or improvement shall be constructed on the Land (such structural additions, buildings and improvements being referred to hereinafter as "**Additional Facilities**"), the Company and the Nominee agree to make additional PILOT Payments to the Agency or, to the extent directed by the Agency, to the Taxing Authorities in amounts equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Additional Facilities by the Taxing Authorities if the Additional Facilities were owned by the Company or the Nominee exclusive of the Agency's leasehold interest times the assessment or assessments established for that tax year by the respective Taxing Authorities having appropriate assessing jurisdiction. All other provisions of this Section 5.1 shall apply to this obligation for additional PILOT Payments.

(g) In the event that the Agency's leasehold interest in the Facility or any part thereof terminates or expires at such time in reference to any taxable status date as to make it impossible to place such Facility or part thereof on the tax rolls of the Taxing Authorities, or appropriate special districts, as the case may be, by such taxable status date, the Company and the Nominee hereby agree to pay, at the first time taxes or assessments are due following the taxable status date on which such Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Facility or part thereof had it been on the tax rolls from the time of the termination of the Agency's leasehold interest until the date of the tax rolls following the taxable status date as of which such Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any amounts previously paid pursuant to this Section 5.1 by the Agency, the Company or the Nominee to the respective Taxing Authorities relating to any period of time after the date of termination of the Agency's interest. The provisions of this subsection (g) shall survive the termination or expiration of this Lease Agreement. Any rights the Company or the Nominee may have against its respective designees are separate and apart from the terms of this subsection (g), and this subsection (g) shall survive any transfer from the Agency to the Company or the Nominee.

(h) In the event the Facility or any part thereof is declared to be subject to taxation for taxes or assessments by an amendment to the Act or other legislative change or by a final judgment of a court of competent jurisdiction, the obligations of the Company and the Nominee under this Section 5.1 shall, to such extent, be null and void.

(i) In the event the Company shall enter into a subsequent payment-in-lieu-of-tax agreement or agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities in the jurisdiction of which the Facility is located, the obligations of the Company

and the Nominee under this Section 5.1, which are inconsistent with such future agreement or agreements, shall be superseded and shall, to such extent, be null and void.

(j) As long as this Lease Agreement is in effect, the Agency, the Company and the Nominee agree that (i) the Company and the Nominee shall be deemed to be the owner of the Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, administrative or judicial review of an assessment of the real estate with respect to the Facility and of the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Agency, at the request of the Company, shall request the Assessor of Nassau County, or any other assessor having jurisdiction to assess the Facility, to take into consideration the value of surrounding properties of like character when assessing the Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility and the Additional Facilities is reduced as a result of any such administrative or judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Facility and the Additional Facilities exclusive of the Agency's leasehold interest therein, such complaining party shall not be entitled to receive a refund or refunds of the PILOT Payments paid pursuant to this Lease Agreement and the PILOT Payments set forth on Exhibit C hereto shall not be reduced. In no event shall the Agency be required to remit to the Company, the Nominee or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Facility (or any part thereof) due to a certiorari review. If the Company or the Nominee receives a reduction in assessment in the last year of this Lease Agreement after it has made its final PILOT Payment, the Company and the Nominee acknowledge that they shall look solely to the Taxing Authorities for repayment or for a credit against the first payment(s) of Taxes on the Facility which will be due after the Facility is returned to the tax rolls. The Company and the Nominee hereby agree that they will notify the Agency if the Company or the Nominee shall have requested a reassessment of the Facility or a reduction in the taxes on the Facility or shall have instituted any tax certiorari proceedings with respect to the Facility. The Company and the Nominee shall deliver to the Agency copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company or the Nominee in connection with any reassessment of the Facility, reduction of taxes with respect to the Facility or tax certiorari proceedings with respect to the Facility.

(k) The Company and the Nominee, in recognition of the benefits provided under the terms hereof, including, but not limited to, the PILOT Payments set forth in Exhibit C hereto, and for as long as this Lease Agreement is in effect, expressly waives any rights it may have for any exemption under Section 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title 1 of Article 18-A of the GML) with respect to the Facility. The Company and the Nominee, however, reserve any such rights with respect to the Additional Facilities as referred to in subsection (f) hereof and with respect to the assessment and/or exemption of the Additional Facilities.

(l) Notwithstanding anything contained in this Lease Agreement to the contrary, the Company, the Nominee, and the Agency hereby acknowledge and agree that this Lease Agreement and the PILOT Payments payable as set forth on Exhibit C attached hereto shall be subject to review and adjustment after the third year after the date of execution hereof and every

third year thereafter in accordance with Title 2 of Article 18-A of the GML, Section 905(3). Further, this Lease Agreement shall not be renewed or renegotiated except in compliance with Section 905(4) of the GML.

Section 5.2 Sales Tax Exemption. No exemption from sales and use tax is granted by the Agency to the Company or the Nominee with respect to the Facility or the Project.

Section 5.3 Mortgage Recording Tax Exemption. No exemption from mortgage recording tax is granted by the Agency to the Company or the Nominee with respect to any Mortgage encumbering the Facility.

Section 5.4 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Lease Agreement in order to provide financial assistance to the Company and the Nominee for the Facility and to accomplish the Public Purposes of the Act. In consideration therefor, the Company and the Nominee hereby agree as follows:

(i) If there shall occur a Recapture Event after the Closing Date, but on or before December 31, 2032, the Company and the Nominee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);

(ii) If there shall occur a Recapture Event on or after January 1, 2033, but on or before December 31, 2038, the Company and the Nominee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy-five percent (75%) of the Recaptured Benefits;

(iii) If there shall occur a Recapture Event on or after January 1, 2039, but on or before December 31, 2044, the Company and the Nominee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits;

(iv) If there shall occur a Recapture Event on or after January 1, 2045 but on or before December 31, 2050, the Company and the Nominee shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty-five percent (25%) of the Recaptured Benefits; and

(v) If there shall occur a Recapture Event on or after January 1, 2051, the Company and the Nominee shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits.

(b) The term “**Recaptured Benefits**” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the

Agency's participation in the transaction contemplated by this Lease Agreement including, but not limited to, the amount equal to 100% of real property tax abatements granted pursuant to Section 5.1 hereof (i.e., the Taxes on the Facility less the PILOT Payments) (the "**Real Property Tax Abatements**"); which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company and the Nominee be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after such notice.

(c) The term "**Recapture Event**" shall mean any of the following events:

(i) The occurrence and continuation of an Event of Default under this Lease Agreement (other than as described in clause (iv) below or in subsections (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or

(ii) The Facility shall cease to be a "project" within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Company and/or the Nominee; or

(iii) The sale of the Facility or closure of the Facility and/or departure of the Company or the Nominee from the Town of Hempstead, except as due to casualty, condemnation or force majeure as provided in subsection (e) below or as provided in Section 9.3 hereof; or

(iv) Failure of the Company to create or cause to be maintained the number of FTE jobs at the Facility as provided in Section 8.11 of this Lease Agreement, which failure, in the sole but reasonable judgement of the Agency, is not reflective of the business conditions of the Company or the subtenants of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or

(v) Any significant and adverse deviations from the Project Application Information which, in the sole judgement of the Agency (except as otherwise agreed to by the Agency), would constitute a significant diminution of the Company's and/or the Nominee's activities in, or commitment to, the Town of Hempstead, Nassau County, New York.

(d) Provided, however, if a Recapture Event has occurred due solely to the failure of the Company to create or cause to be maintained the number of FTEs at the Facility as provided in Section 8.11 hereof in any Tax Year but the Company has created or caused to be maintained at least 90% of such required number of FTEs for such Tax Year, then in lieu of recovering the Recaptured Benefits provided above, the Agency may, in its sole discretion, adjust the PILOT Payments due hereunder on a pro rata basis so that the amounts payable will be adjusted upward retroactively for such Tax Year by the same percentage as the percentage of FTEs that are below the required FTE level for such Tax Year. Such adjustments to the PILOT Payments may be made each Tax Year until such time as the Company has complied with the required number of FTEs pursuant to Section 8.11 hereof.

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a “force majeure” event (as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by governmental authority of all or part of the Facility, (iii) the inability or failure of the Company or the Nominee after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a “**Loss Event**”) to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company, the Nominee or any of their respective affiliates so long as the Company, the Nominee or any of their respective affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof, (iv) the early termination of this Lease Agreement by the Company as a result of the PILOT Payments for the then current Tax Year being in excess of the taxes and assessments that would be levied upon the Facility by the respective Taxing Authorities if the Facility were owned by the Company exclusive of the Agency’s leasehold interest, or (v) the early termination of this Lease Agreement by the Company as a result of a change in the PILOT Payments pursuant to the provisions of Section 905(3) of the Act, provided that no Event of Default then exists under this Lease Agreement.

(f) The Company and the Nominee covenant and agree to furnish, and to cause any non-residential sublessee of the Facility approved by the Agency to furnish, the Agency with written notification within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company and the Nominee of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(g) In the event any payment owing by the Company or the Nominee under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company or the Nominee shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(h) The Company and the Nominee shall pay to the Agency all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.4.

ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Facility by Company.

(a) The Company and the Nominee shall not abandon the Facility or cause or permit any waste to the Improvements. During the Lease Term, the Company and the Nominee shall not remove any material part of the Facility outside of the jurisdiction of the Agency and shall (i) keep the Facility or cause the Facility to be kept in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility; and (iii) from and after the Completion Date, operate the Facility in a sound and economic manner.

(b) The Company and the Nominee from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof, provided such actions do not adversely affect the structural integrity of the Facility. The Company and the Nominee may not make any changes to the footprint of the Facility, and any additions expanding the square footage of the Facility (including the addition of any stories whether above or below ground) or make any additions, modifications or improvements to the Facility which will materially and/or adversely affect the structural integrity or value of the Facility without the prior written consent of the Agency which consent shall not be unreasonably withheld or delayed. All such additions, modifications or improvements made by the Company and/or the Nominee after the date hereof shall become a part of the Facility and the Property of the Agency. The Company and the Nominee agree to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to or an interest in such Property.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 3.5 hereof, the Company, the Nominee or any permitted sublessee (other than residential sublessees) of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility, so long as such additional property is properly identified by such appropriate records, including computerized records, as approved by the Agency. The Company and the Nominee from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company and the Nominee from time to time may remove or permit the removal of such machinery, equipment and other personal property from the 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 Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided further, that if any damage to the Facility is occasioned by such removal, the Company and the Nominee agree promptly to repair or cause to be repaired such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges.

(a) Subject to the Real Property Tax Abatements as provided hereunder, the Company and the Nominee agree to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost which may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, PILOT Payments and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other Property installed or brought by the Company and/or the Nominee therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Facility or any part or component thereof, or the rental or sale of the Facility or any part thereof, and any taxes levied upon or with respect to the income or revenues of the Agency from the Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body 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 and the Nominee shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company and the Nominee may in good faith contest any such taxes, assessments and other charges (other than PILOT Payments). In the event of any such proceedings, the Company and the Nominee may permit the taxes, assessments or other charges (but in no event the PILOT Payments) so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the 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 and (ii) the Company or the Nominee shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency.

(c) The Agency agrees that if it or the Company or the Nominee contests any taxes, assessments or other charges provided for in paragraph (b) hereof, all sums returned and received by the Agency, as a result thereof, will be promptly transmitted by the Agency to the Company or the Nominee, as applicable, and that the Company or the Nominee, as applicable, shall be entitled to retain all such amounts; which such obligation shall survive the expiration or termination of this Lease Agreement.

(d) Within thirty (30) days of receipt of written request therefor, the Company and the Nominee shall deliver to the Agency, official receipts of the appropriate taxing authorities or other proof reasonably satisfactory to the Agency evidencing payment of any tax.

Section 6.4 Insurance Required. At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, if any, the Company and the Nominee shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by facilities of like size and type as the Facility and shall pay or cause to be paid, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the greater of \$1,000,000 or the amount as may be required by any Lender. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance which the Company or any permitted sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or any permitted sublessee who are located at or assigned to the Facility. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Company, any permitted sublessee, any contractor or subcontractor first occupy the Facility.

(c) Insurance protecting the Agency, the Company and the Nominee against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company and the Nominee under Section 8.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (per occurrence for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent protecting the Agency, the Company and the Nominee against any loss, liability or damage for personal injury, including bodily injury or death, and property damage); and blanket excess liability coverage, in an amount not less than \$5,000,000 per occurrence, protecting the Agency, the Company and the Nominee against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

(d) During the Construction Period, if any (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Company shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

(i) Workers' compensation and employer's liability with limits in accordance with applicable law.

(ii) Comprehensive general liability providing coverage for:

Premises and Operations
Products and Completed Operations
Owners Protective
Contractors Protective
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 (per occurrence for personal injury, including bodily injury or death, and property damage).

(iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iv) Excess "umbrella" liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000 per occurrence.

(e) A policy or policies of flood insurance in an amount not less than the greater of \$1,000,000 or the amount that may be required by any Lender or the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Agency that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

(f) The Company and the Nominee shall also maintain such other insurance on or in connection with the Facility as the Agency may require.

(g) The Agency does not in any way represent that the insurance specified in this Lease Agreement, whether in scope or coverage or limits of coverage, is adequate or sufficient to protect the Company's and the Nominee's business or interests.

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be in form and substance satisfactory to the Agency, and procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 6.4(a) and (e) shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. 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 procuring entity is engaged. All policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days' prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Section 6.4(d)(ii), (iii) and (iv) shall name the Agency, the Company and the Nominee as additional insureds. The Agency acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Company and/or the Nominee to any Lender pursuant to the Mortgage, and the Agency consents thereto. The Agency hereby acknowledges that upon request of any Lender, the Company and the Nominee will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under any Mortgage) to any Lender the policies of insurance required under Section 6.4(a), so and in such manner and form that any Lender shall at all times, upon such request and until the payment in full of any Loan, have and hold said policies and the Net Proceeds thereof as collateral and further security under any Mortgage for the payment of any Loan. The policies required under Sections 6.4(a), (b) and (c) shall contain appropriate waivers of subrogation.

(b) In addition, each contractor must protect the Agency with respect to the policies required under Section 6.4(d)(ii), (iii) and (iv) as an additional insured on a primary and non-contributory basis via ISO endorsements CG 20 26 and CG 20 37 or their equivalents and the endorsements must specifically identify the Agency as an additional insured.

(c) The certificates of insurance required by Section 6.4(a), (c) and (e) hereof shall be deposited with the Agency on or before the Closing Date. The certificate of insurance required by Section 6.4(b) hereof shall be deposited with the Agency at such times as provided therein. A copy of the certificates of insurance required by Section 6.4(d)(ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any Construction Period. The Company and the Nominee shall deliver to the Agency 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 of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy or policies, the Company and the Nominee shall furnish to the Agency and any other appropriate Person a new certificate or certificates of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Lease Agreement. The Company and the Nominee shall provide such further information with respect to the insurance coverage required by this Lease Agreement as the Agency may from time to time reasonably require, including, without limitation, a copy of the insurance policy.

(d) The minimum insurance requirements set forth under Section 6.4 and this Section 6.5 shall not limit, abridge, or modify the Company's and the Nominee's obligations under Section 8.2 hereof to indemnify and hold the Agency harmless from and against certain damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses, as more fully set forth in Section 8.2.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) and (e) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Section 6.4(b), (c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.7 Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company or the Nominee fails, beyond the expiration of any applicable notice and cure periods, (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, PILOT Payment, assessment or other governmental charge required to be paid by Section 6.3 hereof (unless contested in accordance with the provisions of Section 6.3), (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Facility or any part thereof (unless contested in accordance with the provisions of Section 8.8(b) hereof), or (v) to pay any other amount or perform any act required to be paid or performed by the Company or the Nominee hereunder, the Agency may, but shall have no obligation to, pay or cause to be paid such tax, PILOT Payment, assessment or other governmental charge, premium for such insurance or any such other payment, or may perform any such act. No such payment shall be made or act performed by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency to the Company and the Nominee, and in the case of any tax,

assessment or governmental charge or the amounts specified in clauses (i) and (iv) hereof, no such payment shall be made in any event if the Company or the Nominee is contesting the same in good faith to the extent and as permitted by this Lease Agreement, unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Company or the Nominee. The Company and the Nominee shall, on demand, reimburse the Agency for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon, from the date of payment of such amount, expense or cost by the Agency at a rate equal to two percent (2%) plus the Prime Rate, but in no event higher than the maximum lawful prevailing rate.

ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Facility.

(a) If the Facility or any part or component thereof shall be damaged or destroyed (in whole or in part) at any time during the Lease Term:

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

 (ii) there shall be no abatement or reduction in the amounts payable by the Company and the Nominee under this Lease Agreement, including, without limitation, the PILOT Payments (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated);

 (iii) the Company or the Nominee shall promptly give written notice thereof to the Agency;

 (iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be (A) paid to the Company, the Nominee or the Lender, as applicable, for the replacement, repair, rebuilding, restoration or relocation of the Facility as provided in Section 7.1(b) hereof or (B) applied pursuant to Section 7.1(e) hereof; and

 (v) if the Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.1(b) hereof, this Lease Agreement shall be terminated at the option of the Agency and the provisions of Section 7.1(e) hereof shall apply.

(b) Any replacements, repairs, rebuilding, restorations or relocations of the Facility by the Company or the Nominee after the occurrence of such damage or destruction shall be subject to the following conditions:

 (i) the Facility shall be in substantially the same condition and value as an operating entity as existed prior to the damage or destruction;

 (ii) the Facility shall continue to constitute a “project” as such term is defined in the Act;

(iii) the Facility will be subject to no Liens, other than Permitted Encumbrances; and

(iv) any other conditions the Agency may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company or the Nominee in accordance with the terms of the applicable contracts and shall automatically become a part of the Facility as if the same were specifically provided herein.

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such repair, replacement, rebuilding, restoration or relocation, the Company and the Nominee shall nonetheless complete the work, or cause the work to be completed pursuant to the terms of this Lease Agreement, and pay from its own moneys, or cause to be paid by such other party as may be obligated for payment that portion of the costs thereof in excess of such Net Proceeds. All such repairs, replacements, rebuilding, restoration or relocations made pursuant to this Section, whether or not requiring the expenditure of the Company's or the Nominee's own money or moneys of any other person, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) If the Company and the Nominee shall not repair, replace, rebuild, restore or relocate the Facility, the Company shall be deemed to have exercised its option to terminate this Lease Agreement pursuant to Section 11.1 hereof. Any Net Proceeds derived from insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof and the balance shall be delivered to the Company and the Nominee. If an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

Section 7.2 Condemnation.

(a) If title to or use of the Facility shall be taken by Condemnation (in whole or in part) at any time during the Lease Term:

(i) the Agency shall have no obligation to repair, replace, rebuild, restore or relocate the Facility or to acquire, by construction or otherwise, facilities of substantially the same nature as the Facility ("**Substitute Facilities**");

(ii) there shall be no abatement or reduction in the amounts payable by the Company and the Nominee under this Lease Agreement including, without limitation, the PILOT Payments (whether or not the Facility is repaired, replaced, rebuilt, restored or relocated or Substitute Facilities are acquired);

(iii) the Company or the Nominee shall promptly give written notice thereof to the Agency;

(iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be (A) paid to the Company, the Nominee or the Lender, as applicable, for the replacement, repair, rebuilding, restoration or relocation of the Facility or acquisition of Substitute Facilities as provided in Section 7.2(b) hereof or (B) applied pursuant to Section 7.2(e) hereof; and

(v) if the Facility is not repaired, replaced, rebuilt, restored or relocated, as provided herein and in Section 7.2(b) hereof, this Lease Agreement shall be terminated at the option of the Agency and the provisions of Section 7.2(e) hereof shall apply.

(b) Any repairs, replacements, rebuilding, restorations or relocations of the Facility by the Company or the Nominee after the occurrence of such Condemnation or acquisitions by the Company or the Nominee of Substitute Facilities shall be subject to the following conditions:

(i) the Facility or the Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to the Condemnation;

(ii) the Facility or the Substitute Facilities shall continue to constitute a "project" as such term is defined in the Act;

(iii) the Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances; and

(iv) any other conditions the Agency may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company and the Nominee in accordance with the terms of the applicable contracts and shall automatically become a part of the Facility as if the same were specifically described herein. Any Net Proceeds of a Condemnation not used to repair, replace, rebuild, restore, or relocate the Facility shall belong to the Company and the Nominee.

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such repair, replacement, rebuilding, restoration, relocation or acquisition of Substitute Facilities, the Company and the Nominee shall nonetheless complete, or cause to be completed, the work or the acquisition pursuant to the terms of this Lease Agreement and pay from its own moneys, or cause to be paid by such other party as may be obligated for payment, that portion of the costs thereof in excess of such Net Proceeds. All such repairs, replacements, rebuilding, restoration, relocations and such acquisition of Substitute Facilities made pursuant to this Section, whether or not requiring the expenditure of the Company's or the Nominee's own money or moneys of any other person, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) If the Company and the Nominee shall not repair, replace, rebuild or restore the Facility or acquire Substitute Facilities, the Company shall be deemed to have exercised its option to terminate this Lease Agreement pursuant to Section 11.1 hereof. Any Net Proceeds derived from the Condemnation shall be applied to the payment of the amounts required to be

paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof and any balance remaining thereafter shall belong to the Company and the Nominee.

Section 7.3 Condemnation of Company-Owned Property. The Company and the Nominee shall be entitled to the Net Proceeds of any casualty, damage or destruction insurance proceeds or any Condemnation award or portion thereof made for damage to or taking of any Property which, at the time of such damage or taking, is not part of the Facility.

Section 7.4 Waiver of Real Property Law Section 227. The Company and the Nominee hereby waive the provisions of Section 227 of the Real Property Law of the State or any law of like import now or hereafter in effect.

ARTICLE VIII SPECIAL COVENANTS

Section 8.1 Right to Inspect Facility. Subject to the rights of residential tenants of the Facility, the Agency and its duly authorized agents shall have the right at all reasonable times on reasonable prior written notice (except in the event of emergency in which event prior notice shall not be required) to inspect the Facility, including, without limitation, for the purpose of ascertaining the condition of the Environment at, on or in the vicinity of the Facility.

Section 8.2 Hold Harmless Provisions.

(a) The Company and the Nominee agree that the Agency, its directors, members, officers, agents (except the Company), and employees (the “**Indemnified Parties**”) shall not be liable for and agree to protect, defend, indemnify, save, release and hold the Indemnified Parties harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses (including, without limitation, reasonable attorneys’ and experts’ fees, expenses and disbursements, incurred whether by reason of third party claims or to enforce the terms, conditions and provisions of this Lease Agreement) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Agency relating to, resulting from or arising out of: (i) 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 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 Facility or the Land, (ii) the Project Work and the Agency’s acquisition, owning, leasing and subleasing of the Facility, including, without limiting the generality of the foregoing, all claims arising from the breach by the Company or the Nominee of any of its covenants contained herein, 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 Lease Agreement (including without limitation this Section) or any of the other documents delivered in connection herewith by the Agency) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, (iii) the conditions of the Environment at, on or in the vicinity of the Facility, (iv) the Project Work or the operation or use of the Facility in violation of any applicable Environmental Law for the

storage, treatment, generation, transportation, processing, handling, management, production or Disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, except in compliance with all applicable Environmental Laws, (v) the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance or waste on, at or from the Facility, (vi) the failure promptly to undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility, required by any Environmental Law, (vii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the Project Work, the condition of the Facility or the ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law, (viii) a violation of any applicable Environmental Law, (ix) non-compliance with any Environmental Permit, (x) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company or the Nominee in this Lease Agreement, or (xi) the costs of any required or necessary investigation, assessment, testing, repair, cleanup, or detoxification of the Facility and the preparation of any closure or other required plans; provided that any such losses, damages, liabilities or expenses of the Agency are not incurred on account of and do not result from the gross negligence or intentional or willful wrongdoing of the Indemnified Parties. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of any of the Indemnified Parties, 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 Lease Agreement, the obligations of the Company and the Nominee pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement 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, the 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 Indemnified Parties, relating to the enforcement of the provisions herein specified. The liability of the Company and the Nominee to the Agency hereunder shall in no way be limited, abridged, impaired or otherwise affected by (i) any amendment or modification of any of the Transaction Documents by or for the benefit of the Agency, the Company, the Nominee or any subsequent owners or users of the Facility, (ii) any extensions of time for payment or performance required by any of the Transaction Documents, (iii) the release of the Company, the Nominee or any other person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Transaction Documents by operation of law, either by the Agency's voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Transaction Documents, (v) any exculpatory provision contained in any of the Transaction Documents limiting the Agency's recourse to any other security or limiting the Agency's rights to a deficiency judgment against the Company or the Nominee, (vi) any investigation or inquiry conducted by or on the behalf of the Agency or any information which the Agency may have or

obtain with respect to the condition of the Environment at, or ecological condition of, the Facility, (vii) the sale, assignment or foreclosure of any mortgage relating to all or any part of the Facility, but only with respect to a Release that has occurred prior to any such event, (viii) the sale, assignment, subleasing, transfer or conveyance of all or part of the Land or the Facility or the Company's or the Nominee's interests and rights in, to, and under this Lease Agreement or the termination of this Lease Agreement, but only with respect to a Release that has occurred prior to any such event, (ix) the death or legal incapacity of the Company or the Nominee, (x) the release or discharge, in whole or in part, of the Company or the Nominee in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, or (xi) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Company or the Nominee under this Lease Agreement, or any other Transaction Document, other than a validly authorized, duly executed and enforceable written release by the Agency or Indemnified Party.

(c) In the event of any claim against the Indemnified Parties by any employee or contractor of the Company, the Nominee 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 and the Nominee 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.

(d) Notwithstanding any provisions of this Section 8.2, the Agency retains the right to defend itself, and in any such defense of itself, the Agency may select its own counsel (subject to approval by the Company's insurance carrier, if applicable with respect to the claim, such consent not to be unreasonably withheld), and any and all costs of such defense, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses, shall be paid by the Company and the Nominee.

(e) To effectuate the provisions of this Section 8.2, the Company and the Nominee shall provide for and insure in the liability policies required in Section 6.4 hereof, its liabilities assumed pursuant to this Section 8.2.

Section 8.3 Company/Nominee to Maintain Its Existence. Each of the Company and the Nominee covenants and agrees that at all times during the Lease Term, it will (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Lease Agreement, (iv) not consolidate with or merge into another limited liability company, corporation, or other type of business entity, or permit one or more limited liability companies, corporations, or other type of business entity, to consolidate with or merge into it, and (v) not change, directly or indirectly, however accomplished, whether in a single transaction or in a series of related or unrelated transactions, more than 49% of the ownership or control of the Company or the Nominee or sell or transfer, directly or indirectly, however accomplished, whether in a single transaction or in a series of related or unrelated transactions, more than 49% of the equity interests in the Company or the Nominee, except with consent of the Agency, which consent shall not be unreasonably withheld or delayed or conditioned; provided, however, that without Agency consent but on prior written

notice to the Agency, (w) the Lender shall have the right to foreclose or execute upon its pledge of the managing member's interest in the Company and succeed to the managing member's interest in the Company, (x) one (1) or more members or indirect interest holders in the Company shall have the right to acquire the ownership interests in the Company held by the tax credit investor member of the Company, (y) the interest of the tax credit investor (or interests therein) in the Company may be transferred to an affiliate of the tax credit investor, and (z) the tax credit investor may remove and replace the managing member of the Company with an affiliate of the tax credit investor pursuant to the Amended and Restated Operating Agreement of the Company.

Section 8.4 Qualification in State. The Company and the Nominee throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 8.5 Agreement to File Annual Statements and Provide Information. Annually, and upon request, the Company shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Facility as a result of the Agency's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained. The Company further agrees to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs as the Agency deems necessary, including, to enable the Agency to make any report required by law, governmental regulation, 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 Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency. If the Agency authorizes any subletting of the Facility to non-residential sublessees, the Company shall cause such non-residential sublessees at the Facility to comply with the requirements of this Section 8.5 by requiring each such non-residential sublessee to enter into a Tenant Agency Compliance Agreement as described in Section 9.3 hereof.

Section 8.6 Books of Record and Account; Financial Statements. The Company and the Nominee at all times agree to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and financial affairs of the Company and the Nominee.

Section 8.7 Compliance with Orders, Ordinances, Etc.

(a) The Company and the Nominee, throughout the Lease Term, each agrees that it will promptly comply, and use commercially reasonable efforts to cause any sublessee, tenant or occupant of the Facility to comply, in all material respects, 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 Facility or any part thereof, or to the Project Work, or to any use, manner of use or condition of the Facility 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 Facility or any part thereof, or of the Project Work, or of any use, manner of use or condition of the Facility or any part thereof or of any companies or associations insuring the premises.

(b) Notwithstanding the provisions of subsection (a) above, the Company and the Nominee may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company or the Nominee 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 the Company and the Nominee that by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company and the Nominee 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 Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Company and the Nominee shall use their reasonable best efforts not to cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency.

Section 8.8 Discharge of Liens and Encumbrances.

(a) The Company and the Nominee, throughout the Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof, without the Agency's consent, including without limitation, by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) above, the Company and the Nominee may in good faith contest any such Lien. In such event, the Company and the Nominee 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 the Company and the Nominee in writing that by nonpayment of any such item or items, the Facility or any part thereof may be subject to loss or forfeiture. In the event of such notice the Company and the Nominee 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 Company's or Nominee's receipt of notice of the filing or perfection thereof.

Section 8.9 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company and the Nominee shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility and to any investment credit or other tax credit, including but not limited to low-income housing tax credits, with respect to any part of the Facility.

Section 8.10 Employment Opportunities; Notice of Jobs. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which the Company is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300), as superseded by the Workforce Innovation and Opportunity Act (PL. 113-128), in which the Facility is located (collectively, the “**Referral Agencies**”). The Company also agrees, and shall cause any and all sublessees (other than residential tenants) to agree, that except as is otherwise prohibited by collective bargaining contracts or agreements, they will, where practicable, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 8.11 Employment at the Facility. The Company hereby agrees to create and maintain at all times at the Facility: seven (7) full time equivalent employees as of December 31, 2026, and thereafter throughout the Lease Term, calculated on the basis of 35 hours per week who are employees of the Company or any subsidiary or affiliates of the Company, or any consultants, contractors or subcontractors of the Company, or any subsidiary or affiliates of the Company, whose place of employment or workplace is located at the Facility (including the full time equivalent employees of all tenants at the Facility) (“**FTE**”).

Section 8.12 Annual Compliance Certificate. The Company and the Nominee shall deliver to the Agency each year no later than January 15th, a certificate signed by an Authorized Representative of each of the Company and the Nominee in the form attached hereto as Exhibit K, together with all attachments referenced therein. The Company and the Nominee shall also deliver to the Agency, within thirty (30) days from the date of receipt thereof, copies of its annual audited or reviewed financial statements.

Section 8.13 Requirements of Labor Law Section 224-a.

(a) The Company and the Nominee hereby acknowledge that the Agency has made the Company and the Nominee 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 and the Nominee represent and warrant that they have read and made themselves 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 and the Nominee covenant and agree with the Agency to comply with the following requirements:

(i) The Company and the Nominee shall certify, under penalty of perjury, within five (5) days of commencement of construction work 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 and the Nominee are required to certify as set forth above, then the Company and the Nominee shall make such certification pursuant to the form attached to this Agreement as Exhibit L. 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.

(ii) The Company and the Nominee 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 or the Nominee 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 and/or the Nominee 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 or the Nominee obtains an opinion of the public subsidy board with respect to the Project, the Company or the Nominee, as applicable, shall deliver to the Agency: (1) a copy of such opinion within ten (10) days after receipt by the Company or the Nominee, and (2) any correspondence between the Company and/or the Nominee 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 M on the Closing Date.

ARTICLE IX RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

Section 9.1 Restriction on Sale of Facility; Release of Certain Land.

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof, or any of its rights under this Lease Agreement, without the prior written consent of the Company.

(b) The Agency, the Company and the Nominee from time to time may release from the provisions of this Lease Agreement and the leasehold estate created hereby any part of, or interest in, the Land which is not necessary, desirable or useful for the Facility. In such event,

the Agency, at the Company's sole cost and expense, shall execute and deliver any and all instruments necessary or appropriate so to release such part of, or interest in, the Land. As a condition to such release, the Agency shall be provided with a copy of the instrument transferring such title or interest in such Land, an instrument survey of the Land to be conveyed, together with a certificate of Authorized Representatives of the Company and the Nominee stating that there is then no Event of Default under this Lease Agreement and that such part of, or interest in, the Land is not necessary, desirable or useful for the Facility.

(c) No conveyance of any part of, or interest in, the Land effected under the provisions of this Section 9.1 shall entitle the Company or the Nominee to any abatement or diminution of the rents payable by it under this Lease Agreement or any abatement or diminution of the PILOT Payments.

Section 9.2 Removal of Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such items from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, provided that such removal will not materially impair the operation of the Facility for the purpose for which it is intended or change the nature of the Facility so that it does not constitute a "project" under the Act.

(b) Upon the request of the Company, the Agency shall execute and deliver to the Company all instruments, in form and substance reasonably satisfactory to the Agency, necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including reasonable attorneys' fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

(c) The removal of any item of Equipment pursuant to this Section shall not entitle the Company or the Nominee to any abatement or diminution of the PILOT Payments or any other amounts payable by it under this Lease Agreement.

Section 9.3 Assignment and Subleasing.

(a) This Lease Agreement may not be assigned, in whole or in part, and the Facility may not be subleased, in whole or in part (including successive generation subleases) or otherwise used or occupied, except for residential subleases of individual units within the Facility entered into in the ordinary course of business of the Company, without the prior written consent of the Agency, in each instance, which consent shall not be unreasonably withheld or delayed, but shall be subject to the dates of the Agency's board meetings, and which consent may be fully and effectively given by the execution and delivery of a Tenant Agency Compliance Agreement by an Authorized Representative of the Agency in substantially the form attached hereto as Exhibit I. Notwithstanding anything to the contrary contained herein or in any of the other Transaction Documents, residential subleases of individual units within the Facility entered into in the ordinary course of business of the Company shall be permitted without the

consent of the Agency. Notwithstanding the foregoing, the Company is authorized to enter into the Master Lease Agreement. Any assignment or sublease shall be on the following conditions, as of the time of such assignment or sublease:

(i) no assignment or sublease shall relieve the Company or the Nominee from primary liability for any of its obligations hereunder unless the Agency consents thereto, which consent shall not be unreasonably withheld or delayed subject to the dates of the Agency's board meetings and which consent shall be conditioned upon the Agency being indemnified and held harmless to its reasonable satisfaction;

(ii) the assignee or sublessee (except in the case of a true sublessee in the ordinary course of business) shall assume the obligations of the Company and the Nominee hereunder to the extent of the interest assigned or subleased;

(iii) except with respect to residential subleases of individual units, the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;

(iv) neither the validity nor the enforceability of this Lease Agreement shall be adversely affected thereby;

(v) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act, and, without limiting the generality of the foregoing, no assignment or sublease shall cause the Facility to be used in violation of Section 862(2)(a) of the Act and no assignment or sublease shall cause the Facility to be occupied by a sublessee in violation of Section 862(1) of the Act; and

(vi) any non-residential sublessee will execute and deliver a Tenant Agency Compliance Agreement, satisfactory to the Agency in substantially the form attached hereto as Exhibit I; and

(vii) any sublease between the Company and a non-residential sublessee shall be for "community space" purposes and shall be at an annual rental that shall not exceed \$5.00 per rentable square foot, which amount may escalate by no more than 2% per year.

(b) Except with respect to residential subleases of individual units and the Master Lease Agreement, if the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 9.3, the Company at its sole cost and expense shall furnish the Agency with opinions, in form and substance reasonably satisfactory to the Agency, (i) of Transaction Counsel as to item (v) above, and (ii) of Independent Counsel as to items (i), (ii), and (iv) above.

(c) In accordance with Section 862(1) of the Act, no assignment or sublease shall cause the Facility to be occupied by an assignee or sublessee whose occupancy would result in the removal of a facility or plant of the proposed assignee or sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such

assignee or sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

- (i) that such occupancy of the Facility is reasonably necessary to discourage the proposed assignee or sublessee from removing such other plant or facility to a location outside the State, or
- (ii) that such occupancy of the Facility is reasonably necessary to preserve the competitive position of the proposed assignee or sublessee in its respective industry.

Section 9.4 Merger of Agency.

(a) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or the transfer of the Agency's interest in the entire Facility to, any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility and to continue the tax benefits contemplated by the Transaction Documents, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease Agreement 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 Facility shall be transferred.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to the Company and shall, upon request, furnish to the Company, at the sole cost and expense of the Company, a favorable opinion of Independent Counsel as to compliance with the provisions of Section 9.4(a) hereof. The Agency promptly shall furnish such additional information with respect to any such transaction as the Company may reasonably request.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

- (a) The following shall each be "Events of Default" under this Lease Agreement:
 - (i) the failure by the Company or the Nominee to pay or cause to be paid, on the date due, the amounts specified to be paid pursuant to Section 4.3(a) and (b) hereof;
 - (ii) the failure by the Company or the Nominee to observe and perform any covenant contained in Sections 2.2(e), (f) or (i), 6.3, 6.4, 6.5, 8.2, 8.4, 8.5, 8.11, 8.12, 9.3, and 10.4 and Article XIII hereof;
 - (iii) the failure by the Company or the Nominee to pay or cause to be paid PILOT Payments or the Recaptured Benefits, in each case on the dates due, beyond applicable cure period, if any;
 - (iv) the occurrence and continuation of a Recapture Event;

(v) any representation or warranty of the Company or the Nominee herein, in any of the Company Documents or in the Project Application Information shall prove to have been false or misleading in any material respect;

(vi) the failure by the Company or the Nominee to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii), (iii) and (vii)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, has been given to the Company and the Nominee by the Agency; provided, however, that in the event such covenant, condition or agreement is not capable of being cured, observed or performed within thirty (30) days after written notice but the Company is proceeding diligently and in good faith to cure such default, then the Company shall be permitted an additional ninety (90) days within which to remedy such default;

(vii) the dissolution or liquidation of the Company the Nominee; or the failure by the Company or the Nominee to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company or the Nominee generally to pay its debts as they become due; or an assignment by the Company or the Nominee for the benefit of creditors; or the commencement by the Company or the Nominee (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company or the Nominee (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company or the Nominee as the debtor, or such case or proceeding is consented to by the Company or the Nominee or remains un-dismissed for forty (40) days, or the Company or the Nominee consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company or the Nominee for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;

(viii) an Event of Default under the Mortgage, if any, shall have occurred and be continuing beyond any applicable cure period therein;

(ix) a default by any non-residential tenant under its respective Tenant Agency Compliance Agreement shall have occurred and be continuing beyond any applicable cure period.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 3.4, 6.1 and 8.11 of this Lease Agreement, and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuation of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public

enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault; provided, however, that "force majeure" shall not mean or include the Company's failure or inability to obtain any zoning, land use, site plan or similar governmental approval required for the construction, equipping and operation of the Facility. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) declare, by written notice to the Company and the Nominee, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 4.3(a) and (b) hereof, (B) all unpaid and past due PILOT Payments, (C) all due and owing Recaptured Benefits, and (D) all other payments due under this Lease Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vii) hereof shall have occurred and be continuing, such installments of rent and other payments due under this Lease Agreement shall become immediately due and payable without notice to the Company or the Nominee or the taking of any other action by the Agency;

(ii) terminate this Lease Agreement and the Company Lease and reconvey the Equipment to the Company. The Agency shall have the right to execute appropriate lease termination documents with respect to the Facility and to place the same on record in the Nassau County Clerk's office, at the sole cost and expense of the Company and the Nominee and in such event the Company and the Nominee waive delivery and acceptance of such lease termination documents and the Company and the Nominee hereby appoint the Agency their 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 their behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such lease termination documents; or

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

(b) No action taken pursuant to this Section 10.2 (including termination of this Lease Agreement) shall relieve the Company or the Nominee from its obligation to make all payments required by Section 4.3 hereof or due and owing PILOT Payments or Recaptured Benefits.

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 Agreement 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 and 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. 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 in this Lease Agreement.

Section 10.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company or the Nominee should default under any of the provisions of this Lease Agreement and the Agency should employ 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 or the Nominee herein contained, the Company and the Nominee shall, within ten (10) days after the Agency's written demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any 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 OF LEASE AGREEMENT OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of Lease Agreement. The Company shall have the option to simultaneously terminate this Lease Agreement and the Company Lease at any time upon 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 and stating the date upon which such payments required by Section 11.2 hereof shall be made (which date shall not be less than forty five (45) nor more than 90 days from the date such certificate is filed) and upon compliance with the requirements set forth in Section 11.2 hereof.

Section 11.2 Conditions to Termination of Lease Agreement. In the event of the termination or expiration of this Lease Agreement in accordance with the provisions of Sections 4.2, 10.2 or 11.1 hereof, the Company and the Nominee shall make or cause to be made the following payments:

(a) To the Agency or the Taxing Authorities, as appropriate pursuant to Section 5.1 hereof: all PILOT Payments due and payable hereunder as of the date of the termination or expiration of this Lease Agreement;

- (b) To the Agency: the purchase price with respect to the Equipment of one dollar (\$1.00);
- (c) To the Agency: all amounts due and payable under Section 5.4 hereof;
- (d) To the Agency: an amount certified by the Agency to be sufficient to pay all unpaid fees and expenses of the Agency incurred under the Agency Documents; and
- (e) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, including reasonable attorneys' fees, due and payable or to become due and payable under the Company Documents and/or the Nominee Documents.

Section 11.3 Conveyance on Termination. At the closing of any expiration or termination of this Lease Agreement, the Agency shall, upon receipt of the amounts payable pursuant to Section 11.2 hereof, deliver to the Company and the Nominee all necessary documents, in form and substance satisfactory to the Agency (i) to terminate this Lease Agreement and the Company Lease and to convey the Equipment to the Company, subject in each case only to the following: (A) any Liens to which leasehold estate or title to such Property was subject when conveyed to the Agency, (B) any Liens created at the request of the Company or the Nominee, to the creation of which the Company or the Nominee consented or in the creation of which the Company or the Nominee acquiesced, (C) any Permitted Encumbrances, and (D) any Liens resulting from the failure of the Company or the Nominee to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default hereunder; and (ii) to release and convey to the Company and the Nominee all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Facility (but not including any Unassigned Rights). At the closing of any expiration or termination of this Lease Agreement, and unless otherwise waived by the Agency, as a condition to such termination or expiration, the Company shall request each Lender to release the Agency from any Mortgage and any other Loan Documents to which it is a party in writing and cause such releases to be recorded as applicable.

ARTICLE XII LENDER PROVISIONS

Section 12.1 Subordination of Lease Agreement. This Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage which may be granted by the Agency, the Company and the Nominee on the Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 12.2 Mortgage and Pledge of Agency's Interests to Lender. The Agency shall at the request of, and at the sole cost and expense of, the Company (i) mortgage its interest in the Facility, and (ii) pledge and assign its rights to and interest in this Lease Agreement (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 D. The Company and the Nominee hereby acknowledge and consent to such mortgage, pledge and

assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such mortgage, pledge and assignment, continue to run to the Agency for its benefit.

Section 12.3 Pledge of Company's and Nominee's Interest to Lender. The Company and the Nominee shall have the right to pledge and assign its rights to and interest in this Lease Agreement and the Plans and Specifications to any Lender as security for the payment of the principal of and interest on the Loan (as hereinafter defined). The Agency hereby acknowledges and consents to any such pledge and assignment by the Company and/or the Nominee.

Section 12.4 Making of Loans; Disbursement of Loan Proceeds. The Agency acknowledges that the Company and/or the Nominee may request one or more Lenders to make one or more loans to finance and refinance the costs of the acquisition of the Facility and/or the Project Work or to reimburse the Company and/or the Nominee for the cost of acquiring the Facility and/or the Project Work (the "**Loan**"). Proceeds of such Loan shall be disbursed by such Lender in accordance with the provisions of the Mortgage or other related documentation applicable to such Loan.

Provided that the Agency shall have received the notice of the name and address of a Lender, the Agency agrees that simultaneously with its giving of any notice under this Lease Agreement (each a "**Notice**") it will send a copy of such Notice to each Lender. The Agency acknowledges that, as of the date of this Lease Agreement, the New York State Housing Finance Agency (the "**HFA**") and Bank of America, N.A. ("**BoA**") are each a Lender entitled to receive Notices hereunder and their respective notice addresses are as follows:

If to BoA:

Bank of America, N.A.
One Bryant Park, 14th floor
Mail Code: NY1-100-14-10
New York, NY 10036
Attn: Beverley James

If to HFA:

New York State Housing Finance Agency
641 Lexington Avenue
New York, NY 10022
Attn: Senior Vice President and General Counsel

Each Notice shall be sent to each Lender in the manner provided herein at the address provided to the Agency by each Lender for such purpose. Each such Lender may change such address from time to time by written notice to the Agency in accordance herewith. The Agency shall reasonably cooperate with the Company and the Nominee in connection with the granting or modification by the Company and/or the Nominee of any Mortgage. Such cooperation shall include, without limitation, the execution and delivery of such documents and instruments in connection with a Mortgage as the Company, the Nominee or the Lender may reasonably request (the "**Loan Documents**"), provided that such documents and instruments shall contain the

language set forth in Exhibit D attached hereto and made a part hereof. The Company and the Nominee shall perform or cause to be performed for and on behalf of the Agency, and at the Company's sole cost and expense, each and every obligation of the Agency under and pursuant to such instruments.

Section 12.5 References to Lender, Loan or Mortgage. All references herein to Lender, Loan or Mortgage or other similar words, whether in the singular or the plural, may be in anticipation of future Loans to be made by future Lenders. Such references shall only be effective if such Loans have been made and are still outstanding. If such Loans are never made or have been repaid, such references shall not be of any force or effect.

Section 12.6 Lender's Right to Seek Assignment. Upon commencement of the exercise of the remedies provided to Lender pursuant to the terms of the Mortgage, to the extent of the Agency's interest in the Facility, the Agency may consent to the assignment and assumption of the rights, interests, covenants and obligations of the Company under this Lease Agreement to Lender, upon such reasonable terms, conditions and provisions as the Agency shall require. Such consent shall not be unreasonably withheld, delayed or conditioned, but shall be subject to the dates of the Agency's board meetings and subject to all requirements of the Act and the Agency's policies and procedures. The foregoing shall not be construed to prohibit or limit the Agency's exercise of any rights or remedies of the Agency at any time.

Section 12.7 Lender's and Investor's Right to Cure. Upon the occurrence of an Event of Default (as defined in Section 10.1 of this Lease Agreement), the tax credit investor of the Company shall have the right, to the same extent and during the same time periods afforded to the Company pursuant to this Lease, to cure such Event of Default.

Section 12.8 Lender's Right to Cure. The Agency agrees, upon an Event of Default hereunder, to the fullest extent possible, to work cooperatively and consult with Lender prior to exercising its remedies under Section 10.2 hereof as a result of such Event of Default, and if Lender objects to Agency's proposed remedial action as a result of such Event of Default, to refrain from exercising such remedial action, including, but not limited to terminating the Company Lease and this Lease Agreement. Notwithstanding the foregoing, if the Event of Default is due to failure to make any PILOT Payment then due and owing, Lender shall be afforded thirty (30) days after receipt of written notice from the Agency to make such PILOT Payment, together with any applicable statutory penalties or interest with respect thereto; and if the Event of Default is due to failure to observe and perform the covenants under Sections 6.4 (Insurance Required), 6.5 (Additional Provisions Respecting Insurance), and 8.5 (Agreement to File Annual Statements and Provide Information) hereof, Lender shall be afforded five (5) business days after receipt of written notice from the Agency to cure any such Event of Default ("Lender Cure Requirements"), and if Lender fails to timely exercise any applicable Lender Cure Requirements, the Agency may, in its discretion, exercise all remedies afforded to it under Section 10.2 hereof. For purposes of exercising its rights under this Section 12.8, the Lender will not be liable to the Company or the Agency for any action taken or omitted to be taken by the Lender, in good faith, in reliance on any written notice from the Agency stating that a default by the Company under this Lease Agreement has occurred and is continuing even though the Company may question or deny the existence or nature of such default. The Agency shall accept such performance by or at the instigation of a Lender as if same had been done by the Company

and/or Nominee. Notwithstanding the foregoing, no Lender is or shall be obligated, under any circumstances, to cure any default by the Company or the Nominee under this Lease Agreement or any other Company Document.

Section 12.9 Lender's Consent. The Agency will not, without the written consent of the Lender (which may be given or withheld by the Lender in its sole discretion), surrender, accept a surrender of the Company's interest under this Lease Agreement or the Company Lease or amend, modify, terminate, extend, renew or cancel this Lease Agreement or the Company Lease; provided, however, notwithstanding the foregoing, the Agency will have the right to terminate this Lease Agreement upon the occurrence of an Event of Default hereunder (which Event of Default continues beyond any applicable notice, grace or cure periods) provided that the Agency complies with Section 12.8 of this Lease Agreement.

Section 12.10 Litigation, Arbitration or Other Proceeding. The Lender shall be given notice by the Company and Nominee of any litigation, arbitration or other proceeding or dispute by or between the parties hereto with respect to the Company Lease and this Lease Agreement, and shall have the right to intervene therein and be made a party to any such arbitration or other proceeding. In any event, the Lender shall have the right to receive notice from the Company and Nominee of, and a copy of, any award or decision made in said arbitration or other proceeding, whether or not Lender intervened or became a party.

Section 12.11 Limitation on Liability. Notwithstanding anything to the contrary, if at all, set forth in this Lease Agreement or any of the Company Documents, in no event shall the New York State Housing Finance Agency or (for so long as its letter of credit is outstanding) Bank of America, N.A. (and any designee or nominees thereof), be liable or responsible for:

(a) Curing or remediating any adverse environmental condition of the Land and/or indemnifying Agency against any such adverse environmental condition, other than adverse environmental conditions that arise during the period where the New York State Housing Finance Agency or Bank of America, N.A. (or their respective designees or nominees), succeed to the interests of the Company or Nominee in the Facility;

(b) Other than outstanding PILOT Payments accruing during the period that the New York State Housing Finance Agency or Bank of America, N.A. (or their respective designees or nominees) succeed to the interests of the Company or Nominee in the Project, payment of any sums due by the Company and/or the Nominee to the Agency hereunder, including the recapture of any financial assistance as provided for in Section 5.4, or any other Company Document;

(c) Other than the payment of outstanding PILOT Payments accruing during the period that the New York State Housing Finance Agency or Bank of America, N.A. (or their respective designees or nominees) succeed to the interests of the Company and Nominee under this Lease Agreement, curing any outstanding Event of Default; and

(d) Performing or completing any construction, equipping, rehabilitation, renovation or equipping of the Facility or any other improvements located on the Land or any part thereof; provided if the New York State Housing Finance Authority or Bank of America, N.A. succeed in interest to the Facility prior to the Completion Date, such entity must either complete the Project

Work or assign its interests in the Facility to another entity duly authorized by the Agency to complete the Project Work.

ARTICLE XIII ENVIRONMENTAL MATTERS

Section 13.1 Environmental Representations of the Company and the Nominee. Except as otherwise shown on Exhibit H attached hereto, the Company and the Nominee hereby represent and warrant to the Agency that:

(a) To the best of Company's and the Nominee's knowledge, information and belief, neither the Facility nor any property adjacent to or within the immediate vicinity of the Facility is being or has been used in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste management or disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) To the best of Company's and the Nominee's knowledge, information and belief, underground storage tanks are not and have not been located on the Facility.

(c) To the best of Company's and the Nominee's knowledge, information and belief, the soil, subsoil, bedrock, surface water and groundwater of the Facility are free of Hazardous Substances, in violation of Environmental Law, other than any such substances that occur naturally.

(d) To the best of Company's and the Nominee's knowledge, information and belief, there has been no Release or threat of a Release of any Hazardous Substance in violation of any applicable law on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility which through soil, subsoil, bedrock, surface water or groundwater migration could come to be located on or at the Facility, and the Company and the Nominee have not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Facility or any property adjacent to or within the immediate vicinity of the Facility or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility in violation of any applicable law.

(e) All Environmental Permits necessary for the Project Work and the ownership, use or operation of the Facility have been obtained and are in full force and effect.

(f) To the best of Company's and the Nominee's knowledge, information and belief, no event has occurred with respect to the Facility which, with the passage of time or the giving of notice, or both, would constitute a violation of or non-compliance with any applicable Environmental Law or Environmental Permit.

(g) There are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future construction, renovation, equipping, ownership, use, operation, sale, transfer or conveyance of the Facility which require any change in the present condition of the Facility or any work, repairs, construction, containment, clean up, investigations, studies, removal or remedial action or capital expenditures in order for the Facility to be in compliance with any applicable Environmental Law or Environmental Permit.

(h) There are no actions, suits, claims or proceedings, pending or, to the best of Company's and the Nominee's knowledge, information and belief, threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or remedy that arise out of, relate to or result from (i) conditions of the Environment at, on or in the vicinity of the Facility, (ii) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit with respect to the Facility, (iii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility or (iv) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Facility, the Project Work or the ownership, use, operation, sale, transfer or conveyance of the Facility.

Section 13.2 Environmental Covenants of the Company and the Nominee. The Company and the Nominee hereby covenant and agree with the Agency as follows:

(a) The Company shall perform the Project Work and use, operate and manage the Facility in accordance with all applicable Environmental Laws and Environmental Permits, and shall cause all operators, tenants, subtenants, licensees and occupants of the Facility to perform the Project Work and to use, operate and manage the Facility in accordance with any applicable Environmental Laws and Environmental Permits, and shall not cause, allow or permit the Facility or any part thereof to be operated or used for the storage, treatment, generation, transportation, processing, handling, production, management or Disposal of any Hazardous Substances other than in accordance with all applicable Environmental Laws and Environmental Permits.

(b) The Company shall obtain and comply with, and shall cause all contractors, subcontractors, operators, tenants, subtenants, licensees and occupants of the Facility to obtain and comply with, all Environmental Permits, if any.

(c) The Company and the Nominee shall not cause or permit any change to be made in the present or intended Project Work or use or operation of the Facility which would (i) involve the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance other than in accordance with any applicable Environmental Law, or the Project Work or use or operation of the Facility as a landfill or waste management or disposal site or for manufacturing or industrial purposes or for the storage of petroleum or petroleum based products other than in accordance with any applicable Environmental Law, (ii) violate any applicable Environmental Law, (iii) constitute a violation or

non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance.

(d) The Company and the Nominee shall promptly provide the Agency with a copy of all notifications which the Company or the Nominee gives or receives with respect to conditions of the Environment at or in the vicinity of the Facility, any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility. If the Company or the Nominee receives or becomes aware of any such notification which is not in writing or otherwise capable of being copied, the Company and the Nominee shall promptly advise the Agency of such verbal, telephonic or electronic notification and confirm such notice in writing. Furthermore, upon the Company's or the Nominee's discovery thereof, the Company and the Nominee shall promptly advise the Agency in writing of: (i) the presence of any Hazardous Substance on, under or about the Facility of which the Agency has not previously been advised in writing; (ii) any remedial action taken by, or on behalf of, the Company and/or the Nominee in response to any Hazardous Substance on, under or about the Facility or to any environmental proceedings of which the Company or the Nominee has not previously been advised in writing; and (iii) the occurrence or condition on any real property adjoining or in the vicinity of the Facility that could reasonably be expected to cause the Facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Facility under any Environmental Law. The Company and the Nominee shall also provide the Agency with copies of all reports, analyses, notices, licenses, approvals, orders, correspondences or other written materials in its possession or control relating to the condition of the Environment at the Facility or real property or bodies of water adjoining or in the vicinity of the Facility or environmental proceedings promptly upon receipt, completion or delivery of such materials.

(e) The Company and the Nominee shall undertake and complete all investigations, studies, sampling and testing and all removal or remedial actions necessary to contain, remove and clean up all Hazardous Substances that are or may become present at the Facility and are required to be removed and/or remediated in accordance with all applicable Environmental Laws and all Environmental Permits. All remedial work shall be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer, (ii) pursuant to a detailed written plan for the remedial work approved by any public or private agencies or persons with a legal or contractual right to such approval, (iii) with such insurance coverage pertaining to liabilities arising out of the remedial work as is then customarily maintained with respect to such activities, and (iv) only following receipt of any required permits, licenses or approvals. In addition, the Company and the Nominee shall submit, or cause to be submitted, to the Agency, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, governmental comments or approvals, proposed removal or other remedial work contracts and similar information prepared or received by or on behalf of the Company and/or the Nominee in connection with any remedial work, or Hazardous Substances relating to the Facility. All costs and expenses of such remedial work shall be paid by or on behalf of the Company and the Nominee, including, without limitation, the charges of the remedial work contractors and the consulting environmental engineer, any taxes or penalties assessed in connection with the remedial work and the Agency's out-of-pocket costs incurred in connection with monitoring or review of such remedial work. The Agency shall have the right

but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any environmental proceedings.

(f) If at any time the Agency obtains any notice or information that the Company, the Nominee or the Facility, or the use or operation thereof or the Project Work may be in violation of an Environmental Law or in non-compliance with any Environmental Permit or standard, the Agency may require that a full or supplemental environmental inspection and audit report with respect to the Facility of a scope and level of detail reasonably satisfactory to the Agency be prepared by a professional environmental engineer or other qualified environmental scientist acceptable to the Agency, at the Company's sole cost and expense. Said audit may, but is not required to or limited to, include a physical inspection of the Facility, a records search, a visual inspection of any property adjacent to or within the immediate vicinity of the Facility, personnel interviews, review of all Environmental Permits and the conducting of scientific testing. If necessary to determine whether a violation of an Environmental Law exists, such inspection shall also include subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance on, at or from the Facility in violation of any applicable law, the Company and the Nominee shall promptly undertake and diligently pursue to completion all necessary, appropriate investigative, containment, removal, clean-up and other remedial actions required by any Environmental Law, in accordance with Section 13.2(e) above. The Company and the Nominee hereby consent to the Agency notifying any party under such circumstances of the availability of any or all of the environmental reports and the information contained therein. The Company and the Nominee further agree that the Agency may disclose such environmental reports to any governmental agency or authority if they reasonably believe that they are required to disclose any matter contained therein to such agency or authority; provided that the Agency shall give the Company and the Nominee at least forty-eight (48) hours prior written notice before so doing. The Company and the Nominee acknowledge that the Agency cannot control or otherwise assure the truthfulness or accuracy of the environmental reports, and that the release of the environmental reports, or any information contained therein, to prospective bidders at any foreclosure sale of the Facility may have a material and adverse effect upon the amount which a party may bid at such sale. The Company and the Nominee agree that the Agency shall not have any liability whatsoever as a result of delivering any or all of the environmental reports or any information contained therein to any third party if done in good faith, and the Company and the Nominee hereby release and forever discharge the Agency from any and all claims, damages, or causes of action arising out of, connected with or incidental to the delivery of environmental reports.

Section 13.3 Survival Provision. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and indemnifications of the Company and the Nominee contained in this Article XIII shall survive any termination, conveyance, assignment, subleasing or defeasance of any right, title or interest of the Company and the Nominee in and to the Facility or in, to or under this Lease Agreement.

ARTICLE XIV
MISCELLANEOUS

Section 14.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication) addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Hempstead Industrial Development Agency
350 Front Street, 2nd Floor
Hempstead, New York 11550-4037
Attention: Chief Executive Officer

With a copy to:

Ryan, Brennan & Donnelly LLP
131 Tulip Avenue
Floral Park, New York 11001
Attention: John E. Ryan, Esq.

To the Company:

Estella Housing LLC
c/o Concern for Independent Living, Inc.
312 Expressway Drive South
Medford, NY 11763
Attention: Ralph Fasano

With a copy to:

Forchelli Deegan Terrana LLP
The Omni
333 Earle Ovington Boulevard, Suite 1010
Uniondale, NY 11553
Attention: Daniel P. Deegan, Esq.

To the Nominee:

Concern Estella Housing Development Fund Corp.
c/o Concern for Independent Living, Inc.
312 Expressway Drive South
Medford, NY 11763
Attention: Ralph Fasano

With a copy to:

Forchelli Deegan Terrana LLP

The Omni
333 Earle Ovington Boulevard, Suite 1010
Uniondale, NY 11553
Attention: Daniel P. Deegan, Esq.

To the Lender and Investor:

Bank of America
MA5-100-04-11
100 Federal Street
Boston, MA 02110
Attention: Asset Manager for Estella Apartments

With a copy to:

Holland & Knight LLP
101 St. James Avenue
Boston, MA 02116
Attention: Sara C. Heskett, Esq.

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third Business Day after mailing with respect to certified mail and one Business Day after mailing with respect to overnight mail.

Copies of all notices given either to the Agency, the Nominee or to the Company shall also be sent to any Lender, if such Lender shall have delivered written instructions to the Agency, the Nominee and the Company with the address of such Lender pursuant to Section 12.4 hereof.

Section 14.2 Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 14.3 Severability. In the event any provision of this Lease Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.4 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or (except pursuant to Section 10.2 hereof) terminated except in a writing executed by the parties hereto.

Section 14.5 Execution of Counterparts. This Lease 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 14.6 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 14.7 Survival of Obligations. This Lease Agreement shall survive the performance of the obligations of the Company and the Nominee to make the payments required by Section 4.3, and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement.

Section 14.8 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

Section 14.9 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Lease Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Lease Agreement.

Section 14.10 No Liability of Agency.

(a) Neither the Agency, nor any member, officer, agent, servant or employee of the Agency, nor a successor in interest to any of the foregoing, shall be under any personal liability with respect to any of the provisions of this Lease Agreement or any other Agency Document or any matter arising out of or in connection with this Lease Agreement, or any other Agency Document, or the Company's, the Nominee's or any other person's occupancy or use of the Facility, and in the event of any breach or default with respect to the Agency's obligations under this Lease Agreement or any claim arising out of or in connection with this Lease Agreement or the Company's, the Nominee's or any other person's occupancy or use of the Facility, the Company's and the Nominee's sole remedy shall be an action or proceeding to enforce such obligation, or for specific performance, injunction or declaratory judgment, and the Company and the Nominee hereby waive any right to recover from, and releases, the Agency, its members, officers, agents and employees from any and all monetary damages, whether known, unknown, foreseeable, unforeseeable, ordinary, extraordinary, compensatory or punitive, and in no event shall the Company or the Nominee attempt to secure any personal judgment against the Agency or any of the Agency's members, officers, agents or employees, or successors thereto.


(b) The approval, consent, determination, opinion or judgment of the Agency or any agent or employee of the Agency shall not be construed as such person's endorsement, warranty or guarantee of the matter at issue or the manner or means of accomplishing same or the benefit thereof; in no event shall actions of such party replace, or act as or on behalf of, the requesting parties, its agents, servants or employees.

Section 14.11 Recordation. This Lease Agreement shall not be recorded by either party hereto. The Agency, at the sole expense and effort of the Company, shall cause a memorandum of lease with respect hereto to be recorded in the office of the Nassau County Clerk.

Section 14.12 Nature of Obligations. The obligations of the Company and the Nominee under this Lease Agreement are joint and several.

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

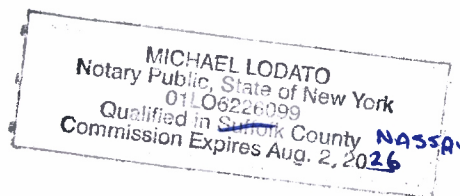
**TOWN OF HEMPSTEAD INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Frederick E. Parola
Title: Chief Executive Officer

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

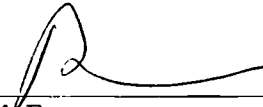
On the 24th day of March in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **Frederick E. Parola**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, 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 or entity on behalf of which the individual acted, executed the instrument.


Notary Public




ESTELLA HOUSING LLC

By: Concern Estella Housing Corp., its
Managing Member

By: 

Ralph Fasano
President

**CONCERN ESTELLA HOUSING
DEVELOPMENT FUND CORP.**

By: 

Ralph Fasano
President

STATE OF NEW YORK)
COUNTY OF Suffolk): SS.:

On the 17 day of March in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared **Ralph Fasano**, 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 executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public

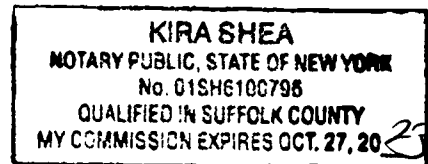


EXHIBIT A

Legal Description of Real Property

ALL that certain plot, piece or parcel of land, situate, lying and being in the Village and Town of Hempstead, County of Nassau and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the easterly side of North Main Street and the southerly side of Bedell Street;

RUNNING THENCE North 78 degrees 36 minutes 50 seconds east along the southerly side of Bedell Street, 150.01 feet to the incorporated Village of Hempstead parking lot;

THENCE South 12 degrees 10 minutes 30 seconds east along said parking lot, 180.31 feet to the northerly side of a 12 foot right-of-way;

THENCE South 82 degrees 18 minutes 30 seconds west along said right-of-way 150.46 feet to the easterly side of North Main Street;

THENCE North 12 degrees 10 minutes 30 seconds west along the easterly side of North Main Street 170.61 feet to the southerly side of Bedell Street the point or place of **BEGINNING**.

EXHIBIT B

Equipment

All Eligible Items acquired, constructed or installed and/or to be acquired, constructed or installed by or on behalf of the Company, in connection with the completion of the Town of Hempstead Industrial Development Agency's Estella Housing LLC 2023 Facility located at the southeast corner of Main Street and Bedell Street (now known as 150 Bedell Street), Village of Hempstead, Town of Hempstead, Nassau County, New York.

EXHIBIT C

PILOT Schedule

Schedule of PILOT Payments less any amounts payable by the Company in connection with any special ad valorem levies, special assessments or Special District Taxes and service charges levied against the Facility to the County of Nassau, Town of Hempstead, Village of Hempstead, Hempstead Union Free School District and Appropriate Special Districts:

Section: 34; Block: 522; Lots: 5 & 327

Parcels: 2

SD- Hempstead #1

Southeast corner of Main Street and Bedell Street (now known as 150 Bedell Street)

Village of Hempstead

Town of Hempstead

Nassau County, New York

General Tax Year/School Tax Year/Village Tax Year	Total PILOT Payment
2025 General/2024-2025 School & Village	\$37,642.00
2026 General/2025-2026 School & Village	\$37,642.00
2027 General/2026-2027 School & Village	\$37,642.00
2028 General/2027-2028 School & Village	\$95,683.00
2029 General/2028-2029 School & Village	\$97,597.00
2030 General/2029-2030 School & Village	\$99,549.00
2031 General/2030-2031 School & Village	\$101,540.00
2032 General/2031-2032 School & Village	\$103,570.00
2033 General/2032-2033 School & Village	\$105,642.00
2034 General/2033-2034 School & Village	\$107,755.00
2035 General/2034-2035 School & Village	\$109,910.00
2036 General/2035-2036 School & Village	\$112,108.00
2037 General/2036-2037 School & Village	\$114,350.00
2038 General/2037-2038 School & Village	\$116,637.00
2039 General/2038-2039 School & Village	\$118,970.00
2040 General/2039-2040 School & Village	\$121,349.00
2041 General/2040-2041 School & Village	\$123,776.00
2042 General/2041-2042 School & Village	\$126,252.00
2043 General/2042-2043 School & Village	\$128,777.00
2044 General/2043-2044 School & Village	\$131,352.00
2045 General/2044-2045 School & Village	\$133,979.00
2046 General/2045-2046 School & Village	\$136,659.00
2047 General/2046-2047 School & Village	\$139,392.00
2048 General/2047-2048 School & Village	\$142,180.00
2049 General/2048-2049 School & Village	\$145,024.00

2050 General/2049-2050 School & Village	\$147,924.00
2051 General/2050-2051 School & Village	\$150,882.00
2052 General/2051-2052 School & Village	\$153,900.00
2053 General/2052-2053 School & Village	\$156,978.00
2054 General/2053-2054 School & Village	\$160,118.00

NOTE: The Lease Agreement and schedule of PILOT Payments shall expire on December 31, 2054. All payments for the 2053-2054 School Tax Year, the 2053-54 Village Tax Year and the 2054 General Tax Year must be paid in full prior to the expiration of the Lease Agreement. Full taxes will go into effect immediately upon the expiration of the foregoing schedule of PILOT payments.

PILOT Payments shall be allocated among the Taxing Authorities in proportion to the amount of real property tax and other taxes which would have been received by each Taxing Authority if the Facility was owned by the Company exclusive of the Agency's leasehold interest.

All annual PILOT Payments as described above shall be payable (i) with respect to the school taxes, in two equal semi-annual installments on or prior to November 10 and May 10 of each year of the Lease Term or on such other due dates as may be established from time to time during the Lease Term, (ii) with respect to the general taxes, in two equal semi-annual installments on or prior to February 10 and August 10 of each year of the Lease Term or on such other due dates as may be established from time to time during the Lease Term, and (iii) with respect to the village taxes, two equal semi-annual installments on or prior to June 1 and December 1 of each year of the Lease Term or on such other due dates as may be established from time to time during the Lease Term.

**** In accordance with Title 2 of Article 18-A of the General Municipal Law, Section 905(3), beginning after the third year after entering into the Lease Agreement, and every third year thereafter, the PILOT Payments shall be reviewed by the Agency and adjusted based on changes to the assessed value and tax rate of all other real properties located in the Village of Hempstead.***

EXHIBIT D

Mortgage Requirements

Any Mortgage or related document which shall be entered into by the Agency and the Company shall contain the following required provisions:

Non-Recourse and Hold Harmless Provisions to be included in the Lender's Mortgage

Section _____. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of this Mortgage. The Mortgagee will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the indebtedness evidenced by this Mortgage or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this Mortgage, the Mortgagee will look solely to the mortgaged premises and/or the Company for the payment of the indebtedness secured by this Mortgage and for the performance of the provisions hereof. The Mortgagee will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this Mortgage or the Loan Documentation. This agreement on the part of the Mortgagee shall not be construed in any way so as to effect or impair the lien of this Mortgage or the Mortgagee's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Mortgagee in any foreclosure proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Company) of the Agency or any natural person executing this Mortgage on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or the Town Hempstead, Nassau County and neither the State of New York nor the Town of Hempstead, Nassau County shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

Section _____. Hold Harmless Provisions. The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its director, members, officers, agents (except the Company) 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 Facility or arising by reason of or in connection with the use thereof or under this Mortgage, or (ii) liability arising from or expense incurred by the Project Work or the Agency's acquiring, owning and leasing of the Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein 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 the Mortgage (including, without limitation, this Section)) and

any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the 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 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 Mortgage, the obligations of the Company pursuant to this Section ___ shall remain in full force and effect after the termination of this Mortgage 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 reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) 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 (except the Company) or employees by any employee or 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, disability benefits or other employee benefit acts.

Section ___. 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.

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

EXHIBIT E

RESERVED

EXHIBIT F

RESERVED

EXHIBIT G

Compliance with Labor Law, Executive Law and Civil Rights Law

The purpose of the Town of Hempstead Industrial Development Agency (the “**Agency**”) is to provide benefits that reduce costs and financial barriers to the creation and to the expansion of business and enhance the number of jobs in the Town of Hempstead.

The Agency has consistently sought to ensure that skilled and fair paying construction jobs be encouraged in straight-lease transactions with the Agency.

Now therefor, the parties to the attached Lease and Project Agreement (the “**Agreement**”) further agree to be bound by the following, which are hereby made a part of the Agreement.

I. The Company agrees to use reasonable efforts to ensure that:

(a) no laborer, workman or mechanic, in the employ of the Company or any contractor, subcontractor or other person doing or contracting to construct and equip the Facility shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except as set forth in the Labor Law of the State of New York (the “**Labor Law**”);

(b) to the extent applicable and required by law, the Company shall comply with the provisions of the Labor Law, including Section 220 thereof, and if such Labor Law does not presently require or obligate the Company to pay the prevailing rate of wages as such term is defined in Section 220-d thereof, the Company acknowledges that it has been advised that it is the policy of the Agency to strongly encourage the Company to voluntarily comply with such provisions.

II. To the extent required by law, the Company agrees that:

(a) in the hiring of employees for the performance of work in acquiring, constructing and equipping the Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction and equipping of the Facility, neither the Company nor any contractor, subcontractor nor any person acting on behalf of the Company shall by reason of race, creed, color, disability, sex, or national origin, marital status or Vietnam veteran era status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(b) neither the Company nor any contractor, subcontractor, nor any person on their behalf shall, in connection with the acquisition, construction and equipping of the Facility, discriminate against or intimidate any employee hired for the performance of work involved in acquiring, constructing and equipping the Facility on account of race, creed, color, disability, sex, national origin, marital status or Vietnam era veteran status; and

(c) the aforesaid provisions of this section covering every contract for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction and equipping of the Facility shall be limited to operations performed within the territorial limits of the State of New York.

III. To the extent required by law, the Company will comply with the applicable provisions of Sections 291-299 of the Executive Law, and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights, and will permit access to its books, records and accounts by the State Division of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and the Civil Rights Law.

EXHIBIT H

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES OF COMPANY

1. The facts disclosed in that certain Phase I Environmental Site Assessment dated January 23, 2023 prepared by Nelson Pope & Voorhis, LLC.

EXHIBIT I

FORM OF TENANT AGENCY COMPLIANCE AGREEMENT

THIS TENANT AGENCY COMPLIANCE AGREEMENT, dated as of _____, 20____, is between the TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 350 Front Street, 2nd Floor, Hempstead, New York 11550 (the “**Agency**”), and _____, a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the _____ State of _____ having its principal office at _____ (the “**Tenant**”).

R E C I T A L S

WHEREAS, the Agency was created by Chapter 529 of the Laws of 1971 of the State of New York, as amended, pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the “**Act**”); and

WHEREAS, the Agency has agreed to assist in the acquisition of an interest in an approximately 0.6193 acre parcel of land located at the southeast corner of Main Street and Bedell Street (now known as 150 Bedell Street), Village of Hempstead, Town of Hempstead, Nassau County, New York (the “**Land**”), the construction of an approximately 125,991 gross square foot four-story residential building above a ground floor-level parking garage, with approximately 96 residential rental units (consisting of approximately 35 studio apartments, 49 one-bedroom apartments and 12 two-bedroom apartments, one of which will be a superintendent’s unit), 5,538 square feet of community service facility space, and on-site parking spaces for 77 vehicles (the “**Improvements**”), and the acquisition of certain fixtures, equipment and personal property necessary for the completion thereof (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company (as hereinafter defined) and further sub-subleased by the Company to future tenants for use as a transit-oriented, affordable, mixed-use multifamily housing and commercial complex (the “**Project**”); and

WHEREAS, the Agency acquired a leasehold interest in the Land and the Improvements, all pursuant to the Company Lease Agreement, dated as of March 1, 2023 (the “**Company Lease**”), by and among the Agency, Estella Housing LLC (the “**Company**”) and Concern Estella Housing Development Fund Corp. (the “**Nominee**”); and

WHEREAS, the Agency leases and subleases the Facility to the Company and the Nominee pursuant to the Lease and Project Agreement, dated as of March 1, 2023 (the “**Lease Agreement**”), by and among the Agency, the Company and the Nominee; and

WHEREAS, the Company intends to sublease a portion of the Facility to be used as _____ (the “**Demised Premises**”) to the Tenant pursuant to a [Tenant Lease Agreement], dated as of _____, 20____ (the “**Tenant Lease Agreement**”), by and between the Company and the Tenant, which may be amended from time to time.

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

ARTICLE I REPRESENTATIONS AND COVENANTS OF TENANT

Section 1.1 Representations and Covenants of Tenant. The Tenant makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Tenant is a [banking corporation] [business corporation] [general partnership] [limited liability company] [limited liability partnership] [limited partnership] duly organized and validly existing under the laws of the State of _____ [*and authorized to transact business in the State of New York*], and in good standing under the laws of the State of New York, [and the State of _____] and has full legal right, power and authority to execute, deliver and perform this Tenant Agency Compliance Agreement. This Tenant Agency Compliance Agreement has been duly authorized, executed and delivered by the Tenant.

(b) To the best of the Tenant's knowledge, neither the execution and delivery of this Tenant Agency Compliance Agreement 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, the Tenant's organizational documents, as amended, or any restriction or any agreement or instrument to which the Tenant is a party or by which it is bound.

(c) Any and all leasehold improvements undertaken by the Tenant with respect to the Demised Premises and the design, acquisition, construction, renovation, equipping and operation thereof by the Tenant will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. The Tenant shall defend, indemnify and hold harmless the Agency from any liability or expenses, including reasonable attorneys' fees, resulting from any failure by the Tenant to comply with the provisions of this subsection.

(d) The Tenant Agency Compliance Agreement constitutes a legal, valid and binding obligation of the Tenant enforceable against the Tenant in accordance with its terms.

(e) Under penalty of perjury, the Tenant certifies that it is in substantial compliance with all local, state, and federal tax, worker protection and environmental laws, rules and regulations.

ARTICLE II INSURANCE

Section 2.1 Insurance Required. At all times throughout the Lease Term, the Tenant shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks, and for such amounts, 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. Such insurance shall include, without limitation, the following (but without duplication of

insurance provided by the Company pursuant to the Lease Agreement covering the same risks and insured(s)):

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Tenant, but in no event less than \$1,000,000. During the construction of the Facility, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance that the Tenant is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Tenant or any permitted sublessee who are located at or assigned to the Facility. This coverage shall be in effect from and after the date any such employees first occupy the Facility.

(c) Insurance protecting the Agency and the Tenant against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Tenant under Section 3.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (per occurrence for personal injury, including bodily injury or death, and property damage), and blanket excess liability coverage, in an amount not less than \$5,000,000 per occurrence, protecting the Agency and the Tenant against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during any construction or renovation period with respect to the Demised Premises.

(d) During any construction period with respect to the Demised Premises (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Tenant shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

- (i) Workers' compensation and employer's liability with limits in accordance with applicable law.
- (ii) Comprehensive general liability providing coverage for:

- Premises and Operations
- Products and Completed Operations
- Owners Protective
- Contractors Protective
- Contractual Liability
- Personal Injury Liability
- Broad Form Property Damage
- (including completed operations)

Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 (per occurrence for personal injury, including bodily injury or death, and property damage).

- (iii) Business auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).
- (iv) Excess “umbrella” liability providing liability Insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000 per occurrence.

(e) The Agency does not in any way represent that the insurance specified in this Tenant Agency Compliance Agreement, whether in scope or coverage or limits of coverage, is adequate or sufficient to protect the Tenant’s business or interests.

Section 2.2 Additional Provisions Respecting Insurance.

(a) All insurance required by this Tenant Agency Compliance Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 2.1(a) hereof shall be rated “A” or better by A.M. Best Co., Inc. in Best’s Key Rating Guide. 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 procuring entity is engaged. All policies of insurance required by Section 2.1 hereof shall provide for at least thirty (30) days prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 2.1(c) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Section 2.1 (d)(ii) and (iv) shall name the Agency and the Tenant as additional insureds. The policies required under Sections 2.1(a), (b) and (c) shall contain appropriate waivers of subrogation.

(b) In addition, each contractor must protect the Agency with respect to the policies required under Section 2.1(d)(ii), (iii) and (iv) as an additional insured on a primary and non-contributory basis via ISO endorsements CG 20 26 and CG 20 37 or their equivalents and the endorsements must specifically identify the Agency as an additional insured.

(c) The certificate of insurance required by Section 2.1(c) hereof shall be delivered to the Agency on or before the date hereof. The certificate of insurance required by Section 2.1(b) hereof shall be delivered to the Agency by such date as required therein. A copy of the certificates of insurance required by Section 2.1(d)(ii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any construction or renovation of the Demised Premises. The Tenant shall deliver to the Agency 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 the current year of the Tenant's insurance policy, insurance of the types and in the amounts required by Section 2.1 hereof and complying with the additional requirements of Section 2.2(a) hereof. Prior to the expiration of each such policy or policies, the Tenant shall furnish to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Tenant Agency Compliance Agreement. The Tenant shall provide such further information with respect to the insurance coverage required by this Tenant Agency Compliance Agreement as the Agency may from time to time reasonably require.

(d) The minimum insurance requirements set forth under Section 2.1 and this Section 2.2 shall not limit, abridge, or modify the Tenant's obligation under Section 3.2 hereof to indemnify and hold the Agency harmless from and against certain damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses, as more fully set forth in Section 3.2

Section 2.3 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid. The Net Proceeds of the insurance carried pursuant to the provisions of Section 2.1(a) hereof shall be applied in accordance with the provisions of the Tenant Lease Agreement.

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 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, 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 FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE DEMISED PREMISES 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 DEMISED PREMISES. THE TENANT ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE

TENANT, ON BEHALF OF ITSELF IS SATISFIED THAT THE DEMISED 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 Company) 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 Demised Premises or to common areas or other portions of the Facility to which the Tenant has regular access (such areas, together with the Demised Premises, are hereinafter referred to as the “**Tenant Premises**”), 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 Tenant Premises, and (ii) liability arising from or expense incurred in connection with the Agency’s participation in the subleasing of the Demised Premises to the Tenant, 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 Tenant Agency Compliance Agreement 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 Tenant Agency Compliance Agreement (including without limitation this Section) or any other documents delivered by the Agency in connection with this Tenant Agency Compliance Agreement), 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 Tenant Agency Compliance Agreement, the obligations of the Tenant pursuant to this Section shall remain in full force and effect after the termination of this Tenant Agency Compliance Agreement 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 Demised Premises. Subject to the Tenant's rights, the Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable prior written notice to inspect the Demised Premises.

Section 3.4 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 Facility 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 Demised Premises in such a way as to cause or permit the Facility to be used in violation of Section 862(2)(a) 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; provided, however, that neither restriction shall apply if the Agency shall determine:

- (i) that such occupancy of the Demised Premises is reasonably necessary to discourage the proposed sublessee from removing such other plant or facility to a location outside the State, or
- (ii) that such occupancy of the Demised Premises is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

Section 3.5 Tenant to Maintain Its Existence. The Tenant agrees that during the Lease Term it will maintain its existence, will not dissolve, liquidate or otherwise dispose of substantially all of its assets, and will not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it.

Section 3.6 Compliance with Orders, Ordinances, Etc.

(a) The Tenant, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee of the Tenant or occupant of the Demised Premises which is occupying the Demised Premises by permission of the Tenant 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 Facility or the Demised Premises, or to the acquisition,

construction and equipping of the Demised Premises, or to any use, manner of use or condition of the Facility or any part of the Demised Premises, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Facility or any part thereof, and companies or associations insuring the premises.

(b) The Tenant shall keep or cause the Demised Premises to be kept free of Hazardous Substances; provided, however, that Hazardous Substances shall not mean or include ordinary cleaning substances provided that such substances are stored, used and disposed of in accordance with, and in such quantities as are permitted by, all applicable federal, state and local laws, ordinances, rules, regulations and policies. Without limiting the foregoing, the Tenant shall not cause or permit the Demised Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Tenant cause or permit, as a result of any intentional or unintentional act or omission on the part of the Tenant or any of its contractors, subcontractors or tenants, a release of Hazardous Substances onto the Facility or onto any other property. The Tenant shall comply with, and ensure compliance by all of its contractors, subcontractors and subtenants with, all applicable federal, state and local environmental laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all of its contractors, subcontractors and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The 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 Substances released, stored, generated or used by it on, from or affecting the Demised Premises (A) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies, (B) to the 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 Substances 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 such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, 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 such Hazardous Substances, and in all cases which result from the intentional or unintentional act or omission of the Tenant or any of its contractors, subcontractors or subtenants, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. The provisions of this Section shall be in addition to any and all other obligations and liabilities the 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) above, the 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, the 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 the Tenant that, by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the 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 Demised Premises shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Tenant shall use reasonable efforts not to cause or permit such use or occupancy by the Tenant to be discontinued without the prior written consent of the Agency, which consent shall not be unreasonably withheld.

(d) Notwithstanding the provisions of this Section, if, because of a breach or violation of the provisions of subsection (a) or (b) above (without giving effect to subsection (c)), 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 or pay an amount or post a bond in an amount 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, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to such Hazardous Substances. 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 the Tenant.

Section 3.7 Agreement to Provide Information. Annually, the Tenant shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Facility as a result of the Agency's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained.² The Tenant further agrees to provide and certify or cause to be provided and certified whenever requested by the Agency any other information concerning the Tenant, its respective finances, its respective operations, its respective employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act, the Public Authorities Accountability Act of 2005, or 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 Agency Documents or Tenant Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 3.8 Employment Opportunities; Notice of Jobs. The Tenant covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to

² Cannot be removed or modified; required by GML Section 859-a(6)(b).

which it is a party, cause any new employment opportunities created in connection with the Demised Premises to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300), as superseded by the Workforce Innovation and Opportunity Act (PL. 113-128), in which the Facility is located (collectively, the “**Referral Agencies**”). The Tenant also agrees that it will, where practicable and except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.³

Section 3.9 Subleasing.

(a) In accordance with Section 862(1) of the Act, the Demised Premises shall not be occupied by a sublessee whose tenancy would 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 or in the abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

- (i) that such occupancy of the Demised Premises is reasonably necessary to discourage the proposed sublessee from removing such other plant or facility to a location outside the State, or
- (ii) that such occupancy of the Demised Premises is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

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

Section 3.10 Approval of Tenant Lease Agreement. The Agency hereby approves the subleasing of the Facility by the Company to the Tenant pursuant to the terms of the Tenant Lease Agreement.

Section 3.11 Definitions. All capitalized terms used in this Tenant Agency Compliance Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A.

Section 3.11 Execution of Counterparts. This Tenant Agency Compliance 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.

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

³ Cannot be removed or modified; required by GML Section 858-b.

IN WITNESS WHEREOF, the Agency and the Tenant have caused this Tenant Agency Compliance Agreement to be executed in their respective names by their duly authorized representatives, all as of _____, 20__.

**TOWN OF HEMPSTEAD INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

[NAME OF ENTITY]

By: _____
Name:
Title:

EXHIBIT J

PROJECT COMPLETION CERTIFICATE OF COMPANY AS REQUIRED BY SECTION 3.6 OF THE LEASE AGREEMENT

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of ESTELLA HOUSING LLC (the “**Company**”), a limited liability company organized and existing under the laws of the State of New York, HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.6 of that certain Lease and Project Agreement, dated as of March 1, 2023 (the “**Lease Agreement**”), among the TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY (the “**Agency**”), the Company and Concern Estella Housing Development Fund Corp. (the “**Nominee**”). If the Company’s Final Project Cost Budget deviates materially (more than ten percent (10%)) from the information provided in the Project Application Information (as defined in the Lease Agreement), the Company shall provide a written statement explaining the difference to the Agency. The Agency may in its sole discretion, adjust the benefits to reflect such deviation.

THE COMPANY HEREBY FURTHER CERTIFIES THAT (capitalized terms used but not defined herein shall have the respective meanings assigned to such terms in the Lease Agreement):

(i) the Project Work has been completed substantially in accordance with the Plans and Specifications therefor;

(ii) attached hereto as Appendix A is a copy of one of the following (check only one and attach a copy of the indicated document):

- certificate of occupancy, or
- temporary certificate of occupancy, or
- amended certificate of occupancy, or
- letter of no objection;

(iii) there is no certificate, license, permit, written approval or consent or other document required to permit the occupancy, operation and use of the Facility that has not already been obtained or received, except for such certificates, licenses, permits, authorizations, written approvals and consents that will be obtained in the ordinary course of business and the issuance of which are ministerial in nature, which certificates, licenses, permits, authorizations, written approvals and consents are attached hereto as Appendix B;

(iv) check as applicable:

- all costs for Project Work have been paid, or
- all costs for Project Work have been paid except for amounts not yet due and payable (attach itemized list) and/or amounts the payments for which are being contested in good faith (attach itemized list with

explanations); and

(v) attached hereto as Appendix C is the Final Project Cost Budget, including a comparison with the project cost budget information listed in the Project Application Information; and

(vi) there are no municipal violations outstanding on the premises.

This Certificate is given without prejudice to any rights of the Company against third parties existing on the date hereof or which may subsequently come into being and no Person other than the Agency may benefit from this Certificate.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this _____ day of _____, ____.

ESTELLA HOUSING LLC

By: Estella Housing Managers LLC, its
Managing Member

By: Concern Estella Housing Corp., its
Managing Member

By: _____
Name:
Title:

Appendix A

Appendix B

Appendix C

EXHIBIT K

ANNUAL COMPLIANCE CERTIFICATE

Compliance Certificate

_____, being duly sworn, deposes and says:

1. That s/he is the duly appointed _____ of _____, a _____ duly organized and existing under the laws of the State of _____, having its office at _____, New York (the “**Company**”) and the duly appointed _____ of _____, a _____ duly organized and existing under the laws of the State of _____, having its office at _____, New York (the “**Nominee**”).

2. That the Company and the Nominee have previously entered into a straight-lease transaction with the Town of Hempstead Industrial Development Agency pursuant to a certain Company Lease Agreement dated as of March 1, 2023 and a certain Lease and Project Agreement dated as of March 1, 2023 (collectively, the “**Company Lease/Lease Agreement**”).

3. That the Company and the Nominee are not in default under the Company Lease/Lease Agreement and that no Event of Default exists under the Company Lease/Lease Agreement or any other Company Document (as such term is defined in the Lease Agreement).

4. That there is no action or proceeding pending or, to the best of the Company’s or the Nominee’s knowledge, after diligent inquiry, threatened, by or against the Company or the Nominee by or before any court or administrative agency that would adversely affect the ability of the Company or the Nominee to perform its obligations under the Company Lease/Lease Agreement or any other Company Document.

5. That neither the Company nor the Nominee has received written notice of default in payment of any taxes, PILOT Payments, sewer rents or water charges which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

6. That there are no mechanics liens or other liens by reason of any labor, services or materials on the Facility, except in compliance with the provisions in the Lease Agreement.

7. That there are no municipal violations outstanding on the premises.

8. That all information submitted herein is attested to as accurate information to the best of your knowledge, **under penalty of perjury**.

9. That attached hereto as Exhibit A hereto are copies of the certificates of insurance required to be provided to the Agency pursuant to Sections 6.4 and 6.5 of the Lease Agreement.

10. That attached hereto as Exhibit B hereto is a certified statement of the Company and documentation 1) enumerating the FTE (as such term is defined in the Company Lease/Lease Agreement) jobs, by category, retained and/or created at the Facility as a result of the Agency's financial assistance and 2) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained.

11. That attached hereto as Exhibit C is verification of the certified statement of employment in the form of one of the following: a copy of the Form NYS-45 form filed with the New York State Department of Labor, OR a certified payroll statement. For companies with multiple tenants: either certified statements of employment from every tenant, OR a current list of all tenants and the number of employees as per their agreements with the Company.

12. That attached hereto as Exhibit D is a letter attesting to any pending litigation at the facility.

13. That when applicable, attached hereto as Exhibit E is a letter attesting to the number of "affordable" units and "workforce" units for Market Rate Housing Projects.

Signature

Print Name:
Title:
Date:

Subscribed and sworn to before me on this ____ day of _____, 20____

Notary Public

Enclosed: Exhibit A – Insurance Certificates
 Exhibit B – Certified Statement of FTE's, benefits and salary averages
 Exhibit C – Employment Verification
 Exhibit D – No Pending Litigation letter
 Exhibit E – "Affordable" and "Workforce" housing letter

NOTE: All Exhibits must be generated by the Company and the Nominee

Exhibit A

Insurance Certificates

Exhibit B

Certified Statement and Documentation Regarding FTEs

Exhibit C

Employment Verification

Exhibit D

No Pending Litigation Letter

Exhibit E

“Affordable” and “Workforce” housing letter

EXHIBIT L

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

I, _____, as [_____] of ESTELLA HOUSING LLC, a limited liability company duly organized and existing under the laws of the State of New York (the “**Company**”), and as [_____] of CONCERN ESTELLA HOUSING DEVELOPMENT FUND CORP., a not-for-profit corporation duly organized and existing under the laws of the State of New York (the “**Nominee**”), HAVING BEEN DULY SWORN, DO DEPOSE AND SAY, UNDER PENALTY OF PERJURY, as follows:

1. The Company and the Nominee are the owner or developer of a project (the “**Project**”) consisting of: acquisition of an interest in an approximately 0.6193 acre parcel of land located at the southeast corner of Main Street and Bedell Street (now known as 150 Bedell Street), Village of Hempstead, Town of Hempstead, Nassau County, New York (the “**Land**”), the construction of an approximately 125,991 gross square foot four-story residential building above a ground floor-level parking garage, with approximately 96 residential rental units (consisting of approximately 35 studio apartments, 49 one-bedroom apartments and 12 two-bedroom apartments, one of which will be a superintendent’s unit), 5,538 square feet of community service facility space, and on-site parking spaces for 77 vehicles (the “**Improvements**”), and the acquisition of certain fixtures, equipment and personal property necessary for the completion thereof (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company and the Nominee and further sub-subleased by the Company to future tenants for use as a transit-oriented, affordable, mixed-use multifamily housing and commercial complex (the “**Project**”).
2. The Project [is][is not] a “covered project” within the meaning of Section 224-a of the New York State Labor Law and, therefore, [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__.

Notary Public

EXHIBIT M

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

I, _____, as [_____] of the Town of Hempstead 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 529 of the Laws of 1971 of 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 on behalf of Estella Housing LLC (the “**Company**”) and Concern Estella Housing Development Fund Corp. (the “**Nominee**”) consisting of the following: the acquisition of an interest in an approximately 0.6193 acre parcel of land located at the southeast corner of Main Street and Bedell Street (now known as 150 Bedell Street), Village of Hempstead, Town of Hempstead, Nassau County, New York (the “**Land**”), the construction of an approximately 125,991 gross square foot four-story residential building above a ground floor-level parking garage, with approximately 96 residential rental units (consisting of approximately 35 studio apartments, 49 one-bedroom apartments and 12 two-bedroom apartments, one of which will be a superintendent’s unit), 5,538 square feet of community service facility space, and on-site parking spaces for 77 vehicles (the “**Improvements**”), and the acquisition of certain fixtures, equipment and personal property necessary for the completion thereof (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility is to be subleased by the Agency to the Company and the Nominee and further sub-subleased by the Company to future tenants for use as a transit-oriented, affordable, mixed-use multifamily housing and commercial complex (the “**Project**”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Lease and Project Agreement dated as of March 1, 2023 among the Agency, the Nominee and the Company (the “**Lease Agreement**”).

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 and the Nominee 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 AND THE NOMINEE PURSUANT TO SECTION 224-a(8)(d) OF THE NEW YORK STATE LABOR LAW AND THE COMPANY AND THE NOMINEE ARE HEREBY NOTIFIED OF THEIR 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 _____, 20[___].

[Name]
[Title]

SCHEDULE A

SCHEDULE OF DEFINITIONS

“Act” means, collectively, Title 1 of Article 18-A of the General Municipal Law of the State, enacted into law as Chapter 1030 of the Laws of 1969 of the State, as amended, together with Chapter 529 of the Laws of 1971 of the State, as amended.

“Additional Facilities” shall have the meaning ascribed to such term in Section 5.1(f) of the Lease Agreement.

“Agency” means (i) the Town of Hempstead Industrial Development Agency, its successors and assigns, and (ii) any local governmental body resulting from or surviving any consolidation or merger to which the Agency or its successors may be a party.

“Agency Documents” means the Company Lease and the Lease Agreement.

“Approving Resolution” or “Authorizing Resolution” means the resolution adopted by the Agency on February 24, 2022, authorizing the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

“Authorized Representative” means, in the case of the Agency, the Chairman, the Vice Chairman, the Executive Director, the Chief Executive Officer, the Deputy Executive Director, the Chief Financial Officer, or the Secretary of the Agency and such additional persons as, at the time, are designated to act on behalf of the Agency; in the case of the Company, the Managing Member and such additional persons as, at the time, are designated to act on behalf of the Company; and in the case of the Nominee, the President and such additional person as, at the time, are designated to act on behalf of the Nominee.

“Bill of Sale” means the Bill of Sale, dated the Closing Date, given by the Company to the Agency with respect to the Equipment, as the same may be amended from time to time.

“BoA” has the meaning ascribed to such term in Section 12.4 of the Lease Agreement.

“Business Day” means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions in New York, New York, or any city in which the principal office of the Lender, if any, is located are authorized by law or executive order to remain closed.

“Closing Date” means March 30, 2023.

“Commissioner of Labor” has the meaning ascribed to such term in Section 8.13(b)(i) of the Lease Agreement.

“Company” means ESTELLA HOUSING LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, and its successors and assigns.

“Company Documents” means the Bill of Sale, the Company Lease and the Lease Agreement.

“Company Lease” means the Company Lease Agreement, dated as of March 1, 2023, by and between the Company and the Agency, as the same may be amended from time to time.

“Completion Date” means the date of completion of the Facility as certified pursuant to Section 3.6 of the Lease Agreement.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

“Construction Period” means the period beginning on the earlier of (a) Closing Date and (b) the date of commencement of the Project Work of the Facility, and ending on the Completion Date.

“Disposal” has the same meaning as given to that term in the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 et seq.).

“Eligible Items” shall mean the following items of personal property and services: (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility; (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more; (iii) with respect to the eligible items identified in (ii) above; purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs; (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

“Environment” means any water or water vapor, any land, including land surface or subsurface, air, fish, wildlife, flora, fauna, biota and all other natural resources.

“Environmental Laws” means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection, preservation or remediation of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, written and published policies, guidelines, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

“Environmental Permits” means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership,

construction, renovation, equipping, use and/or operation of the Facility, for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Facility.

“Equipment” means all machinery, equipment and other personal property used and to be used in connection with the Facility as described in Exhibit B to the Lease Agreement.

“Event of Default” means (a) when used with respect to the Lease Agreement, any of the events defined as Events of Default by Section 10.1 of the Lease Agreement, and (b) when used with respect to any Mortgage, any of the events defined as Events of Default in such Mortgage.

“Facility” means, collectively, the Land, the Improvements and the Equipment, leased and subleased to the Company pursuant to the Lease Agreement.

“Final Project Cost Budget” means that certain budget of costs paid or incurred by the Company in connection with the Project, which shall be submitted by the Company pursuant to Section 3.6 hereof upon completion of the Project.

“FTE” shall have the meaning ascribed to such term in Section 8.11 of the Lease Agreement.

“GML” means the General Municipal Law of the State.

“Hazardous Substance” means, without limitation, any flammable, explosive, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum constituents, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, pollutants, or toxic pollutants, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Sections 1251 et seq.), Articles 17 and 27 of the New York State Environmental Conservation Law, or any other applicable Environmental Law and the regulations promulgated thereunder.

“HFA” has the meaning ascribed to such term in Section 12.4 of the Lease Agreement.

“Improvements” means the approximately 125,991 gross square foot four-story residential building above a ground floor-level parking garage, with approximately 96 residential rental units (consisting of approximately 35 studio apartments, 49 one-bedroom apartments and 12 two-bedroom apartments, one of which will be a superintendent’s unit), 5,538 square feet of community service facility space, and on-site parking spaces for 77 vehicles, which will be constructed by the Company as part of the Project.

“Indemnified Parties” has the meaning ascribed to such term in Section 8.2 of the Lease Agreement.

“Independent Accountant” shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency (such approval not to be unreasonably withheld or delayed).

“Independent Counsel” means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full time employee of the Agency, the Company.

“Land” means the real property leased by the Agency to the Company pursuant to the Lease Agreement and more particularly described in Exhibit A attached thereto.

“Lease Agreement” means the Lease and Project Agreement, dated as of March 1, 2023 by and between the Agency, as lessor, and the Company, as lessee, with respect to the Facility, as the same may be amended from time to time.

“Lease Term” means the duration of the leasehold estate created by the Lease Agreement as specified in Section 4.2 of the Lease Agreement.

“Lender” means any lender making a Loan to the Company to finance in whole or in part the Project Work, the acquisition and/or development of the Facility or any portion thereof, including any party providing credit enhancement for the financing transaction.

“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 the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar encumbrances, affecting real property. For the purposes of this definition, a Person shall be deemed to be the owner of any Property which 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.

“Loan” has the meaning ascribed to such term in Section 12.4 of the Lease Agreement.

“Loan Documents” has the meaning ascribed to such term in Section 12.4 of the Lease Agreement.

“Loss Event” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Master Lease Agreement” shall mean that certain Master Sublease Agreement Community Space dated as of the Closing Date by and among the Company, the Nominee and Estella Housing Master Tenant LLC.

“Mortgage” means any mortgage and security agreement granted by the Agency and the Company, or the Company and the Nominee with the consent of the Agency, to a Lender which

grants a mortgage lien on and security interest in the Facility in favor of the Lender as security for such Lender's Loan to the Company.

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

"Nominee Documents" means the Company Lease and the Lease Agreement.

"Organizational Documents" means (i) in the case of an entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such entity, (ii) in the case of an entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such entity, and (iii) in the case of an entity constituting a general or limited partnership, the partnership agreement of such entity.

"Permitted Encumbrances" means, with respect to the Facility, (i) exceptions to title set forth in the Title Report, (ii) the Company Lease, (iii) the Lease Agreement, (iv) utility, access and other easements and rights-of-way, restrictions and exceptions that do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (v) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens which are approved in writing by the Lender, if any, or its counsel and, if no Lender, then by the Agency or its counsel, (vi) Liens for taxes not yet delinquent, (vii) any Mortgage or ancillary document granted to a Lender, (viii) purchase money security interests and blanket liens and (ix) the Regulatory Agreement.

"Person" or "Persons" means an individual, partnership, limited liability partnership, limited liability company, corporation, trust or unincorporated organization, or a government agency, political subdivision or branch thereof.

"PILOT Payments" has the meaning ascribed to such term in Section 5.1 of the Lease Agreement.

"Plans and Specifications" means the plans and specifications, if any, for the Improvements, prepared for the Company and approved by the Agency, as revised from time to time in accordance with the Lease Agreement.

"Prevailing Wage Law" has the meaning ascribed to such term in Section 8.13(a) of the Lease Agreement.

"Project" means the acquisition, construction, furnishing and equipping of the Facility, which Facility will be subleased by the Agency to the Company and further sub-subleased by the Company to future tenants for use as a transit-oriented, affordable, mixed-use multifamily housing and commercial complex.

"Project Application Information" means the application and questionnaire submitted to the Agency on or about December 20, 2021 by or on behalf of the Company, for approval by the Agency of the Project, together with all amendments thereto and all other letters, documentation,

reports and financial information submitted in connection therewith, including, without limitation, that certain letter dated March 9, 2023.

“Project Work” means the work required to complete the Project.

“Prime Rate” means (i) if no Lender, the rate designated by The Wall Street Journal from time to time as its “prime rate”, or (ii) if a Lender exists, the rate designated by the Lender from time to time as its “prime rate”.

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

“Public Purposes” shall mean the State’s objective to create industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and to empower such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living.

“Real Property Tax Abatements” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Recaptured Benefits” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Recapture Event” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Regulatory Agreement” means the Regulatory Agreement, dated as of March 30, 2023 by and between HFA, the Nominee and the Company with respect to the Facility, as the same may be amended from time to time.

“Release” has the meaning given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), and the regulations promulgated thereunder.

“Schedule of Definitions” means the words and terms set forth in this Schedule of Definitions attached to the Lease Agreement, as the same may be amended from time to time.

“SEQR Act” means the State Environmental Quality Review Act and the regulations thereunder.

“State” means the State of New York.

“Substitute Facilities” has the meaning ascribed to such term in Section 7.2 of the Lease Agreement.

“Tax Year” means the lien period for which real estate taxes are assessed.

“Taxes on the Facility” has the meaning ascribed to such term in Section 5.1 of the Lease Agreement.

“Taxing Authorities” has the meaning ascribed to such term in Section 5.1 of the Lease Agreement.

“Tenant Agency Compliance Agreement” means an agreement in the form attached to the Lease Agreement as Exhibit I between the Agency and a sublessee of the Facility.

“Title Report” means Certificate of Title No. BTA81634 issued by First American Title Insurance Company to the Agency, having an effective date of January 13, 2023, and redated and recertified on the Closing Date.

“Transaction Counsel” means the law firm of Phillips Lytle LLP.

“Transaction Documents” means the Agency Documents, the Company Documents and the Nominee Documents.

“Unassigned Rights” means the rights of the Agency and moneys payable pursuant to and under Sections 3.6, 4.3, 4.4, 5.1, 5.4, 6.4(c) and (d), 6.7, 8.1, 8.2, 8.5, 8.7, 8.8, 8.10, 8.11, 9.3, 10.2(a), 10.4, 11.2, 11.3 and 14.8 and Article XIII of the Lease Agreement.

Except as otherwise expressly provided or unless the context otherwise requires, (i) the plural includes the singular, the singular includes the plural, and the use of any gender herein shall be deemed to include the other genders; (ii) “including,” “included” and words of similar import are deemed followed by “but not limited to”; (iv) the words “herein,” “hereof,” “hereunder” and other words of similar import refer to the document as a whole and not to any particular provision, (v) the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of the document, (vi) “or” is not exclusive, (vii) “any” shall include “any and all”, and (viii) “shall” is mandatory, “will” shall have the same meaning as “shall” and “may” is permissive.