

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

and

FAIRFIELD EAST ROCKAWAY LLC

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AMENDED AND RESTATED LEASE AGREEMENT

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Originally dated as of August 1, 2005

Amended September 24, 2008

Amended and Restated as of March 19, 2014

Town of Hempstead Industrial Development Agency  
(Fairfield East Rockaway LLC 2014 Facility)

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THIS AMENDED AND RESTATED LEASE AGREEMENT, originally dated as of August 1, 2005 and amended and restated as of March 19, 2014 (the "**Amended and Restated Lease Agreement**") 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, 2<sup>nd</sup> Floor, Hempstead, New York 11550-4037 (the "**Agency**"), and FAIRFIELD EAST ROCKAWAY LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having an office at c/o Fairfield Properties, 538 Broadhollow Road, 3<sup>rd</sup> Floor, Melville, New York 11747 (the "**Company**").

## 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;

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

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, civic, 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;

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

WHEREAS, the Agency previously assisted Chait Properties, Inc., a New York business corporation (the "**Original Company**") in the acquisition of an approximately 1.116 acre parcel of land located at 60 Front Street, Village of East Rockaway, Town of Hempstead, Nassau County, New York, the demolition of an existing 40,000 square foot building located thereon and the construction and equipping of an approximately 60,000 square foot building of residential space located thereon comprising approximately forty-three (43) senior citizen apartments including HVAC units, plumbing and electrical fixtures and appliances together with one recreation room, used by the Original Company as a senior citizen residential facility (the "**Original Facility**");

WHEREAS the Agency leased the Original Facility to the Original Company pursuant to a certain Lease Agreement, dated as of August 1, 2005 (the "**Original Lease**");

**Agreement**”), by and between the Agency, as lessor, and the Original Company, as lessee, which was recorded in the Nassau county Clerk’s Office on September 28, 2005 in Liber 12015, Page 834, and a memorandum of which Lease Agreement was recorded in the Nassau County Clerk’s Office on September 28, 2005 in Liber 12015 of Deeds at Page 828;

WHEREAS, in connection with the leasing of the Original Facility, the Original Company and the Agency entered into (i) a certain Payment-In-Lieu-of-Tax Agreement, dated as of August 1, 2005 (the “**Original PILOT Agreement**”), whereby the Assignor agreed to make payments in lieu of taxes on the Original Facility, and (ii) a certain Environmental Compliance and Indemnification Agreement, dated as of August 1, 2005 (the “**Original Environmental Compliance and Indemnification Agreement**”), by and between the Agency and the Original Company, whereby, among other things, the Original Company agreed to comply with all Environmental Laws (as defined therein) applicable to the Original Facility; and

WHEREAS, North Fork Bank, a New York banking corporation, (the “**Original Lender**”), financed the costs of the acquisition, construction and equipping to the Original Facility by making the Loan to the Original Company;

WHEREAS, the Original Company previously requested the Agency’s assistance in the refinancing of the Loan from the Original Lender and in connection therewith, the Original Company and the Agency executed and delivered to the Bank of Smithtown (the “**2008 Lender**”) a Mortgage and Security Agreement, dated September 24, 2008 (the “**2008 Mortgage**”), from the Company and the Agency to the 2008 Lender to fully secure a loan from the 2008 Lender, to the Company in the principal amount of \$6,000,000 (the “**2008 Loan**”); and

WHEREAS, in connection with the execution and delivery of the 2008 Mortgage, the Original Company and the Agency entered into a certain Amendment to Lease Agreement, dated September 24, 2008 (the “**Amendment to Lease**”), by and between the Agency and the Original Company, a memorandum of which was recorded in the Nassau County Clerk’s Office on October 29, 2008 in Liber 12448, Page 476;

WHEREAS, the Company has now requested the Agency’s consent to the assignment by the Original Company of all of its rights, title, interest and obligations under the Original Lease Agreement, as amended, and certain other agreements in connection with the Original Facility to the Company, and the assumption by the Company of all such rights, title, interest and obligations of the Original Company, and the release of the Original Company from any further liability with respect to the Original Facility under the Original Lease Agreement, as amended, subject to certain requirements of the Agency;

WHEREAS, the Company has further requested the Agency’s assistance in the renovation and equipping of the Original Facility (the “**2014 Facility**”); and together with the Original Facility, the “**Facility**”); including the following, as they relate to the renovation, equipping and completion of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection

with construction of the Facility, and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction of the Facility, and (iii) all equipment, machinery, and other tangible personal property (including installation costs with respect thereto) installed or placed in, upon or under such Facility; provided, however, no part of the Facility shall include, the acquisition, leasing, construction, repair, replacement, renovation, maintenance or relocation of any docks, piers, boat slips, wharves, pilings, boardwalks or any other structures, equipment, parking facilities or other items of personal property used in connection with the foregoing or located on the real property at the Facility which is subject to easements, leases, licenses or other agreements running to the benefit of owners, users or lessees of any such docks, piers, boat slips, wharves, pilings, boardwalks or similar structures (collectively, the **"Boat Docks"**);

WHEREAS, pursuant to a certain Assignment, Assumption and Release Agreement, dated as of March 19, 2014 (the **"Assignment, Assumption and Release Agreement"**), by and among the Agency, the Original Company and the Company, the Company will assume all of the right, title, interest, liability, duty and obligations of the Original Company with respect to the Original Facility, including but not limited to, all of the right, title, interest, liability, duty and obligations of the Original Company under the Original Lease Agreement, as amended, subject to the limitations outlined therein;

WHEREAS, the Original Lease Agreement, as amended, shall be amended and restated pursuant to and in accordance this Amended and Restated Lease Agreement (the Amended and Restated Lease Agreement, the Original Lease Agreement and the Amendment to Lease are collectively referred to herein as, the **"Lease Agreement"**);

WHEREAS, the Original PILOT Agreement shall be amended and restated pursuant to and in accordance with a certain Amended and Restated Payment-In-Lieu-of-Tax Agreement, dated as of March 19, 2014 (the **"Amended and Restated PILOT Agreement"**); and together with the Original PILOT Agreement, the **"PILOT Agreement"**) by and between the Agency and the Company;

WHEREAS, the Original Environmental Compliance and Indemnification Agreement shall be amended pursuant to and in accordance with a certain Amended and Restated Environmental Compliance and Indemnification Agreement, dated as of March 19, 2014 (the **"Amended and Restated Environmental Compliance and Indemnification Agreement"**); and together with the Original Environmental Compliance and Indemnification Agreement, the **"Environmental Compliance and Indemnification Agreement"**), by and between the Agency and the Company;

WHEREAS, in connection with the foregoing, the Agency and the Company shall enter into a certain Recapture Agreement, dated as of March 19, 2014 (the **"Recapture Agreement"**), by and between the Agency and the Company in order to reflect the repayment obligations of the Company upon the occurrence of a Recapture Event (as defined therein);



WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, renovate and equip the Facility in accordance with the Plans and Specifications; and

WHEREAS, the Agency and the Company propose to amend and restate the Original Lease Agreement pursuant to this Amended and Restated Lease Agreement, pursuant to which the Agency shall lease the Facility to the Company, and the Company shall rent the Facility from the Agency, upon the terms and conditions set forth in this Amended and Restated Lease Agreement.

## 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.

### 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 cause the Land to be acquired, the Improvements to be acquired and constructed and the Equipment to be acquired and installed and will lease the Facility to the Company pursuant to this Lease Agreement, all for the Public Purposes of the State.

(c) By preliminary resolution adopted on September 8, 2004, the Agency determined that, based upon the review by the Agency of the materials submitted and the representations made by the Original Company relating to the Facility, the Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQR Act.

(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 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 to utilize the Facility in the Town of Hempstead, New York in furtherance of the Public Purposes of the Agency.

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 validly 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 Articles of Organization or Operating Agreement, as amended to date, or any corporate 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, Articles of Organization or Operating Agreement, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

(c) The Facility and the design, acquisition, renovation and equipping and operation thereof will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having

jurisdiction over the Facility. The Company shall defend, indemnify and hold harmless the Agency from any liability and the Lender for expenses, including reasonable attorneys' fees, resulting from any failure by the Company to comply with the provisions of this subsection.

(d) Except as otherwise provided in the Mortgage, the Company shall perform or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency under and pursuant to the Mortgage.

(e) 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.

(f) The Company will complete renovation of the Facility in accordance with the terms and provisions of the Plans and Specifications.

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

(h) The Company, as agent for the Agency, shall comply with all provisions of the Labor Law, the Executive Law and the Civil Rights Law of the State applicable to the acquisition, renovation and equipping of the Facility 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 C attached hereto. The Company further agrees to use reasonable efforts to ensure that ninety percent (90%) of the workers hired by the Company, its contractors or sub-contractors for the performance of work in connection with the construction, renovation or equipping of the Facility, 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 acquisition, renovation and equipping of the Facility shall be purchased from vendors or suppliers doing business within Nassau or Suffolk Counties. Except as provided in the second and third sentences of this subsection, 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.

### ARTICLE III

#### FACILITY SITE AND TITLE INSURANCE

Section 3.1 Agreement to Convey to Agency. The Original Company has conveyed or has caused to be conveyed to the Agency (i) good and marketable title to the Land, including any buildings, structures or other improvements thereon, and (ii) lien-free title to the Equipment, in each case except for Permitted Encumbrances, and the Company will convey or cause to be conveyed to the Agency lien-free title to the Equipment and Improvements acquired after the date hereof.

Section 3.2 Title Insurance. The Original Company has obtained (i) a fee title insurance policy for the benefit of the Agency insuring fee title to the Land and the Improvements, and (ii) a mortgage insurance policy for the benefit of the Lender insuring the Lien of the Mortgages on the Land and the Improvements, in each case in an amount equal to the fair market value of the Land and the Improvements, and in each case except for Permitted Encumbrances.

Section 3.3 Subordination of Lease Agreement. his Lease Agreement and any and all modifications, amendments, renewals and extensions hereof is subject and subordinate to the Mortgages and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof and the Agency and the Company, at the sole cost and expense of the Company, will deliver to the Lender any documents requested by such Lender to confirm such subordination.

## ARTICLE IV

### ACQUISITION, RENOVATION AND EQUIPPING OF FACILITY

#### Section 4.1 Acquisition, Renovation And Equipping of Facility.

(a) The Company agrees that, on behalf of the Agency, it will acquire, renovate and equip the Facility in accordance with the Plans and Specifications.

(b) The Company may revise the Plans and Specifications from time to time with the written approval of the Lender, which approval may not be unreasonably withheld but may be subject to such conditions as the Lender may deem appropriate.

(c) Title to all materials, equipment, machinery and other items of Property incorporated or installed in 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 to so vest title to the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(d) The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency appointment (i) to acquire, construct and equip the Facility in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for constructing the Improvements and acquiring and installing the Equipment with the same powers and with the same validity as would the Agency if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the construction of the Improvements and the acquisition and installation of the Equipment from funds made available therefor in accordance with this Lease Agreement, (iv) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt, or writing in connection with

construction and completion of the Improvements and the acquisition and installation of the Equipment, and (v) to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Company from purchasing any motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles for use on public highways or streets.

(e) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1.

(f) The Company, as agent for the Agency, shall comply with all provisions of the Labor Law of the State, except Section 220-d thereof and as hereinafter noted, applicable to the acquisition, construction and equipping, maintaining, repairing and replacing of the Facility and shall include in all construction contracts, all provisions which may be required to be inserted therein by such provisions.

Section 4.2 Making of the Loan; Disbursements of Loan Proceeds. The Loan Agreement governs the disbursement of the proceeds of the Loan to the Company.

Section 4.3 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Agency and the Lender a certificate signed by an Authorized Representative of the Company (i) stating that acquisition, renovation and equipping of the Facility has been completed in accordance with the Plans and Specifications therefor; (ii) stating that payment for all labor, services, materials and supplies used in such acquisition has been made or provided for; and (iii) such certificates as may be satisfactory to the Agency, including without limitation, a final certificate of occupancy, if applicable. The Company agrees to complete the acquisition, construction and equipping of the Facility on or before March 1, 2016.

Section 4.4 Completion by Company.

(a) In the event that the Net Proceeds of the Loan are not sufficient to pay in full all costs of acquiring, renovating and equipping the Facility in accordance with the Plans and Specifications, the Company agrees to pay, for the benefit of the Agency and the Lender, all such sums as may be in excess of the Net Proceeds of such Loan. Title to all portions of the Facility acquired, installed or constructed at the Company's cost or expense shall immediately upon such acquisition, installation or construction vest in the Agency. The Company shall execute, deliver and record or file such instruments as the Agency or the Lender, may request in order to perfect or protect the Agency's title to or the lien of the Mortgage on such portions of the Facility.

(b) The Company shall not be entitled to any reimbursement for such excess cost or expense from the Agency or the Lender, nor shall it be entitled to any diminution or abatement of any other amounts payable by the Company under this Lease Agreement.

Section 4.5 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 or surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's 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.

Section 4.6 Construction Signage. The Agency shall have the right to erect on the Facility site at the Agency's own cost and expense a sign stating that financing and/or economic benefits in connection with the Facility for the Facility has been provided through the Agency.

## ARTICLE V

### DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of Facility. The Agency hereby leases the Facility, consisting of the Land as particularly described in Exhibit A attached hereto, the Improvements located thereon and the Equipment as particularly described in Exhibit B attached hereto, to the Company and the Company hereby takes the Facility from the Agency upon the terms and conditions of this Lease Agreement.

Section 5.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to Sections 3.3, 8.3 and 10.2 hereof) and the leasehold estate created hereby shall commence on the Closing Date and the Company shall accept possession of the Facility on the Closing Date.

(b) Except as provided in Section 10.2 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on December 31, 2023 or on such earlier date as may be permitted by Section 11.1 hereof; provided, however, that, except as provided in Section 10.2 hereof, in no event shall this Lease Agreement be terminated until the Loan shall have been paid in full or provision for such full payment shall have been made or the Agency has reconveyed the Facility to the Company subject to the Lien of the Mortgages and the Assignment.

(c) Except as provided in Sections 3.3, 8.3 and 10.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Company 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 cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

### Section 5.3 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 \$48,998.50 (equal to the administrative fee of \$49,500.00, plus the public hearing and notice fee of \$998.50 less the \$1,500 application fee previously paid to the Agency). The Company shall pay basic rent for the Facility as follows: One Dollar (\$1.00) per year commencing on the Closing Date and on each January 1 thereafter during the term of this Lease Agreement. In addition, the Company shall pay to the Agency an initial compliance fee of \$2,500.00 on the Closing Date and thereafter the Company shall pay to the Agency an annual compliance fee of \$1,000.00 on or before January 1 of each year commencing on the Closing Date and continuing through the term of the Lease Agreement.

(b) In addition to the payments of basic rent pursuant to Section 5.3(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within ten (10) days of receipt of demand therefor, the expenses of the Agency and the members thereof incurred (i) by reason of the Agency's ownership or leasing 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 not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Agency.

(c) The Company, under the provisions of this Section 5.3, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Company shall fail to timely make any payment required in Section 5.3(a) or 5.3(b), the Company 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.

Section 5.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 5.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company, 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 agrees it will not (i) suspend, discontinue or abate any payment required hereunder, (ii) fail to observe any of its other covenants or agreements in this Lease Agreement, or (iii) terminate this Lease Agreement early for any cause whatsoever unless and until any outstanding Loan has been paid in full without the prior written consent of such Lender.

Subject to the foregoing provisions, nothing contained in this Section shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease Agreement or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem

necessary to compel performance or recover damages for non-performance, and the Agency covenants that it will not, subject to the provisions of Sections 3.3 and 8.3 and Article X hereof, take, suffer or permit any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights or estate of the Company hereunder, except upon written consent of the Company.

Section 5.5 Payment of Additional Moneys in Prepayment of Loans. In addition to any other moneys required or permitted to be paid pursuant to this Lease Agreement, the Company may, subject to the terms of any Loan Agreement, pay moneys to any Lender to be used for the prepayment of such Loan at such time or times and on such terms and conditions as is provided in such Note and such Loan Agreement.

Section 5.6 Rights and Obligations of the Company upon Prepayment of the Loan. In the event that any Loan shall have been paid in full prior to the termination date specified in Section 5.2(b) hereof (i) all references in this Lease Agreement to such Lender, as applicable, Loan Agreement, and such Mortgage as applicable to such Loan shall be ineffective, provided that if such Loan shall be refinanced with a new Loan, such references shall remain in effect with respect to the new Lender and its Loan Documents, and (ii) provided that such Loan shall not be refinanced with a new Loan, the Company shall be entitled so long as any additional Mortgages have been satisfied in full, at its option, to the exclusive use, occupancy and enjoyment of the Facility from the date of such payment until the scheduled expiration of the Lease Term, on all of the terms and conditions hereof, except that the Company shall not be required to carry any insurance for the benefit of any such Lender, or the Company may, at its option, require the Agency to convey the Facility to the Company pursuant to the terms of Section 11.3 hereof. In the event of any such payment or the making of any such provision, the Agency, at the sole cost of the Company, shall obtain and record or file appropriate discharges or releases of the Mortgages and any other security interest relating to the Facility or this Lease Agreement.

## ARTICLE VI

### MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

#### Section 6.1 Maintenance and Modifications of Facility by Company.

(a) The Company shall not abandon the Facility or cause or permit any waste to the Improvements. During the Lease Term, the Company shall not remove any part of the Facility outside of the jurisdiction of the Agency and shall (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (iii) operate the Facility in a sound and economic manner.

(b) The Company from time to time may make minor 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 or will not affect the qualification of the Facility as a "project" under the Act. All such additions, modifications or



improvements made by the Company shall become a part of the Facility and the Property of the Agency. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to such property and to perfect or protect the lien of the Mortgage.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 8.10 hereof, the Company or any permitted sublessee 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. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the 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 is occasioned to the Facility by such removal, the Company agrees to promptly repair such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges.

(a) Subject to the PILOT Agreement, the Company agrees 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 may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, payments in lieu of taxes 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 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; (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; and (iv) all payments under the PILOT Agreement; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company may permit the taxes, assessments or other charges 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 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 contests any taxes, assessments or other charges provided for in paragraph (b) hereof, all sums returned, as a result thereof, will be promptly transmitted by the Agency to the Company and that the Company shall be entitled to retain all such amounts.

(d) Within thirty (30) days of receipt of written request therefor, the Company shall deliver to the Agency and the Lender official receipts of the appropriate taxing authorities or other proof satisfactory to the Agency and the Lender evidencing payment of any tax which the Company is required to pay pursuant to Section 6.3(a) hereof.

Section 6.4 Insurance Required. At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, the Company 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, 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, 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 Company, but in no event less than the principal amount of the Loan. 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 and the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company 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 (combined single limit 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 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 combined single limit or equivalent, protecting the Agency and the Company 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 (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 (combined single limit 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 \$3,000,000.

(e) A policy or policies of flood insurance in an amount not less than the principal amount of the Loan 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 Lender 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.

## **Section 6.5 Additional Provisions Respecting Insurance.**

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. 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 evidencing the insurance required by Section 6.4(a) and (e) hereof shall provide for payment of the losses to the Company to the extent applicable and shall contain a standard New York non-contributory mortgagee clause showing the interest of the Lender as first mortgagee and shall provide for payment to the Lender of the Net Proceeds of insurance resulting from any claim for loss or damage thereunder, and all policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days (or ten (10) days in the case of cancellation for non-payment) prior written notice to the Agency and the Lender of the restriction, cancellation or modification thereof. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Agency and the Lender as additional named insureds. All policies evidencing the insurance required by Section 6.4(d)(ii), (iii) and (iv) shall name the Agency and the Company as additional insureds. The Company 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 Agency to the Lender pursuant to any Mortgage, and the Company consents thereto. Upon request of the Lender, the Company 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 the applicable Mortgage) to the Lender the policies of insurance required under Section 6.4(a), so and in such manner and form that the Lender shall at all times, upon such request and until the payment in full of the applicable Loan, have and hold said policies and the Net Proceeds thereof as collateral and further security under such Mortgage for the payment of the Loan. The policies required under Section 6.4(a) shall contain appropriate waivers of subrogation. The policies may be included under "blanket" or master policies, which also insure other entities and premises. Nothing contained herein is intended to limit or modify any insurance requirements set forth in any Mortgage or other Loan Document.

(b) The certificates of insurance required by Sections 6.4(a), (c) and (e) hereof shall be deposited with the Lender on or before the Closing Date. Upon request of the Lender, the Agency will deliver such policies to it. A copy of the policy (not a certificate or binder) of insurance required by Sections 6.4(d)(ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency and the Lender 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 shall furnish to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies are no longer required by this Lease.

Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Lease Agreement as the Agency and the Lender may from time to time reasonably require.

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) subject to the terms of any Mortgage or other Loan Document, the Net Proceeds of the insurance required by Sections 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 Sections 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 Lenders or Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (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, or payments-in-lieu-of-taxes pursuant to the PILOT Agreement, assessment or other governmental charge required to be paid by Section 6.3 hereof, (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 8.9(b)), or (v) to pay any other amount or perform any act hereunder required to be paid or performed by the Company hereunder, the Agency or the Lender may pay or cause to be paid such tax or payments-in-lieu-of-taxes pursuant to the PILOT Agreement, assessment or other governmental charge or the 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 or the Lender until at least ten (10) days shall have elapsed since notice shall have been given by the Lender to the Agency, with a copy of such notice being given to the Company (or by the Agency to the Lender and the Company), and in the case of any tax, assessment or governmental charge or the amounts specified in paragraphs (iii) and (iv) hereof, no such payment shall be made in any event if the Company 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 or the Lender shall affect or impair any rights of the Agency hereunder or any Lender under the Mortgages arising in consequence of such failure by the Company. The Company, shall, on demand, reimburse the Agency or any Lender for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency or the Lender 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 or the Lender at one percent (1%) in excess of the rate set forth in any applicable note, and such amount, together with such interest, shall become additional indebtedness secured by the Mortgages.

## ARTICLE VII

### DAMAGE, DESTRUCTION AND CONDEMNATION

#### Section 7.1 Damage or Destruction of the Facility.

(a) If the Facility or any part or component 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; and
- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement or the PILOT Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated); and
- (iii) the Company shall promptly give written notice thereof to the Agency and the Lender; and
- (iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Company, or if there is a mortgage or mortgages in effect, to the applicable Lender or lenders and except as otherwise provided in Section 11.1 and subsection (d) hereof, applied by the Lender or Lenders pursuant to the terms of the Mortgage or Mortgages; and
- (v) the Company shall have the option to terminate this Lease Agreement pursuant to Section 11.1 hereof or to promptly replace, repair, rebuild or restore the Facility or the damaged part or component thereof to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by Company, provided that such changes, alterations or modifications do not so change the nature of the Facility that it does not constitute a "project" as such term is defined in the Act and provided that the Facility will be subject to no Liens other than Permitted Encumbrances; and
- (vi) the Agency shall have the right to terminate this Lease Agreement pursuant to Section 10.2 hereof if the Company does not promptly replace, repair, rebuild, restore or relocate the Facility or the damaged part or component thereof as described in (v) above; however the Agency will not terminate this Lease Agreement if the Company has proceeded with good effort to replace, repair, rebuild, restore or relocate the Facility but has encountered problems obtaining the proper governmental permits in order to replace, repair, rebuild, restore or relocate the Facility; and

(vii) any other conditions any Lender may reasonably impose.

(b) 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 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 balance of such Net Proceeds remaining after payment of all costs of replacement, repair, rebuilding, restoration or relocation shall be retained by the Company.

(c) The Company shall have the right to settle and adjust all claims under any policies of insurance required by Section 6.4(a) hereof on behalf of the Agency and on its own behalf.

(d) If the Company shall exercise its option to terminate this Lease Agreement pursuant to Section 11.1 hereof, subject to the terms of any Mortgage or other Loan Document, any Net Proceeds derived from insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If an Event of Default hereunder shall have occurred and the Lender shall have exercised its remedies under Section 10.2 hereof, subject to the terms of any Mortgage or other Loan Document, 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 be retained by the Company.

(e) If the Facility has been substantially damaged or destroyed and is not replaced, repaired, rebuilt, restored or relocated, the Facility may be reconveyed to the Company, subject to the Mortgages.

#### 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 replace, repair, rebuild, restore or relocate the Facility or acquire, by construction or otherwise, facilities of substantially the same nature as the Facility ("**Substitute Facilities**"); and
- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement or the PILOT Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated or Substitute Facilities acquired); and
- (iii) the Company shall promptly give written notice thereof to the Agency and each Lender; and
- (iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid and applied pursuant to the terms of the Mortgages except as otherwise provided in Section 11.1 and

subsection (d) hereof, applied by the Lender pursuant to the terms of the Mortgages; and

- (v) if the Facility is not replaced, repaired, 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 either of Sections 11.2, 11.3 and 11.4 hereof or of Section 7.2(f) hereof shall apply; and
- (vi) the Company shall have the option to terminate this Lease Agreement pursuant to Section 11.1 hereof or to promptly replace, repair, rebuild or restore the Facility or any part or component thereof to substantially the same condition and value as an operating entity as existed prior to taking, with such changes, alterations and modifications as may be desired by the Company, provided that such changes, alterations or modifications or acquisition of Substitute Facilities do not so change the nature of the Facility that it does not constitute a "project" as such term is defined in the Act and provided that the Facility will be subject to no Liens, other than Permitted Encumbrances; and
- (vii) the Agency shall have the right to terminate this Lease Agreement pursuant to Section 10.2 hereof if Company does not promptly replace, repair, rebuild, restore or relocate the Facility or any part or component as described in (vi) above; and
- (viii) the Company shall submit to any other conditions the Agency or any Lender may reasonably impose pursuant to the terms of the applicable Mortgage.

(b) 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 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.

(c) Except upon the occurrence of an Event of Default, the Company shall have the right to settle and adjust all claims under any Condemnation proceedings on behalf of the Agency and on its own behalf.

(d) If the Company shall exercise 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 and any balance remaining thereafter shall be retained by the Company. If an Event of Default hereunder shall have occurred and the Agency or any Lender shall have exercised their respective 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 be retained by the Company.



(e) If the Facility has been substantially condemned and, is not replaced, repaired, rebuilt, replaced or relocated or if a Substitute Facility is not acquired, constructed and equipped, the Facility will be reconveyed to the Company.

Section 7.3 Condemnation of Company-Owned Property. Subject to the terms of any Mortgage or other Loan Document, the Company shall be entitled to the proceeds of 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 hereby waives 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 No Warranty of Condition or Suitability by Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.2 Hold Harmless Provisions.

(a) 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 directors, 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 occupation or the use thereof or the presence of any Person or Property on, in or about the Facility or the Land; (ii) liability arising from or expense incurred by the Agency's acquisition, construction and equipping, 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, the exercise by the Company of the authority conferred upon it pursuant to Section 4.1(d) of this Lease Agreement and all causes of action and 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 on the Closing Date 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, 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, agents (except the Company) or employees. 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 Lease Agreement, the obligations of the Company 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 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 respective 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 respective members, directors, officers, agents 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 8.3 Right to Inspect Facility. The Agency and any Lender and the duly authorized agents of any of them shall have the right, upon five (5) days written notice to the Company, at all reasonable times to inspect the Facility. The Agency and any Lender will restrict their inspections of the Facility to no more than three (3) visits a year unless they have a reasonable belief that more visits are necessary.

Section 8.4 Company to Maintain Its Existence. The Company 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 without the prior written consent of the Agency, which consent shall not be unreasonably withheld, delayed or conditioned. The Company shall provide prior written notice to the Agency of any subsequent sale, transfer or conveyance (not including any transfer or conveyance as security) of a controlling interest in the Company and any such sale, transfer or conveyance of a controlling interest in the Company shall be subject to the Agency's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 8.5 Qualification in State. The Company throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 8.6 Agreement to File Annual Statements and Provide Information. The Company shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) of the New York State General Municipal Law. The Company shall submit copies of such annual statements to the Agency at the time of filing with the Department of Taxation and Finance. The Company shall also provide the

Agency with such information necessary for the Agency to comply with Section 874(9) of the General Municipal Law. The Company further agrees whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Company and/or such sublessees, their finances, operations, employment and affairs necessary 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, or the Public Authorities Reform Act of 2009, each as amended from time to time, or any of the Agency Documents or Company Documents, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller, and such information shall be provided within thirty (30) days following written request from the Agency.

Section 8.7 Books of Record and Account; Financial Statements. The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and financial affairs of the Company. The Company shall furnish to the Agency and to any Lender, within thirty (30) days of their filing, copies of all reports, if any, filed with the Securities and Exchange Commission, pursuant to the Securities Exchange Act of 1934, as amended, relative to the Company.

Section 8.8 Compliance With Orders, Ordinances, Etc.

(a) The Company, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee or occupant of the Facility 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 any part thereof or to the acquisition, construction and equipping thereof, 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 and companies or associations insuring the premises having jurisdiction of the Facility or any part thereof, or to the acquisition, construction and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) The Company shall keep or cause the Facility to be kept free of Hazardous Substances. Without limiting the foregoing, the Company shall not cause or permit the Facility 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 Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any contractor, subcontractor, tenant or subtenant, a release of Hazardous Substances onto the Facility or onto any other property. The Company shall comply with and ensure compliance by all contractors, subcontractors, tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all contractors, subcontractors, tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company shall (a) 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, on, from, or affecting the Facility (i) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies and (ii) to the satisfaction of any Lender and the Agency, and (iii) in accordance with the orders and directives of all federal, state, and local governmental authorities; and (b) defend, indemnify, and hold harmless any Lender and the Agency, and their respective members, 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 (i) 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, (ii) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, and/or (iv) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of any Lender or the Agency, which are based upon or in any way related to such Hazardous Substances, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. In the event any Mortgage is foreclosed, or the Company tenders a deed in lieu of foreclosure, the Company shall deliver the Facility free of any and all Hazardous Substances so that the condition of the Facility shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Facility. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Company may have to the Agency or any Lender at common law, and shall survive the transactions contemplated herein.

(c) Notwithstanding the provisions of subsections (a) and (b) hereof, the Company 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 Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency or any Lender shall notify the Company that by failure to comply with such requirement or requirements, the lien of any Mortgage as to any part of the Facility may be materially endangered or the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be satisfactory to any such Lender and 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 shall use its best efforts to not cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency and any such Lender if such Lender's consent is required by the terms of any applicable mortgage.

(d) Notwithstanding the provisions of this Section 8.8, if, because of a breach or violation of the provisions of subsections (a) or (b) hereof (without giving effect to subsection (c) hereof), the Agency, or any Lender or any of their respective members, directors, officers, agents, or employees, shall be threatened with a fine, liability, expense or

imprisonment, then, upon notice from the Agency or any such Lender, the Company shall immediately provide legal protection and/or pay amounts necessary in the opinion of the Agency or any such Lender, as the case may be, and their respective members, directors, officers, agents and employees deem sufficient, 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, any Lender and 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 themselves, any such Lender and the Agency shall each select its own counsel, 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.

#### Section 8.9 Discharge of Liens and Encumbrances.

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

Section 8.10 Identification of Equipment**Error! Bookmark not defined..** 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 and any Lender. All Equipment and other 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 utilized for purposes of construction of the Facility or 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 Equipment and other Property were properly identified by such appropriate records as were approved by the Agency and such Lender.Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility and to any investment credit with respect to any part of the Facility.

**Section 8.12 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 it 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) in which the Facility is located (collectively, the "Referral Agencies"). The Company also agrees that it will, 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 (PL 97-300) programs who shall be referred by the Referral Agencies.

**Section 8.13 Rental to Persons at Fifty Percent (50%) or Less of the Median Family Income in Nassau County.** The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated therein, it will verify to the Agency, in writing, on an annual basis (beginning on January 15, 2007, and on each January 15th thereafter for as long as this Lease Agreement is in effect) that the Company has met its obligation to rent at least twenty percent (20%) of the apartments at the Facility to persons at fifty percent (50%) or less of the median family income in Nassau County ("Low Income Persons"). If the Company fails to meet its obligation to rent at least twenty percent (20%) of the apartments at the Facility to Low Income Persons but the Company has rented between fifteen percent (15%) and twenty percent (20%) of the apartments at the Facility to Low Income Persons then the Agency shall reduce the Company's PILOT benefits as described in 7(a) of the PILOT Agreement. If less than fifteen percent (15%) of the apartments at the Facility are rented to Low Income Persons then the Agency shall reduce the Company's PILOT benefits as described in 7(b) of the PILOT Agreement. If less than fifteen percent (15%) of the apartments at the Facility are rented to Low Income Persons for two consecutive years then an Event of Default will have occurred, as described in Section 7(c) of the PILOT Agreement and as described in Section 10.1(a)(xiii) hereof.

**Section 8.14 Employment at the Facility.** The Company covenants at all times to maintain one (1) full time equivalent employee at the Facility as of January 31, 2015, 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 or subcontractors of the Company (including, but not limited to, a third party property manager for the Facility), or any subsidiary or affiliates of the Company, whose place of employment or workplace is located at the Facility ("FTE"), and the FTE jobs created and maintained by any of such parties at the Facility shall satisfy the obligation of the Company hereunder.

**Section 8.15 Compliance with the Act.** The Company hereby agrees to comply with the NY General Municipal Law Section 875. The Company further agrees that the exemption of sales and use tax provided pursuant to the Act and the appointment of the Company as agent of the Agency is subject to termination and recapture of benefits pursuant to Section 875 and the Recapture Agreement.

## 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 Section 8.13 hereof and 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 and each Lender.

(b) With the prior written consent of the Lender, the Agency and the Company 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 and request the Lender to execute and deliver any and all instruments necessary or appropriate to so release such part of, or interest in, the Land and convey such title thereto or interest therein, free from the lien of the Mortgages, to the Company or such other Person as the Company may designate. As a condition to such conveyance, the Lender shall be provided with a copy of the instrument transferring such title or interest in such a Land, an instrument survey (if the Lender so requests) of the Land to be conveyed, together with a certificate of an Authorized Officer of the Company stating that there is then no Event of Default under this Lease Agreement and 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 to any abatement or diminution of the rents payable by it under this Lease Agreement or any abatement or diminution of the amounts payable by it under the PILOT Agreement.

#### 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, with the prior written consent of the Lender if required by the Mortgage or any other Loan Document, 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, free from the lien of the Mortgage, 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) The Agency shall execute and deliver to the Company all instruments 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 counsel 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 to any abatement or diminution of the rents payable by it under this Lease Agreement or any abatement or diminution of the amounts payable by it under the PILOT Agreement.

### Section 9.3 Assignment and Subleasing.

(a) Except in connection with a permitted Mortgage (and enforcement thereof) and except for leases of units in the Facility to the residents of the Facility, this Lease Agreement may not be assigned, in whole or in part, and the Facility may not be subleased, in whole or in part, without the prior written consent of the Lender, if Lender's consent is required under the Mortgages, and the Agency and the Lender in each instance. The foregoing provisions shall not apply to any assignment of this Lease Agreement resulting from any foreclosure of any Mortgage or the delivery of an assignment in lieu thereof. 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 from primary liability for any of its obligations hereunder;
- (ii) the assignee or sublessee (except in the case of a true sublease in the ordinary course of business) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;
- (iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency and to the Lender a true and complete copy of such assignment or sublease and the instrument of assumption;
- (iv) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act and no assignment or sublease shall cause the Facility to be used in violation of Section 862(2)(a) of the Act; and
- (v) neither the validity nor the enforceability of the Lease Agreement shall be adversely affected thereby; and
- (vi) the sublessee will execute and deliver an Agency Compliance Agreement, in form and substance satisfactory to the Agency.

(b) If the Lender or 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 cost shall furnish the Lender and the Agency, with opinions, in form and substance satisfactory to the Lender and the Agency, (i) of Transaction Counsel as to item (iv) above, and (ii) of Independent Counsel as to items (i), (ii), and (v) above.

Section 9.4 Mortgage and Pledge of Agency's Interests to Lender. The Agency shall at the request of and at the sole expense and cost of the Company, (i) mortgage its interest in the Facility pursuant to the Mortgage, and (ii) pledge and assign its rights to and



interest in this Lease Agreement and in all amounts payable by the Company pursuant to Section 5.3 hereof and all other provisions of this Lease Agreement (other than Unassigned Rights), to the Lender as security for the payment of the principal of and interest on the Loan. The Company hereby acknowledges and consents to such mortgages, pledges and assignments 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 as well as for the benefit of the Lender.

Section 9.5 Pledge of Company's Interest to Lender. The Company shall have the right to pledge and assign its rights to and interest in this Lease Agreement, the Equipment and the Plans and Specifications to each Lender as security for the payment of the principal of and interest on the Loan. The Agency hereby acknowledges and consents to any such pledge and assignment by the Company.

Section 9.6 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 transfer of title to the entire Facility to any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility, 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 the Lender, upon request, at the sole cost and expense of the Company, a favorable opinion of Independent Counsel as to compliance with the provisions of Section 9.6(a) hereof. The Agency promptly shall furnish such additional information with respect to any such transaction as the Company or the Lender may reasonably request. 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 be "Events of Default" under this Lease Agreement, after thirty (30) days written notice delivered to the Company by the Agency (except for obligations referred to in 10.1(a)(ii) which are not given this thirty day notice) specifying any failure and requesting that it be remedied:

- (i) the failure by the Company to pay or cause to be paid on the date due, the amount specified to be paid pursuant to Section 5.3(a) hereof;

- (ii) the failure by the Company to observe and perform any covenant contained in Sections 6.4, 6.5, 8.4 and 9.3 hereof;
- (iii) the failure by the Company to pay or cause to be paid on the dates due, the amounts specified to be paid pursuant to the PILOT Agreement;
- (iv) the invalidity, illegality or unenforceability of the PILOT Agreement due to an act, omission, or failure to act of the Company; or the failure by the Company to observe and perform any covenant contained in the PILOT Agreement, and the continuance of such failure beyond the expiration of any applicable notice and cure period;
- (v) any representation or warranty of the Company herein or in any of the Company Documents shall prove to have been false or misleading in any material respect;
- (vi) [reserved];
- (vii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days after notice to the Company of 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 generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; the commencement by the Company (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 (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor in such case or proceeding, or such case or proceeding is consented to by the Company or remains undismissed for forty (40) days, or the Company 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 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 (the term "dissolution or liquidation of the Company" as used in this subsection shall not be construed to include any transaction permitted by Section 8.4 hereof);
- (viii) an Event of Default under any Mortgage shall have occurred and be continuing;
- (ix) an Event of Default under any Loan Documents shall have occurred and be continuing;
- (x) the invalidity, illegality or unenforceability of any Loan Documents;

- (xi) the breach of any covenant or representation contained in Section 8.8 hereof with respect to environmental matters;
- (xii) failure of the Company to create, maintain or retain the number of full-time and part-time jobs at the Facility that the Company represented to the Agency in the Company's Application that the Company would create, maintain or retain at the Facility; or
- (xiii) failure of the Company to rent at least fifteen percent (15%) of the apartments at the Facility to Low Income Persons for two consecutive years; or
- (xiv) failure of the Company to create or maintain one (1) FTE Jobs at the Facility based upon a 35 hour work week by January 31, 2015, and thereafter unless such failure is reflective of a force majeure event, or the Company' business cycle or conditions, including 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.

(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 4.1 and 6.1 of this Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Lender, 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 continuance 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, any civil or military authority, insurrections, riots, epidemics, 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. 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, the Agency or the Lender 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, to be due and payable within five (5) business days of the Company's receipt of such notice: (A) all unpaid installments of rent payable pursuant to Section 5.3(a) and (b) hereof, (B) all unpaid and past due payments in lieu of taxes pursuant to the PILOT Agreement and (C) 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, 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 taking of any other action by the Agency or the Lender;
- (ii) if an Event of Default specified in Section 10.1(a)(xiii) hereof shall have occurred, then the Agency shall terminate this Lease Agreement, reconvey the Facility to the Company and terminate the PILOT Agreement;
- (iii) take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such actions shall not be deemed to constitute a waiver of such Event of Default;
- (iv) terminate this Lease Agreement, reconvey the Facility to the Company and terminate the PILOT Agreement. The Agency shall have the right to execute an appropriate deed with respect to the Facility and to place the same on record in the Nassau County Clerk's Office, at the expense of the Company and in such event the Company waives delivery and acceptance of such deed and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such deed.
- (v) 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 under the PILOT Agreement and the Recapture Agreement, and to enforce the obligations, agreements or covenants of the Company under this Lease Agreement and under the PILOT Agreement and the Recapture Agreement.

(b) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof or under the PILOT Agreement.

(c) Any sums payable to the Agency as a consequence of any action taken pursuant to this Section 10.2 (other than those attributable to Unassigned Rights or to reimburse the Agency for reasonable costs and expenses; including legal fees and expenses) shall be paid pro rata to the Lenders and applied to the pro rata payment of the Loans.

(d) After an Event of Default shall have occurred, the Company shall have the right upon notice to the Agency and to each Lender to enter the Facility with agents or representatives of the Agency and the Lenders to remove any equipment or other personalty owned by the Company if such equipment or personalty is not part of the Facility.

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency or the Lender 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 or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency and the Lender, as appropriate, 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

(a) In the event the Company 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 herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

(b) In the event the Company should default under any of the provisions of this Lease Agreement and the Lender 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 herein contained, the Company shall, on demand therefor, pay to the Lender 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.

Section 10.6 Certificate of No Default. The Company shall deliver to the Agency each year no later than January 15 a certificate signed by an Executive Officer of the Company stating that the Company is not in default under this Lease Agreement and no Event of Default exists under this Lease Agreement, the PILOT Agreement, or any other

Company Document. Such certificate shall also contain all information required by Sections 8.6 and 8.13 hereof.

## ARTICLE XI

### EARLY TERMINATION OF LEASE AGREEMENT; OPTION IN FAVOR OF COMPANY

#### Section 11.1 Early Termination of Lease Agreement.

(a) The Company shall have the option to terminate this Lease Agreement at any time that the Loan has been paid in full or is subject to prepayment in whole pursuant to the terms of the Notes and 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 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; provided, however, that the exercise of the option to terminate by the Company pursuant to this Section shall have no force and effect unless the Lender shall consent thereto in writing. Notwithstanding anything in this Section to the contrary, the Agency shall have the right to terminate this Lease Agreement at any time after the occurrence and continuation of an Event of Default.

(b) Notwithstanding anything in this Lease Agreement to the contrary, at such time as (i) the Company is required to make payments in lieu of taxes pursuant to the PILOT Agreement in an amount equal to one hundred percent (100%) of the taxes and assessments which would be levied upon the Facility were the Facility owned by the Company and not by the Agency, or (ii) the Agency receives a certificate signed by an Authorized Representative of the Company and the Lender stating that the provisions of this subsection are then effective, this Lease Agreement shall be deemed to have expired pursuant to Section 5.2(b) hereof.

Section 11.2 Conditions to Early Termination of Lease Agreement. In the event the Company exercises its option to terminate this Lease Agreement in accordance with the provisions of Section 11.1 hereof, the Company shall make the following payments:

(a) To the Lender: an amount certified by the Lender to be sufficient to pay the principal of and interest on each outstanding Loan and any other amounts due and payable under the Loan Documents.

(b) To the Agency or the Taxing Authorities (as such term is defined in the PILOT Agreement), as appropriate pursuant to the PILOT Agreement all amounts due and payable under the PILOT Agreement as of the date of the conveyance described in Section 11.3 hereof.

(c) To the Agency: an amount certified by the Agency sufficient to pay all unpaid fees and expenses of the Agency incurred under the Agency Documents.

(d) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under any Company Documents or due under any Loan Documents.

Section 11.3 Obligation to Purchase Facility. Upon termination or expiration of the Lease Term, in accordance with Sections 5.2 or 11.1 hereof, the Company shall purchase the Facility from the Agency for the purchase price of One Dollar (\$1.00) plus all unpaid payments in lieu of taxes pursuant to the PILOT Agreement through the date upon which this Lease Agreement terminates or expires. The Company shall purchase the Facility by giving written notice to the Agency and to each Lender (if any) (which may be contained in the certificate referred to in Section 11.1 hereof) (i) declaring the Company's election to purchase and (ii) fixing the date of closing such purchase, which shall be the date on which this Lease Agreement is to be terminated.

Section 11.4 Conveyance on Purchase. At the closing of any purchase of the Facility pursuant to Section 11.3 hereof, the Agency shall, upon receipt of the purchase price, deliver and request each Lender to deliver to the Company all necessary documents (i) to convey to the Company title to the Property being purchased, as such Property exists, subject only to the following: (A) any Liens to which title to such Property was subject when conveyed to the Agency, (B) any Liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances and (D) any Liens resulting from the failure of the Company 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 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), and (iii) to discharge and release the Mortgage and any other security interest held by the Lender. Upon the conveyance of the Facility by the Agency to the Company pursuant to this Article XI, either due to a purchase of the Facility or a termination of the Lease Agreement, the PILOT Agreement shall terminate. The Agency shall also execute and deliver such other documents as may be reasonably requested by Company's Lender to evidence the reconveyance of the Facility and termination of the Lease Agreement.

## ARTICLE XII

### MISCELLANEOUS

Section 12.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, 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: Executive Director

To the Company:

Fairfield East Rockaway LLC  
c/o Fairfield Properties  
538 Broadhollow Road, 3<sup>rd</sup> Floor  
Melville, New York 11747  
Attention: Gary Broxmeyer or Michael Broxmeyer

With a copy to:

Moritt Hock Hamroff & Horowitz LLP  
400 Garden City Plaza  
Garden City, New York 11530  
Attention: Gary Hisiger, Esq.

To the Lender (so long as its Mortgage remains outstanding):

Signature Bank  
68 South Service Road  
Melville, New York 11747  
Attention: Commercial Lending Dept.

With a copy to:

Farrell Fritz, P.C.  
1320 RXR Plaza  
Uniondale, New York 11556-1320  
Attention: James F. DeVarso, Esq.

Section 12.2 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 12.3 Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.4 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and only with the concurring written consent of the Lender.



Section 12.5 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 12.6 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 12.7 List of Additional Equipment; Further Assurances. (a) Upon the Completion Date with respect to the Facility and the installation of all of the Equipment therein, the Company shall prepare and deliver to the Agency and the Lender a schedule listing all of the Equipment not previously described in this Lease Agreement. If requested by the Agency or the Lender, the Company shall thereafter furnish to the Agency and the Lender, within sixty (60) days after the end of each calendar year, a schedule listing all of the Equipment not theretofore previously described herein or in the aforesaid schedule.

(b) The Agency and the Company shall execute and deliver all instruments and shall furnish all information necessary or appropriate to perfect or protect any security interest created or contemplated by this Lease Agreement and the Mortgages.

Section 12.8 Survival of Obligations. This Lease Agreement shall survive the making of the Loan and the performance of the obligations of the Company to make the payments required by Section 5.3, and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement and the payment of the Loan.

Section 12.9 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 12.10 Additional Covenants. In the event that the consent or approval of the Agency is requested by the Company as required hereunder, or the Agency exercises its discretion hereunder, such consent shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised. With respect to any obligation of the Company hereunder to reimburse the Agency for its costs or expenses, such costs and expenses to be reimbursed shall be limited to the reasonable costs and expenses of the Agency.

Section 12.11 Loan Documents. Nothing herein is intended to limit any obligations of the Company or any other party to the Lender under the Loan Documents or any rights or benefits provided to Lender under and pursuant to the terms of the Loan Documents.

Section 12.12 Amendment and Restatement of Original Lease Agreement. This Amended and Restated Lease Agreement amends and restates the Original Lease Agreement in its entirety.

Section 12.13 Special Lender Provisions. Notwithstanding any provision of this Lease Agreement or any other Transaction Document to the contrary, so long as a Mortgage remains outstanding:

(a) The Agency shall simultaneously give to the Lender a copy of each notice of default given to the Company under this Lease Agreement or any of the other Transaction Documents simultaneously with the giving of any such notice by the Agency to the Company. The Lender shall have the right to remedy such default within the applicable notice, cure or grace period, if any, provided under this Lease Agreement or other Transaction Document with respect to such default. The Agency shall accept performance by the Lender of any covenant, condition or agreement on the Company's part to be performed hereunder or under the other Transaction Documents with the same force and effect as though performed by the Company.

(b) Nothing contained in this Lease Agreement or any other Transaction Document shall modify or limit any of the rights or remedies provided to the Lender under the terms of the Loan Documents.

(Remainder of Page Intentionally Left Blank – Signature Pages Follow)

**FAIRFIELD EAST ROCKAWAY LLC**

By: 

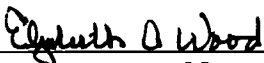
Name: Gary Broxmeyer

Title: Manager

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

On the 19th day of March in the year 2014, before me, the undersigned, personally appeared **Gary Broxmeyer**, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

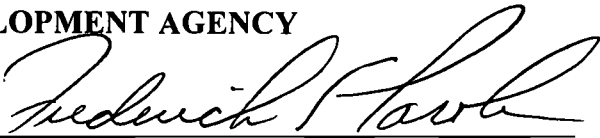
**ELIZABETH A. WOOD**  
Notary Public, State of New York  
Registration # 01WO6103025  
Qualified in Monroe County  
Certificate Filed in Monroe County  
Commission Expires: 12/15/20**15**

  
Notary Public

Signature Page 2 of 2  
Amended and Restated Lease Agreement


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

**TOWN OF HEMPSTEAD INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Name: Frederick E. Parola  
Title: Executive Director

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

On the 19th day of March in the year 2014, before me, the undersigned, 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 with instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

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

MICHAEL LODATO  
Notary Public, State of New York  
01LO6226099  
Qualified in Suffolk County  
Commission Expires Aug. 2, 20<sup>14</sup>

## EXHIBIT A

### Legal Description of Real Property

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

BEGINNING at a point on the Easterly side of Front Street 283.30 feet Southerly measured along said Easterly side of Front Street from a monument at the corner formed by the intersection of the Southerly side of Althouse Avenue with the Easterly side of Front Street and from said point of beginning.

RUNNING along land now or formerly of John Peter North 89 degrees 30 minutes East 125.00 feet;

THENCE still along said Peter's Lane North 0 degrees 30 minutes West 50 feet to land of the Town of Hempstead;

THENCE along the same South 80 degrees 07 minutes East 265.20 feet to East Rockaway Creek;

THENCE along the same and along the line of the dock the following seven courses and distances:

South 12 degrees 19 minutes 50 seconds West 48.67 feet;  
South 52 degrees 09 minutes 52 seconds West 18.01 feet;  
South 62 degrees 36 minutes 48 seconds West 19.72 feet;  
South 70 degrees 42 minutes 58 seconds West 102.36 feet;  
South 16 degrees 25 minutes 31 seconds East 18.8 feet;  
South 63 degrees 25 minutes 32 seconds West 129.79 feet;  
South 77 degrees 21 minutes 06 seconds West 137.89 feet;

THENCE along the same North 0 degrees 30 minutes West 202.20 feet to land of Peter at the point or place of BEGINNING.

FOR CONVEYANCING ONLY, IF INTENDED TO BE CONVEYED. TOGETHER WITH ALL RIGHTS, TITLE AND INTEREST OF, IN AND TO ANY STREETS AND ROADS ABUTTING THE ABOVE DESCRIBED PREMISES TO THE CENTER LINE THEREOF.

## EXHIBIT B

### Equipment

All equipment, fixtures, machinery, building materials and items of personal property acquired, renovated and installed and/or to be acquired, renovated and installed by the Company as agent of the Agency in connection with the completion of the Agency's Fairfield East Rockaway LLC 2014 Facility located in the Town of Hempstead, Nassau County, New York.

## EXHIBIT C

### 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 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. While 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, renovating and equipping the Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, renovation 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, renovation and equipping of the Facility, discriminate against or intimidate any employee hired for the performance of work involved in acquiring, renovating 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, renovation 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.



## SCHEDULE A

### Schedule of Definitions

**"2008 Lender"** (i) Bank of Smithtown, a New York banking corporation, (ii) its successors or assigns, or (iii) any surviving, resulting or transferee institution authorized to do business in the State.

**"2008 Loan"** means the loan in the amount of \$6,000,000 given by the 2008 Lender to the Company pursuant to the terms of the Loan Documents.

**"2008 Mortgage"** means the Mortgage and Security Agreement, dated September 24, 2008, from the Agency and the Company to the 2008 Lender, which 2008 Mortgage may be amended, renewed, restated, extended or supplemented from time to time.

**"2014 Facility"** shall have the meaning ascribed thereto in the Recitals of the Amended and Restated Lease Agreement.

**"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.

**"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 Lease Agreement, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement, the Mortgages, the Assignment, the Assignment, Assumption and Release Agreement and the Recapture Agreement.

**"Amended and Restated Environmental Compliance and Indemnification Agreement"** means the Amended and Restated Environmental Compliance and Indemnification Agreement, dated as of March 19, 2014, by and between the Agency and the Company.

**"Amended and Restated Lease Agreement"** means the Amended and Restated Lease Agreement, dated as of March 19, 2014, by and between the Agency and the Company.

**"Amended and Restated PILOT Agreement"** means the Amended and Restated PILOT Agreement, dated as of March 19, 2014, by and between the Agency and the Company.

**"Approving Resolution"** or **"Authorizing Resolution"** means (i) with respect to the acquisition, demolition, construction and equipping of the Facility, the resolution adopted by the Agency on August 17, 2005 authorizing the execution and delivery of the Agency Documents and (ii) with respect to the Assignment Documents, the resolution adopted by the Agency on June 20, 2013, authorizing the execution and delivery of the Assignment Documents, as such resolutions may be amended and supplemented from time to time.

**"Assignment"** means (i) the Assignment of Leases and Rents, dated August 31, 2005 from the Agency and the Original Company to the Original Lender, or (ii) collectively, any substantially similar instrument or instruments executed and delivered from time to time in connection with the permanent financing or refinancing of the Facility, given by the Company to the Lender evidencing the Loan for the Facility.

**"Assignment, Assumption and Release Agreement"** means the Assignment, Assumption and Release Agreement, dated as of March 19, 2014, by and among the Agency, the Original Company and the Company.

**"Assignment Documents"** means the Assignment, Assumption and Release Agreement and other related documents evidencing the assignment of the Facility by the Original Company to the Company.

**"Authorized Representative"** means, in the case of the Agency, the Chairman, the Vice Chairman, the Secretary, the Assistant Secretary, the Executive Director, or any member or officer of the Agency; in the case of the Company, any member, or manager of the Company; and, in the case of both, such additional persons as, at the time, are designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Agency or Company, as the case may be, containing the specimen signature of each such person and signed on behalf of (i) the Agency by the Chairman, the Vice Chairman, the Secretary, the Assistant Secretary, the Executive Director, or any member of the Agency, or (ii) the Company by any member, or manager of the Company.

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

**"Boat Docks"** shall have the meaning assigned thereto in the fifth recital of this Lease Agreement.

**"Building Note"** means (i) the Building Note in the principal amount of \$4,100,000, dated August 31, 2005, from the Original Company to the Original Lender, or (ii) collectively, any substantially similar instrument or instruments executed and delivered from time to time in connection with the permanent financing or refinancing of the Facility, given by the Company to the Lender evidencing the Loan for the Facility.

**"Building Mortgage"** means (i) the \$4,100,000 Building Mortgage, Security Agreement and Assignment of Leases and Rents, dated August 31, 2005, from the Agency and the Original Company to the Original Lender, or (ii) any substantially similar instrument or instruments executed and delivered from time to time in connection with the permanent financing or refinancing of the Facility, given by the Agency and the Company to the Lender as security for the Loan, as the same may be modified, amended, renewed or extended from time to time.

**"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 is located are authorized by law or executive order to remain closed.

**“Closing Date”** means (i) with respect to the acquisition, demolition, construction and equipping of the Facility, means August 31, 2005 and (ii) with respect to the Assignment Documents, March 19, 2014.

**“Company”** means Fairfield East Rockaway 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 Deed, the Lease Agreement, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement, the Mortgages, the Notes, the Assignment, the Assignment, Assumption and Release Agreement, the Recapture Agreement, and any other Loan Documents to which it is a party.

**“Completion Date”** means the date of completion of the Facility as certified pursuant to Section 4.2 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 (a) beginning on the earlier of (i) the date of commencement of acquisition, renovation and equipping of the Facility, which date shall not be prior to June 29, 2013, or (ii) the Closing Date, and (b) ending on the Completion Date.

**“Deed”** means the Bargain and Sale Deed, dated the Closing Date, given by the Original Company to the Agency with respect to the Land and the existing improvements thereon.

**“Environmental Compliance and Indemnification Agreement”** means, collectively, the Original Environmental Compliance and Indemnification Agreement and the Amended and Restated Environmental Compliance and Indemnification Agreement, as the same may be amended from time to time.

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

**“Facility”** means the Land, the Improvements and the Equipment leased to the Company under the Lease Agreement.

**“Facility Services”** means all services necessary for the acquisition, construction and equipping of the Facility.

**"Hazardous Substance"** means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials 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.), Articles 17 and 27 of the New York State Environmental Conservation Law, or any other applicable Environmental Law and the regulations promulgated thereunder.

**"Improvements"** means all those buildings, improvements, structures and other related facilities (i) affixed or attached to the Land and (ii) not part of the Equipment, all as they may exist from time to time.

**"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 or 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.

**"Land Note"** means (i) the Land Note in the principal amount of \$750,000, dated August 31, 2005, from the Original Company to the Original Lender, or (ii) collectively, any substantially similar instrument or instruments executed and delivered from time to time in connection with the permanent financing or refinancing of the Facility, given by the Company to the Lender evidencing the Loan for the Facility.

**"Land Mortgage"** means (i) the \$750,000 Land Mortgage, Security Agreement and Assignment of Leases and Rents, dated August 31, 2005, from the Agency and the Original Company to the Original Lender, or (ii) any substantially similar instrument or instruments executed and delivered from time to time in connection with the permanent financing or refinancing of the Facility, given by the Agency and the Company to the Lender as security for the Loan, as the same may be modified, amended, renewed or extended from time to time.

**"Lease Agreement"** means, collectively, the Original Lease Agreement and the Amended and Restated Lease Agreement, 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 5.2 of the Lease Agreement.

**"Lender"** means (i) the 2008 Lender, or (ii) any lender making a Loan to the Company secured by a Mortgage on the Facility or a pledge of interests in the Company and any surviving, resulting or transferee banking institution authorized to do business in the

State of New York; provided, however, a Lender shall be a Lender hereunder, only for such time as its Loans are outstanding.

“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” or “Loans” means, (i) the 2008 Loan, or (ii) any loan made by a Lender to the Company, which Loan is secured by a Mortgage on the Facility or a pledge of interests in the Company, in connection with the financing, refinancing of the acquisition, renovation and equipping of the Facility.

“Loan Documents” means, collectively, the Mortgages, the Notes, the Assignment and any other documents executed and delivered by the Company to the Lender in connection with the Loan.

“Low Income Persons” means a resident at the Facility whose income is at fifty percent (50%) or less of the median family income in Nassau County, New York.

“Mortgage” or “Mortgages” means, (i) the 2008 Mortgage or (ii) any mortgage and security agreement granted by the Agency and the Company 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, in connection with the financing, refinancing of the acquisition, renovation and equipping of the Facility.

“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.

“Note” or “Notes” means (i) collectively (a) the Building Note in the principal amount of \$4,100,000, dated the Closing Date from the Original Company to the Original Lender and (b) the Land Note, in the principal amount of \$750,000, dated the Closing Date from the Original Company to the Original Lender, or (iii) a promissory note given by the Company to the Lender evidencing the Loan for the Facility.

“Original Company” means Chait Properties, Inc., a business corporation duly organized and validly existing under the laws of the State of New York.

“Original Facility” shall have the meaning ascribed thereto in the Recitals of the Amended and Restated Lease Agreement.

**“Original Environmental Compliance and Indemnification Agreement”** means the Environmental Compliance and Indemnification Agreement, dated as of August 1, 2005, by and between the Original Company and the Agency.

**“Original Lease Agreement”** means the Lease Agreement, dated as of August 1, 2005, by and between the Agency, as lessor, and the Original Company, as lessee, with respect to the Original Facility.

**“Original Lender”** means (i) North Fork Bank, a New York banking corporation or (ii) its successors or assigns.

**“Original PILOT Agreement”** means the Payment-In-Lieu-of-Tax Agreement, dated as of August 1, 2005, by and between the Original Company and the Agency.

**“Permitted Encumbrances”** means (i) exceptions to title set forth in the Title Report, (ii) the Mortgages and the Assignments, (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 or its Counsel, (vi) Liens for taxes not yet delinquent and (vii) the Recapture Agreement.

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

**“PILOT Agreement”** means, collectively, the Original PILOT Agreement and the Amended and Restated PILOT Agreement, as amended from time to time.

**“Plans and Specifications”** means the plans and specifications for the Improvements, prepared for the Company and approved by the Lender and the Agency, as revised from time to time in accordance with the Lease Agreement.

**“Prime Rate”** means the rate designated by The Wall Street Journal from time to time as the current “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.

“Recapture Agreement” means the Recapture Agreement, dated as of March 19, 2014, by and between the Agency and the Company, as amended from time to time.

“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” means facilities of substantially the same nature as the proposed Facility.

“Title Report” means Certificate of Title No. 306-N-22122 issued by First American Title Insurance Company of New York to the Agency on April 1, 2005, and redated and recertified on the Closing Date.

“Transaction Counsel” means the law firm of Nixon Peabody LLP.

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

“Unassigned Rights” means the rights of the Agency and moneys payable pursuant to and under Sections 5.3(b), 6.4(b) and (c), 6.7, 8.1, 8.2, 8.8, 8.9, 8.12, 8.15 10.2(a)(i)(B) and 10.2(a)(iii) (in each case with respect to Section 10.2 upon a continuing default in payment by the Company under the PILOT Agreement), 10.4, 11.2(b) and 12.8 of the Lease Agreement.