

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

and

HSRE-EB NORTH WOODMERE, LLC

SECOND AMENDED AND RESTATED INSTALLMENT SALE AGREEMENT

Originally Dated as of December 1, 2001

Amended and Restated February 21, 2007

Amended and Restated February 13, 2013

Town of Hempstead Industrial Development Agency
(HSRE-EB North Woodmere, LLC 2013 Facility)

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THIS SECOND AMENDED AND RESTATED INSTALLMENT SALE AGREEMENT, dated February 13, 2013 (this "**Second Amended and Restated Installment Sale 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, 2nd Floor, Hempstead, New York 11550 (the "**Agency**"), and HSRE-EB NORTH WOODMERE, LLC, a Delaware limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having its principal office at c/o Harrison Street Real Estate Capital, 71 S. Wacker Drive, Suite 3575, Chicago, IL 60606 (the "**Company**" or "**HSRE-EB North Woodmere, LLC**").

RECITALS

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

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

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

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

WHEREAS, the Agency has previously issued its Industrial Development Revenue Bonds, Series 2001 (Hungry Harbor, LLC Facility) in the aggregate principal amount of \$25,500,000 (the "**Bonds**"), to acquire approximately 3.10 acre parcel of land located at 477 Hungry Harbor Road, North Woodmere, Town of Hempstead, Nassau County, New York more particularly described on Exhibit A attached hereto, and the construction and equipping thereon of a three-story, approximately 103,000 square foot facility which contains 118 one-bedroom units which is used as an assisted living senior citizen residential facility (the "**Facility**"); and

WHEREAS, the Agency sold the Facility to Hungry Harbor, LLC ("**Hungry Harbor**") pursuant to the terms and conditions set forth in a certain Installment Sale

Agreement, dated as of December 1, 2001 (the “**Original Installment Sale Agreement**”); and

WHEREAS, the Agency and Hungry Harbor entered into a Payment-in-Lieu-of-Tax Agreement, dated as of December 1, 2001, (the “**Original PILOT Agreement**”) as amended and restated by the Amended and Restated Payment-in-Lieu-of Tax Agreement, dated as of September 1, 2006 (the “**Amended and Restated PILOT Agreement**”; and together with the Original PILOT Agreement, the “**PILOT Agreement**”), which provided for Hungry Harbor to make payments in lieu of real property taxes on the Facility; and

WHEREAS, the Agency previously consented to Hungry Harbor’s assignment to CSH Hungry Harbor LP, a _____ Limited Partnership (“**CSH Hungry Harbor**”), and the assumption by CSH Hungry Harbor of Hungry Harbor’s rights, title and interests in the Facility; and

WHEREAS, the Original Installment Sale Agreement was assigned to CSH Hungry Harbor by Hungry Harbor, pursuant to and in accordance with a certain Assignment and Assumption of Installment Sale Agreement, dated as of February 21, 2007 (the “**Assignment and Assumption of Installment Sale Agreement**”), among Hungry Harbor, CSH Hungry Harbor and the Agency, and CSH Hungry Harbor assumed all of the right, title, interest, liability, duty and obligations of Hungry Harbor in, to and under the Original Installment Sale Agreement; and

WHEREAS, the PILOT Agreement was assigned to CSH Hungry Harbor by Hungry Harbor, pursuant to and in accordance with a certain Assignment and Assumption of Amended and Restated PILOT Agreement, dated as of February 21, 2007 (the “**2007 Assignment and Assumption of Amended and Restated PILOT Agreement**”), among Hungry Harbor, CSH Hungry Harbor and the Agency, and CSH Hungry Harbor assumed all of the right, title, interest, liability, duty and obligations of Hungry Harbor in, to and under the Installment Sale Agreement; and

WHEREAS, CSH Hungry Harbor acquired Hungry Harbor’s reversionary interest created pursuant to the Original Installment Sale Agreement, as assigned pursuant to the Assignment and Assumption of Installment Sale Agreement, in the Facility and Hungry Harbor assigned to CSH Hungry Harbor all of Hungry Harbor’s rights, title, interest, duties, liabilities and obligations in, to and under the Original Installment Sale Agreement and the PILOT Agreement, and CSH Hungry Harbor assumed all of Hungry Harbor’s rights, title, interest, duties, liabilities and obligations in, to and under the Original Installment Sale Agreement and the PILOT Agreement; and

WHEREAS, CSH Hungry Harbor and the Agency entered into the Amended and Restated Installment Sale Agreement, dated as of February 21, 2007 (the “**Amended and Restated Installment Sale Agreement**”); and

WHEREAS, CSH Hungry Harbor and the Agency entered into the Environmental Compliance and Indemnification Agreement, dated as of February 21, 2007 (the “**Original Environmental Compliance and Indemnification Agreement**”); and

WHEREAS, the Bonds have been defeased and paid in full; and

WHEREAS, the Company has applied to the Agency for its assistance and consent to the assignment and assumption of the interest in the Facility from CSH Hungry Harbor to the Company; and

WHEREAS, the Agency has consented to CSH Hungry Harbor's assignment to the Company and the assumption by the Company of CSH Hungry Harbor's rights, title and interests in the Facility; and

WHEREAS, on July 25, 2012, the Agency duly adopted its Authorizing Resolution, authorizing and approving the assignment and assumption of the interest in the Facility from CSH Hungry Harbor and the execution and delivery of (i) an Assignment and Assumption of Amended and Restated Installment Sale Agreement (the "**Assignment and Assumption of Amended and Restated Installment Sale Agreement**"), among the Agency, CSH Hungry Harbor and the Company, (ii) an Assignment and Assumption of Amended and Restated Payment-in-Lieu-of-Tax Agreement (the "**2013 Assignment and Assumption of Amended and Restated PILOT Agreement**"), among the Agency, CSH Hungry Harbor and the Company, (iii) this Second Amended and Restated Installment Sale Agreement, (iv) a Second Amended and Restated PILOT Agreement (the "**Second Amended and Restated PILOT Agreement**"), between the Agency and the Company, (v) a Recapture Agreement (the "**Recapture Agreement**"), between the Agency and the Company; and (vi) an Environmental Compliance and Indemnification Agreement (the "**Environmental Compliance and Indemnification Agreement**") between the Agency and the Company; and

WHEREAS, the Agency shall now continue to assist in the operation and maintenance of the Facility; and

WHEREAS, the Agency proposes to continue to sell the Facility to the Company, and the Lender (as such term is defined in Schedule A to this Second Amended and Restated Installment Sale Agreement) consents to the assumption of the Loan (as such term is defined in Schedule A to this Second Amended and Restated Installment Sale Agreement) by the Company; and

WHEREAS, the Company has agreed with the Agency to operate and maintain the Facility; and

WHEREAS, the Agency proposes to sell the Facility to the Company, and the Company desires to purchase the Facility from the Agency, upon the terms and conditions set forth in this Second Amended and Restated Installment Sale Agreement; and

WHEREAS, the Installment Sale Agreement is hereby amended, restated, superceded and replaced in its entirety by this Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale 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 previously caused the Land to be acquired, the Improvements to be constructed and the Equipment to be acquired and installed and will continue to sell the Facility to the Company pursuant to this Second Amended and Restated Installment Sale Agreement, all for the Public Purposes of the State.

(c) By resolution adopted on July 25, 2012, the Agency determined that, based upon the review by the Agency of the materials submitted and the representations made by the 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 or of the Agency's Certificate of Establishment or By-Laws, as amended, or of 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 Second Amended and Restated Installment Sale Agreement by the undertaking of the Company to continue to operate and utilize the Facility in the Town of Hempstead, New York.

(g) Other than as identified in the Transaction Documents, the Agency is not a party to any property management agreement or operation lease.

(h) There shall be no recapture of any Agency benefits in connection with the execution and delivery of (i) the Assignment and Assumption of Amended and Restated Installment Sale Agreement, and (ii) the Assignment and Assumption of Amended and Restated PILOT Agreement.

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 Delaware and authorized to transact business in the State of New York, in good standing under the laws of the State of Delaware and 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 or of the Company's Articles of Organization or Operating Agreement, as amended, 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. The Facility and the design and operation thereof 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 or expenses,

including reasonable attorneys' fees, resulting from any failure by the Company to comply with the provisions of this subsection.

(c) 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.

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

(e) The Company will complete, operate and maintain construction of the Facility in accordance with industry standards for facilities of similar size and nature as the Facility.

(f) 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 would cause the Facility to not constitute a "project" as such quoted term is defined in the Act.

(g) Other than as identified in the Transaction Documents, the Agency is not a party to any property management agreement or operator lease.

(h) Reserved.

(i) The Tax Regulatory Agreement was recorded in the Office of the Nassau County Clerk.

(j) The Company will comply, abide by and be bound by the provisions of the Tax Regulatory Agreement through the Qualified Project Period, as defined in Section 3.1 of the Tax Regulatory Agreement, including without limitation, all provisions relating to Low Income Occupancy requirements and the leasing and reporting requirements set forth in the Tax Regulatory Agreement.

ARTICLE III FACILITY SITE AND TITLE INSURANCE

Section 3.1 Agreement to Convey to Agency. Hungry Harbor previously conveyed or 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 conveyed or caused to be conveyed to the Agency lien-free title to the Equipment and Improvements acquired after December 1, 2001.

Section 3.2 Title Insurance. Hungry Harbor previously obtained a fee title insurance policy for the benefit of the Agency insuring title to the Land and the Improvements in the amount of equal to the fair market value of the Land and Improvements. The Company has obtained a mortgage title policy for the benefit of the Lender insuring the

Lien of the Mortgage on the Land and the Improvements in an amount equal to the Loan proceeds; in each case except for Permitted Encumbrances.

Section 3.3. Subordination of Second Amended and Restated Installment Sale Agreement. This Second Amended and Restated Installment Sale Agreement, and any and all modifications, amendments, renewals and extensions thereof, is subject and subordinate to the Mortgage and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 3.4 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Facility and the interest therein to be conveyed by this Second Amended and Restated Installment Sale Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the interests therein are securing the financial obligations of the Company. The Facility and the interests hereunder secure the Company's obligations to the Lender under the Mortgage, and to the Agency under the Second Amended and Restated PILOT Agreement, the Environmental Compliance and Indemnification Agreement and this Second Amended and Restated Installment Sale Agreement, including the Company's obligation to indemnify and hold harmless the Agency.

ARTICLE IV ACQUISITION, CONSTRUCTION AND EQUIPPING OF FACILITY

Section 4.1 Acquisition, Construction and Equipping of Facility.

(a) Hungry Harbor previously agreed that, on behalf of the Agency, to acquire, construct and equip the Facility in accordance with the Plans and Specifications. The Company may hereafter revise the Plans and Specifications from time to time in connection with the operation, maintenance and renovation of the Facility, with the written approval of the Agency and the Lender, which approval may not be unreasonably withheld but which may be subject to such conditions as the Agency and the Lender may deem appropriate.

(b) Subject to the Lender's rights under the Mortgage, title to all materials, equipment, machinery and other items of Property incorporated or installed in the Facility on or after the date hereof 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.

Section 4.2 Making of the Loan; Disbursements of Loan Proceeds. The Lender has proposed to allow for the assumption of the Loan by the Company should the Company acquire the interest of CSH Hungry Harbor in the Facility.

Section 4.3 Certificates of Completion. To establish the Completion Date, Hungry Harbor previously delivered to the Agency a certificate signed by an Authorized Representative of Hungry Harbor (i) stating that acquisition, construction and equipping of the Facility had been completed in accordance with the Plans and Specifications therefor; (ii) stating that the payment of all labor, services, materials and supplies used in such acquisition has been made or provided for; and (iii) such other certificates as were satisfactory to the Agency, including without limitation, a final certificate of occupancy.

Section 4.4 [Reserved.]

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 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 for the Facility has been provided through the Agency.

ARTICLE V SALE AND INSTALLMENT PAYMENT PROVISIONS

Section 5.1 Demise of Facility. The Agency hereby agrees to continue to sell the Facility, consisting of the Land as particularly described in Exhibit A attached hereto, the Improvements and the Equipment as particularly described in Exhibit B attached hereto, to the Company and the Company hereby agrees to purchase the Facility from the Agency upon the terms and conditions of this Second Amended and Restated Installment Sale Agreement.

Section 5.2 Vesting Title In Company; Duration of Sale Term.

(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 Sale Term (as defined hereinafter) created hereby shall commence on the Closing Date and the Company shall accept possession of the Facility on the Closing Date.

(b) Installment Payments for the purchase price of the Facility shall be made in installments as provided in Section 5.3 hereof and shall continue until December 31, 2023, or the earlier date as may be provided in Article XI hereof (the "**Sale Term**").

Provided, however, that in the event shall this Installment Sale Agreement be terminated before the Loan shall have been paid in full the Agency shall reconvey the Facility to the Company expressly subject to the lien of the Mortgage, and all other Permitted Encumbrances.

(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 Sale 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 Installment Payments and Other Amounts Payable.

(a) The Company shall pay to the Agency the Agency's administrative fee (which shall include \$803.00 for the Public Hearing Notice and the Public Hearing Transcript, less the \$1,500 application fee previously paid to the Agency). In addition, the Company shall pay to the Agency an initial compliance fee of \$2,500 on the Closing Date and thereafter the Company shall pay to the Agency an annual compliance fee of \$1,000 on or before January 1 of each year commencing on January 1, 2014 and continuing through the term of this Second Amended and Restated Installment Sale Agreement. 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 Second Amended and Restated Installment Sale Agreement.

(b) In addition to the Installment Payments pursuant to Section 5.3(a) hereof, throughout the Sale Term, the Company shall pay to the Agency as additional Installment Payments, within ten (10) days of receipt of demand therefore, the expenses of the Agency and the members thereof incurred (i) by reason of the Agency's ownership or sale 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 Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale Agreement, or (iii) terminate this Second Amended and Restated Installment Sale Agreement for any cause whatsoever unless and until the Loan has been paid in full.

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

Section 5.6 Rights and Obligations of the Company upon Prepayment of Loan. In the event the Loan shall have been paid in full prior to the termination date specified in Section 5.2(b) hereof (i) all references in this Second Amended and Restated Installment Sale Agreement to the Lender, the Note and the Mortgage shall be ineffective and (ii) the Company shall be entitled, 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 Sale 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 the 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 Mortgage and any other security interest relating to the Facility or this Second Amended and Restated Installment Sale 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 material physical waste to the Improvements (other than to cause the additions, modifications or improvements to the Facility or any part thereof permitted pursuant to Subsection 6.1(b) hereunder. During the Sale 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) With the written consent of the Agency and the Lender, which shall not be unreasonably withheld or delayed, the Company from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof, provided such actions do not adversely affect the structural integrity of the Facility. 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 lessee 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. Subject to the Lender's rights under the Mortgage, 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) 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 Second Amended and Restated 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 Second Amended and Restated Installment Sale Agreement to pay only such installments as are required to be paid during the Sale 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 or the Lender.

(c) The Agency agrees that if it or the Company contests any taxes, assessments or other charges provided for in paragraph (b) hereof, all refunds, if any, will be applied in accordance with the Second Amended and Restated PILOT Agreement.

(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.

Section 6.4 Insurance Required. At all times throughout the Sale 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 lessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or any permitted lessee 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 lessee, 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 \$5,000,000.

(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 authorized to write such insurance in the State and selected by the entity required to procure the same. 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 Sections 6.4(a) hereof shall contain a standard New York non-contributory mortgagee clause showing the interest of the Lender as first mortgagee, 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 prior written notice of the restriction, cancellation or modification thereof to the Agency and the Lender. 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 Sections 6.4(d)(ii), (iii) and (iv) shall name the Agency and the Company as additional named 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 the 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 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 Loan, have and hold said policies and the Net Proceeds thereof, as collateral and further security under the Mortgage for the payment of the Loan. The policies under Section 6.4(a) shall contain appropriate waivers of subrogation. Nothing contained in this Second Amended and Restated Installment Sale Agreement is intended to limit or modify any insurance requirements set forth in the Mortgage

(b) The policies (or certificates and binders) of insurance required by Sections 6.4(a) and (e) hereof shall be deposited with the Lender on or before the Closing Date. A copy of the policy (or certificate and binder) of insurance required by Section 6.4(c) hereof shall be delivered to the Agency on or before the Closing Date. The policy (or certificate and binder) of insurance required by Section 6.4(b) hereof shall be deposited with the Lender on or before the Completion Date. A copy of the policies (or certificates and binders) 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, the Company shall furnish the appropriate Person with evidence that such policy has been renewed or replaced or is no longer required by this Second Amended and Restated Installment Sale Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Second Amended and Restated Installment Sale 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) 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 Lender 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 Second Amended and Restated 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) hereof), 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 Second Amended and Restated 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 by the Agency or the Lender shall affect or impair any rights of the Agency hereunder or of the Lender under the Mortgage arising in consequence of such failure by the Company. The Agency, upon serving the Company with any default notice under this Second Amended and Restated Installment Sale Agreement and/or the Second Amended and Restated PILOT Agreement (individually and collectively, the "**Agreements**"), shall also serve a copy of such notice upon the holder or holders of the Mortgage (such holder or holders, and its or their successors and assigns from time to time, each a "**Mortgagee**") (in the same manner as required by the Agreements for notices to the Company) at such address as the Mortgagee shall designate in writing to the Agency. In the event that the Company shall be in default under the Agreements, the Mortgagee shall have the right, but not the obligation, to remedy such default, or cause the same to be remedied, prior to the expiration of all applicable grace or cure periods as provided in the Agreements. The Agency shall accept such performance by or at the instance of the Mortgagee as if the same had been made by the Company. The Company shall, on demand, reimburse the Agency or the 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 the Note, and such amount, together with such interest, shall become additional indebtedness secured by the Mortgage.

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 Sale 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 Second Amended and Restated Installment Sale Agreement or the Second Amended and Restated 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 Lender and, except as otherwise provided in Section 11.1 and subsection (d) hereof, applied by the Lender or the Company pursuant to the terms of the Mortgage; and

(v) if the Facility is not replaced, repaired, rebuilt, restored or relocated or Substitute Facilities acquired, as provided herein and in Section 7.1(b) hereof, this Second Amended and Restated Installment Sale Agreement shall be terminated at the option of the Agency and the provisions of Sections 11.2, 11.3 and 11.4 hereof shall apply.

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

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

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

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

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

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility or acquisition of Substitute Facilities 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 provided herein.

(d) If the Company shall exercise its option to terminate this Second Amended and Restated Installment Sale Agreement pursuant to Section 11.1 hereof such Net

Proceeds 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 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.

(e) If the entire amount of the Loan and interest thereon has been fully paid, all such remaining Net Proceeds shall be paid to the Company.

(f) If the Facility has been substantially damaged or destroyed and is not replaced, rebuilt, restored or relocated, the Facility will be reconveyed to the Company subject to the Mortgage.

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 Sale 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 Second Amended and Restated Installment Sale Agreement or the Second Amended and Restated 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 the Lender; and

(iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid to the Lender and applied by the Lender pursuant to the terms of the Mortgage except as otherwise provided in Section 11.1 and subsection (d) hereof, applied by the Lender pursuant to the terms of the Mortgage; and

(v) if the Facility is not replaced, repaired, rebuilt, restored or relocated or Substitute Facilities acquired, as provided herein and in Section 7.2(b) hereof, this Second Amended and Restated Installment Sale Agreement shall be terminated at the option of the Agency and the provisions of Sections 11.2, 11.3 and 11.4 hereof shall apply; and

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

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

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

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

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

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility or acquisition of Substitute Facilities 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.

(d) If the Company shall exercise its option to terminate this Second Amended and Restated Installment Sale Agreement pursuant to Section 11.1 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Lender shall have exercised its remedies under Section 10.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

(e) If the entire amount of the Loan and interest thereon has been fully paid, all such remaining Net Proceeds shall be paid to the Company.

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

Section 7.3 Condemnation of Company-Owned Property. Subject to the Mortgage, 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, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF, OR TITLE TO, 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 or (ii) liability arising from or expense incurred by the Agency's acquisition, construction and equipping, owning and sale 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(c) of this Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Second Amended and Restated Installment Sale 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 the Lender and the duly authorized agents of either of them shall have the right at all reasonable times to inspect the Facility.

Section 8.4 Company to Maintain Its Existence. The Company agrees that during the Sale Term it will maintain its existence as a limited liability company and will not dissolve, liquidate or otherwise dispose of substantially all of its assets and will not merge with or into any other entity or allow any other entity to merge with or into the Company 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 or the general partner of the Company, and any such sale, transfer or conveyance of a controlling interest in the Company or the general partner of 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 Sale 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 (i) 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, (ii) submit copies of such annual statements to the Agency at the time of filing with the Department of Taxation and Finance, (iii) agree whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Company, its 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, as amended from time to time, or any of the Agency Documents or Company Documents, and (iv) submit such information 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 the 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 Sale Term, agrees that it will promptly comply, and cause any lessee 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 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 or of all companies or associations insuring the premises.

(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, (ii) to the satisfaction of the 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 the Lender and the Agency, their 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 the Lender and 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 the Mortgage are 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 and the 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 the Lender shall notify the Company that by failure to comply with such requirement or requirements, the Lien of the 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 the 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 the Lender.

(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), either the Agency, the 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 the Lender, the Company shall immediately provide legal protection and/or pay amounts necessary in the opinion of the Agency or the 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 Section 8.8, the Lender and the Agency each retain the right to defend themselves in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of themselves, the Lender and the Agency shall each select their 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 Sale 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 the Lender shall notify the Company that by nonpayment of any such item or items, the Lien of the 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 the Lender and the Agency, thereby causing such Lien to be removed or by taking such other actions as may be satisfactory to the Lender and the Agency to protect their respective interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the filing or perfection thereof.

Section 8.10 Identification of Equipment. All Equipment which is or may become the Property of the Agency pursuant to the provisions of this Second Amended and Restated Installment Sale Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency and the 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 Second Amended and Restated Installment Sale Agreement and such Equipment and other Property were properly identified by such appropriate records as were approved by the Agency and the Lender.

Section 8.11 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 Compliance with Provisions of Tax Regulatory Agreement. The Agency and Hungry Harbor entered into a Tax Regulatory Agreement, dated August 5, 1999 (the "**Tax Regulatory Agreement**"), pursuant to which the Agency and Hungry Harbor made certain representations, warranties and covenants with respect to the financing,

acquisition, construction, equipping and use of the Facility, which Tax Regulatory Agreement was recorded in the office of the County Clerk of Nassau, as covenants and restrictions running with the Land. The Company agrees to abide by and be bound by the provisions of the Tax Regulatory Agreement through the Qualified Project Period, as defined in Section 3.1 of the Tax Regulatory Agreement, including, without limitation, all provisions relating to Low Income Occupancy requirements and the leasing and reporting requirements set forth in the Tax Regulatory Agreement. The Agency and Hungry Harbor shall have the right throughout the Qualified Project Period to enforce the provisions of this paragraph 8.13.

ARTICLE IX RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

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

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Second Amended and Restated Installment Sale Agreement, without the prior written consent of the Company and the 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 Second Amended and Restated Installment Sale Agreement, 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 Mortgage, 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 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 Second Amended and Restated Installment Sale 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 Installment Payments payable by it under this Second Amended and Restated Installment Sale Agreement or any abatement or diminution of the amounts payable by it under the Second Amended and Restated 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, 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 Installment Payments payable by it under this Second Amended and Restated Installment Sale Agreement or any abatement or diminution of the amounts payable by it under the Second Amended and Restated PILOT Agreement.

Section 9.3 Assignment and Subleasing.

(a) This Second Amended and Restated Installment Sale Agreement may not be assigned, in whole or in part, and the Facility may not be leased (except for (i) the Master Lease dated as of July 9, 2012 (as may be amended, the “**Master Lease**”) between HSRE-EB North Woodmere, LLC as lessor, and HSRE-EB North Woodmere, TRS, LLC, as lessee, and (ii) to residents of the Facility in the ordinary course of business, in whole or in part, without the prior written consent of the Lender and the Agency in each instance, which consent shall not be unreasonably withheld.) Any assignment or lease shall be on the following conditions, as of the time of such assignment or lease:

(i) no assignment or lease shall relieve the Company from primary liability for any of its obligations hereunder;

(ii) the assignee or lessee (except in the case of a true lease in the ordinary course of business) shall assume the obligations of the Company hereunder to the extent of the interest assigned or leased;

(iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency and the Lender a true and complete copy of such assignment or lease and the instrument of assumption;

(iv) neither the validity nor the enforceability of the Second Amended and Restated Installment Sale Agreement or any of the Loan Documents shall be adversely affected thereby;

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

(vi) the lessee will execute and deliver an agency compliance agreement, in form and substance satisfactory to the Agency.

(b) If the Lender or the Agency shall so request, as of the purported effective date of any assignment or lease pursuant to subsection (a) of this Section 9.3, the Company at its cost shall furnish the Lender and the Agency, with an opinion, 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 (i) execute the Assumption Agreement, (ii) mortgage its interest in the Facility, and (iii) pledge and assign its rights to and interest in this Second Amended and Restated Installment Sale Agreement and in all amounts payable by the Company pursuant to Section 5.3 hereof and all other provisions of this Second Amended and Restated Installment Sale Agreement (other than the Agency's 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 mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall subsequent to such mortgage, pledge and assignment continue to run to the Agency for its benefit as well as for the benefit of the Lender.

Section 9.5 Pledge of Company's Interest to Lender. The Company shall mortgage and pledge and assign its rights to and interest in this Second Amended and Restated Installment Sale Agreement to the Lender as security for the payment of the principal of and interest on the Loan. The Agency hereby acknowledges and consents to such pledge and assignment by the Company. Upon the occurrence of an Event of Default (as such term is defined in the Mortgage), the Lender may seek to enforce its pledge and collateral assignment of Company's rights to and interest in this Second Amended and Restated Installment Sale Agreement; in such event, upon Lender's written notice to the Agency, the Lender's compliance with the terms herein, including, without limitation, Section 9.3 hereof.

Section 9.6 Merger of Agency.

(a) Nothing contained in this Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale 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 and shall furnish to the Company and the Lender, 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.

**ARTICLE X
EVENTS OF DEFAULT AND REMEDIES**

Section 10.1 Events of Default Defined.

(a) The following shall be “Events of Default” under this Second Amended and Restated Installment Sale Agreement:

(i) the failure by the Company to pay or cause to be paid within ten (10) days after written notice from the Agency to the Company that payment is due, the amount specified to be paid pursuant to Section 5.3(a) and (b) hereof;

(ii) the failure by the Company to observe and perform any covenant contained in Sections 6.4, 6.5, 8.4, 8.6, 8.13 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 Second Amended and Restated PILOT Agreement;

(iv) the invalidity, illegality or unenforceability of the Second Amended and Restated PILOT Agreement; or the failure by the Company to observe and perform any covenant contained in the Second Amended and Restated PILOT Agreement;

(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) the failure by the Company to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii) and (iii)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or the Lender;

(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 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;

(viii) [Reserved];

(ix) [Reserved];

(x) [Reserved];

(xi) a breach of any covenant or representation contained in Section 8.8 hereof with respect to environmental matters; or

(xii) failure of the Company to create, maintain or retain sixty-nine (69) full-time jobs at the Facility and to spend \$150,000 annually on capital expenditures that the Company represented to the Agency in the Company's Application that the Company would create, maintain or retain at the Facility

(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 Second Amended and Restated Installment Sale Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Second Amended and Restated Installment Sale 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 may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) declare, by written notice to the Company and to the Lender, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid Installment Payments payable pursuant to Section 5.3(a) and (b) hereof, (B) all unpaid and past due payments in lieu of taxes pursuant to the Second Amended and Restated PILOT Agreement and (C) all other payments due under this Second Amended and Restated Installment Sale Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vii) hereof shall have occurred, such Installment Payments and other payments due under this Second Amended and Restated Installment Sale 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) re-enter and take possession of the Facility, on ten (10) days written notice to the Company and the Lender, without terminating this Second Amended and Restated Installment Sale Agreement and without being liable for any prosecution or damages therefor, and sublease the Facility for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from the sublessee under such sublease;

(iii) terminate, on ten (10) days written notice to the Company and to the Lender, the Sale Term and all rights of the Company under this Second Amended and Restated Installment Sale Agreement and, without being liable for any prosecution or damages therefor, exclude the Company from possession of the Facility and lease the Facility to another Person for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from such other Person under the new lease;

(iv) [Reserved];

(v) upon prior written notice to Lender that Agency intends to terminate this Second Amended and Restated Installment Agreement and the Second Amended and Restated PILOT Agreement, and reconvey the Facility to the Company, terminate this Second Amended and Restated Installment Sale Agreement, reconvey the Facility to the Company subject to the Mortgage (unless same have been satisfied or released), and terminate the Second Amended and Restated 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;

(vi) 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 Second Amended and Restated PILOT Agreement, to secure possession of the Facility, and to enforce the obligations, agreements or covenants of the Company under this Second Amended and Restated Installment Sale Agreement and under the Second Amended and Restated PILOT Agreement.

(b) In the event the Facility is subleased or leased to another Person pursuant to Section 10.2(a)(ii) or (iii) hereof, the Agency or the Lender, as appropriate, may (but shall be under no obligation to) make such repairs or alterations in or to the Facility as it may deem necessary or desirable for the implementation of such sublease or lease, and the Company shall be liable and agrees to pay the costs of such repairs or alterations and the expenses incidental to the effecting of such sublease or lease, together with interest on such costs and expense paid by either the Agency or the Lender at the rate equal to fifteen percent (15%) per annum, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such costs and expenses were incurred until the date on which such payment is made, notwithstanding that the Sale Term and all rights of the Company under this Second Amended and Restated Installment Sale Agreement may have been terminated pursuant to Section 10.2(a)(iii) hereof.

(c) Any sums payable to the Agency as a consequence of any action taken pursuant to this Section 10.2 (other than those sums attributable to Unassigned Rights) shall be paid to the Lender and applied to the payment of the Loan.

(d) No action taken pursuant to this Section 10.2 (including repossession of the Facility) shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof.

(e) After an Event of Default shall have occurred, the Company shall have the right upon notice to the Agency and the Lender to enter the Facility with agents or representatives of the Agency and the Lender 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 and 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 Second Amended and Restated Installment Sale 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 or 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 Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale 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 and the Lender each year no later than January 15 a certificate signed by the Member of the Company stating that the Company is not in default under this Second Amended and Restated Installment Sale Agreement and no Event of Default exists under this Second Amended and Restated Installment Sale Agreement, the Second Amended and Restated PILOT Agreement, as assigned pursuant to the Assignment and Assumption of Second Amended and Restated PILOT Agreement, or any other Company Document. Such certificate shall also contain all information required by Section 8.6 hereof.

ARTICLE XI

**EARLY TERMINATION OF SECOND AMENDED AND RESTATED INSTALLMENT
SALE AGREEMENT;
OPTION IN FAVOR OF COMPANY**

Section 11.1 Early Termination of Second Amended and Restated Installment Sale Agreement. The Company shall have the option to terminate this Second Amended and Restated Installment Sale Agreement at any time, upon filing with the Agency and the Lender a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and the date upon which such payments pursuant to 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.

Section 11.2 Conditions to Early Termination of Second Amended and Restated Installment Sale Agreement. In the event the Company exercises its option to terminate this Second Amended and Restated Installment Sale 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 that will be sufficient to pay the principal of and interest on the Loan, together with all other fees and sums which may be owed to the Lender pursuant to the Loan unless the Facility is to be reconveyed to the Company expressly subject to the Lien of the Mortgage.

(b) To the Agency or the Taxing Authorities (as such term is defined in the Second Amended and Restated PILOT Agreement), as appropriate pursuant to the Second Amended and Restated PILOT Agreement: all amounts due and payable under the Second Amended and Restated 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 the Loan Documents.

Section 11.3 Obligation to Purchase Facility. Upon termination or expiration of the Sale 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 Second Amended and Restated PILOT Agreement through the date upon which this Second Amended and Restated Installment Sale Agreement terminates or expires. The Company shall purchase the Facility by giving written notice to the Agency (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 Second Amended and Restated Installment Sale 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 the 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 (including the Lien of the Mortgage if the Loan has not be repaid) 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 Second Amended and Restated Installment

Sale 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 but only if the Loan has been repaid in full. Upon the conveyance of the Facility by the Agency to the Company pursuant to this Article XI, the Second Amended and Restated PILOT Agreement shall terminate.

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
Attention: Executive Director and Chief Executive Officer

With a copy to:

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

The Company:

HSRE-EB North Woodmere LLC
67 Clinton Road
Garden City, New York 11530
Attention: Jan Burman and Steven Krieger

and

HSRE-EB North Woodmere LLC
c/o Harrison Street Real Estate
71 South Wacker Drive
Suite 3575
Chicago, Illinois 60606
Attention: General Counsel

To the Lender:

Federal Home Loan Mortgage Corporation
8200 Jones Beach Drive
McLean, VA 22101
Attention: [_____]

Section 12.2 Binding Effect. This Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and without the concurring written consent of the Lender.

Section 12.5 Execution of Counterparts. This Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale Agreement and the Mortgage.

Section 12.8 Survival of Obligations. This Second Amended and Restated Installment Sale Agreement shall survive the making of the Loan and the performance of the obligations of the Company to make payments required by Section 5.3 and all indemnities

shall survive the foregoing and any termination or expiration of this Second Amended and Restated Installment Sale Agreement and the payment of the Loan.

Section 12.9 Future Financing.


Subject to the written consent of the Agency, which consent shall not be unreasonably withheld or delayed, the Company may decide to finance or refinance certain costs of the acquisition, construction and equipping of the Facility and to utilize a lender or lenders, as may be determined, to finance or refinance an amount as determined by the Company after the Closing Date. The Agency agrees to cooperate with the Company in connection with such financing or refinancing, including without limitation, granting one or more mortgages on the Facility, executing such other documents required by the Company's lender(s) and complying with the terms and provisions of such mortgage(s) and other documents, provided that such mortgage and other documents and the execution thereof shall meet all the requirements of the Agency.

Section 12.10 Table of Contents and Section Headings not Controlling. The Table of Contents and the headings of the several Sections in this Second Amended and Restated Installment Sale 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 Second Amended and Restated Installment Sale Agreement.

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

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

**TOWN OF HEMPSTEAD
INDUSTRIAL DEVELOPMENT
AGENCY**

By: 

Name: Frederick E. Parola

Title: Executive Director and
Chief Executive Officer

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

On the 8th day of February in the year 2013, 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 instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



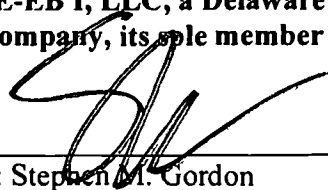
Notary Public

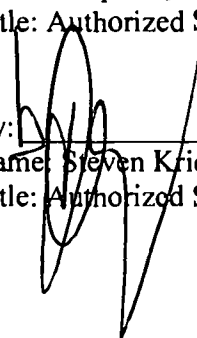
MICHAEL LODATO
Notary Public, State of New York
01LO6226099
Qualified in Suffolk County
Commission Expires Aug. 2, 2014

Second Amended and Restated Installment Sale Agreement
Signature Page 1 of 2

**HSRE-EB NORTH WOODMERE, LLC, a
Delaware limited liability company**

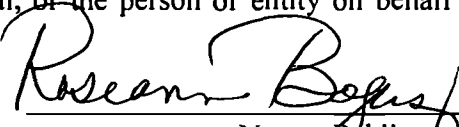
**By: HSRE-EB I, LLC, a Delaware limited
liability company, its sole member**

By: 
Name: Stephen M. Gordon
Title: Authorized Signatory

By: 
Name: Steven Krieger
Title: Authorized Signatory

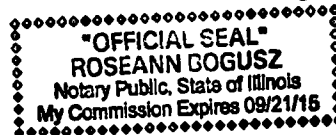
STATE OF ILLINOIS)
 : SS:
COUNTY OF COOK)

On the 7th day of February in the year 2013, before me, the undersigned, personally appeared **Stephen M. Gordon**, 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 ~~her~~ capacity, and that by his signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

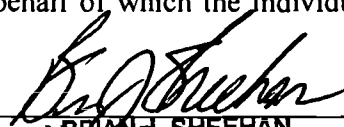


Notary Public

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



On the 11th day of February in the year 2013 before me, the undersigned, personally appeared **Steven Krieger**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



BRIAN J. SHEEHAN
Notary Public, State of New York
No. 01SH6096970
Qualified in New York County
Commission Expires Aug. 11, 2015

Second Amended and Restated Installment Sale Agreement
Signature Page 2 of 2

EXHIBIT A

Legal Description of Real Property

ALL that certain plot, piece or parcel of land, situate, lying and being near Valley Stream, Town of Hempstead, County of Nassau and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the southerly side of Hungry Harbor Road (as relocated and shown on map of Brookfield Estates) distant 81.18 feet easterly from the easterly end of the curve having a radius of 20 feet; which curve connects the southerly side of Hungry Harbor Road and the easterly side of Golf Drive and from said point of beginning;

RUNNING THENCE easterly along the said southerly side of Hungry Harbor Road and along the arc of a curve bearing to the left having a radius of 1043 feet a distance along the arc of said curve of 290.66 feet;

RUNNING THENCE south 2 degrees 46 minutes 15 seconds east 335.24 feet;

RUNNING THENCE south 87 degrees 13 minutes 45 seconds west 176.25 feet;

THENCE south 82 degrees 38 minutes 00 seconds west 121.66 feet;

THENCE north 87 degrees 54 minutes 00 seconds west 120 feet;

THENCE north 42 degrees 30 minutes 00 seconds west 52.88 feet;

RUNNING THENCE north 26 degrees 31 minutes 00 seconds east 244.44 feet;

THENCE north 68 degrees 10 minutes 00 seconds west 12.35 feet;

THENCE north 21 degrees 50 minutes 00 seconds east 136.66 feet to the said southerly side of Hungry Harbor Road (as relocated) at the point or place of BEGINNING.

Said premises being known as 477 Hungry Harbor Road, North Woodmere, New York.

Section 39 Block 485 Lots 76A and 76B on the Nassau County Land and Tax Map.

EXHIBIT B

Equipment

All equipment, fixtures, machinery, building materials and items of personal property acquired, constructed and installed and/or to be acquired, constructed and installed in connection with the operation of the Town of Hempstead Industrial Development Agency's HSRE-EB North Woodmere, LLC 2013 Facility located in the Town of Hempstead, Nassau County, New York.

SCHEDULE A

Schedule of Definitions

“2013 Assignment and Assumption of Amended and Restated PILOT Agreement” means the Assignment and Assumption of Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated February 13, 2013, by and among CSH Hungry Harbor, the Company and the Agency

“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 Assignment and Assumption of Amended and Restated Installment Sale Agreement, the Second Assignment and Assumption of Amended and Restated PILOT Agreement, the Second Amended and Restated PILOT Agreement, the Second Amended and Restated Installment Sale Agreement, the Recapture Agreement, the Environmental Compliance and Indemnification Agreement and any Loan Documents to which the Agency is a party.

“Approving Resolution” means the resolution adopted by the Agency on the 25th day of July, 2012 authorizing the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

“Assignment and Assumption of Amended and Restated Installment Sale Agreement” means the Assignment and Assumption of Amended and Restated Installment Sale Agreement, dated February 13, 2013, by and among CSH Hungry Harbor, the Company and the Agency.

“Authorized Representative” means, in the case of the Agency, the Chairman, the Vice Chairman, the Secretary, the Assistant Secretary, the Executive Director and the Chief Executive Officer, and the Deputy Executive Director and Chief Financial Officer of the Agency; in the case of the Company, the manager or any member 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 the 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 and the Chief Executive Officer and the Deputy Executive Director and Chief Financial Officer, or (ii) the Company by the manager or any member of the Company.

“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 are authorized by law or executive order to remain closed.

"Closing Date" means February 13, 2013.

"Company" means HSRE-EB North Woodmere, LLC, a limited liability duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, and its successors and assigns.

"Company Documents" means the Assignment and Assumption of Amended and Restated Installment Sale Agreement, the 2013 Assignment and Assumption of Amended and Restated PILOT Agreement, the Second Amended and Restated Installment Sale Agreement, the Second Amended and Restated PILOT Agreement, the Recapture Agreement, the Environmental Compliance and Indemnification Agreement and the Loan Documents.

"Completion Date" means the date upon which the acquisition, construction and equipping of the Facility was complete, on or about March 31, 2004.

"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 any such length of time during which the Facility is under construction.

"CSH Hungry Harbor" means CSH Hungry Harbor, LP, a limited partnership duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York and its successors and assigns.

"Environmental Compliance and Indemnification Agreement" means the Environmental Compliance and Indemnification Agreement, dated February 13, 2013, by and between the Agency and the Company.

"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 Second Amended and Restated Installment Sale Agreement.

"Event of Default" (a) when used with respect to the Second Amended and Restated Installment Sale Agreement, means any of the events defined as Events of Default by Section 10.1 of the Second Amended and Restated Installment Sale 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 sold to the Company under the Second Amended and Restated Installment Sale Agreement.

"Facility Services" means all services necessary for the acquisition, construction and equipping of the Facility.

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

"Hungry Harbor" means Hungry Harbor, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, and its successors and assigns.

"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.

"Installment Payments" means all installment payments with respect to the Facility made by the Company pursuant to the Second Amended and Restated Installment Sale Agreement.

"Land" means the real property sold by the Agency to the Company pursuant to the Second Amended and Restated Installment Sale Agreement and more particularly described in Exhibit A attached thereto.

"Lender" means (i) Federal Home Loan Mortgage Corporation, its successors and assigns, and (ii) any lender making a Loan to the Company secured by a Mortgage on the Facility or a pledge of interests in the Company.

"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” means (i) a loan in the maximum amount of \$32,562,500.00 from the Lender to HSRE-EB North Woodmere, LLC made on February 21, 2007, and assumed by the Company and all modifications, extensions, or restatements thereof and (ii) any loan made by a Lender to the Company to pay for the costs of acquisition, remediating and developing the Facility, or any portion thereof, which Loan is secured by a Mortgage on the Facility.

“Loan Documents” means, collectively, the Mortgage, the Note and any other documents executed and delivered to the Lender in connection with the Loan.

“Mortgage” means the Multifamily Mortgage, Assignment of Rents and Security Agreement, dated February 21, 2007, given by the Agency and HSRE-EB North Woodmere, LLC, to the Lender, covering, among other things, the Facility, as security for the Loan, as amended by that certain Cross Collateralization and Amendment to Security Instrument dated February 21, 2007; as further amended by that certain Assumption Agreement dated _____, 2013 as the same may be further modified, amended, renewed or extended from time to time.

“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” means the Multifamily Note, dated February 21, 2007, given by HSRE-EB North Woodmere, LLC to the Lender, in the principal amount of \$32,562,500.00, and all extensions or modifications or restatements thereof.

“Operator” means Hungry Harbor Care LLC, a New York limited liability company authorized to transact business in the State of New York, its successor and assigns.

“Operator Lease” means the Lease, dated February 21, 2007, between HSRE-EB North Woodmere, LLC and the Operator, and any amendments, restatements, extensions and modifications thereof assume by HSRE-EB North Woodmere, LLC, a Delaware limited liability company, pursuant to that certain Assignment and Assumption of Operating Lease dated May 22, 2012, to be effective as of the Closing Date.

“Permitted Encumbrances” means (i) exceptions to title set forth in the Title Report, (ii) the Second Amended and Restated Installment Sale Agreement, the Mortgage, the Assignment of Leases and Rents, the Recapture Agreement, and the Tax Regulatory Agreement, (iii) 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, (iv) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens which are approved in writing by the Agency or its counsel, (v) Liens for taxes not yet delinquent, and (vi) the Operator Lease.

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

“Plans and Specifications” means the plans and specifications for the Improvements, prepared for the Company and approved by the Agency, as revised from time to time in accordance with the Second Amended and Restated Installment Sale Agreement.

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

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

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

“Recapture Agreement” means the Recapture Agreement, dated February 13, 2013, by and between the Agency and the Company, as the same may be amended from time to time.

“Sale Term” means the duration of the sale term as specified in Section 5.2 of the Second Amended and Restated Installment Sale Agreement.

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

“Second Amended and Restated Installment Sale Agreement” means the Second Amended and Restated Installment Sale Agreement, dated February 13, 2013, by and between the Agency, as seller, and the Company, as purchaser, with respect to the Facility, as the same may be amended from time to time.

“Second Amended and Restated PILOT Agreement” means the Amended and Restated Payment-in-Lieu-of-Tax Agreement, originally dated as of December 1, 2001, amended and restated as of September 1, 2006, further amended and restated February 13, 2013, between the Company and the Agency, 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. [] issued by [] Title Insurance Company] to the Agency on [] 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, 8.4, 8.6, 8.8, 8.9, 8.12, 8.13, 10.2(a)(i), 10.2(a)(v) and 10.2(a)(vi) (in each case with respect to Section 10.2 upon a continuing default in payment by the Company under the Second Amended and Restated PILOT Agreement), 11.2(b) and 12.8 of the Second Amended and Restated Installment Sale Agreement.