

VILLAGE OF FAIRPORT INDUSTRIAL DEVELOPMENT AGENCY  
(VILLAGE OF FAIRPORT, NEW YORK)

and

FAIRPORT CANNERY, LLC

---

AGENCY LEASE AND PROJECT AGREEMENT

---

Dated as of February 7, 2020

Village of Fairport Industrial Development Agency  
(FAIRPORT CANNERY, LLC Project)

## TABLE OF CONTENTS

	<u>Page No.</u>
ARTICLE I DEFINITIONS .....	2
ARTICLE II REPRESENTATIONS AND COVENANTS .....	2
Section 2.1 <u>Representations and Covenants of Agency</u> .....	2
Section 2.2 <u>Representations and Covenants of Company</u> .....	3
ARTICLE III CONVEYANCE OF FACILITY SITE; PROJECT WORK AND COMPLETION.....	5
Section 3.1 <u>Agreement to Convey to Agency</u> .....	5
Section 3.2 <u>Title Report and Survey</u> .....	5
Section 3.3 <u>Public Authorities Law Representations</u> .....	5
Section 3.4 <u>Project Work</u> .....	6
Section 3.5 <u>Identification of Equipment</u> .....	6
Section 3.6 <u>Certificates of Completion</u> .....	7
Section 3.7 <u>Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties</u> .....	7
ARTICLE IV LEASE OF FACILITY RENTAL PROVISIONS .....	7
Section 4.1 <u>Lease of Facility</u> .....	7
Section 4.2 <u>Duration of Lease Term; Quiet Enjoyment</u> .....	7
Section 4.3 <u>Rents and Other Amounts Payable</u> .....	8
Section 4.4 <u>Obligations of Company Hereunder Unconditional</u> .....	8
Section 4.5 <u>No Warranty of Condition or Suitability by Agency</u> .....	9
ARTICLE V PILOT PAYMENTS; SALES TAX EXEMPTION; MORTGAGE RECORDING TAX EXEMPTION AND RECAPTURE OF BENEFITS .....	9
Section 5.1 <u>PILOT Payments</u> .....	9
Section 5.2 <u>Sales Tax Exemption</u> .....	12
Section 5.3 <u>Mortgage Recording Tax Exemption</u> .....	17
Section 5.4 <u>Recapture of Agency Benefits</u> .....	18
ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE .....	21
Section 6.1 <u>Maintenance and Modifications of Facility by Company</u> .....	21
Section 6.2 <u>Installation of Additional Equipment</u> .....	21
Section 6.3 <u>Taxes, Assessments and Utility Charges</u> .....	22
Section 6.4 <u>Insurance Required</u> .....	23
Section 6.5 <u>Additional Provisions Respecting Insurance</u> .....	24
Section 6.6 <u>Application of Net Proceeds of Insurance</u> .....	25
Section 6.7 <u>Right of Agency to Pay Taxes, Insurance Premiums and Other Charges</u> .....	25
ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION .....	26
Section 7.1 <u>Damage or Destruction of the Facility</u> .....	26
Section 7.2 <u>Condemnation</u> .....	27
Section 7.3 <u>Condemnation of Company-Owned Property</u> .....	29
Section 7.4 <u>Waiver of Real Property Law Section 227</u> .....	29
ARTICLE VIII SPECIAL COVENANTS .....	29
Section 8.1 <u>Right to Inspect Facility</u> .....	29

Section 8.2	<u>Hold Harmless Provisions</u> .....	29
Section 8.3	<u>Company to Maintain Its Existence</u> .....	31
Section 8.4	<u>Qualification in State</u> .....	32
Section 8.5	<u>Agreement to File Annual Statements and Provide Information</u> ....	32
Section 8.6	<u>Books of Record and Account; Financial Statements</u> .....	32
Section 8.7	<u>Compliance with Orders, Ordinances, Etc.</u> .....	32
Section 8.8	<u>Discharge of Liens and Encumbrances</u> .....	33
Section 8.9	<u>Depreciation Deductions and Investment Tax Credit</u> .....	33
Section 8.10	<u>Employment Opportunities; Notice of Jobs</u> .....	33
Section 8.11	<u>Employment at the Facility</u> .....	34
Section 8.12	<u>Annual Compliance Certificate</u> .....	34
Section 10.6	<u>Certificate of No Default</u> .....	34
<b>ARTICLE IX RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING</b>		
34		
Section 9.1	<u>Restriction on Sale of Facility; Release of Certain Land</u> .....	34
Section 9.2	<u>Removal of Equipment</u> .....	35
Section 9.3	<u>Assignment and Subleasing</u> .....	35
Section 9.4	<u>Merger of Agency</u> .....	36
<b>ARTICLE X EVENTS OF DEFAULT AND REMEDIES</b> .....		
37		
Section 10.1	<u>Events of Default Defined</u> .....	37
Section 10.2	<u>Remedies on Default</u> .....	39
Section 10.3	<u>Remedies Cumulative</u> .....	40
Section 10.4	<u>Agreement to Pay Attorneys' Fees and Expenses</u> .....	40
Section 10.5	<u>No Additional Waiver Implied by One Waiver</u> .....	40
Section 10.6	<u>Certificate of No Default</u> .....	<b>Error! Bookmark not defined.</b>
<b>ARTICLE XI EARLY TERMINATION OF LEASE AGREEMENT OPTION IN FAVOR</b>		
<b>OF COMPANY</b> .....		
40		
Section 11.1	<u>Early Termination of Lease Agreement</u> .....	40
Section 11.2	<u>Conditions to Termination of Lease Agreement</u> .....	40
Section 11.3	<u>Conveyance on Termination</u> .....	41
<b>ARTICLE XII LENDER PROVISIONS</b> .....		
41		
Section 12.1	<u>Subordination of Lease Agreement</u> .....	41
Section 12.2	<u>Mortgage and Pledge of Agency's Interests to Lender</u> .....	42
Section 12.3	<u>Pledge of Company's Interest to Lender</u> .....	42
Section 12.4	<u>Making of Loans; Disbursement of Loan Proceeds</u> .....	42
Section 12.5	<u>References to Lender, Loan or Mortgage</u> .....	42
<b>ARTICLE XIII ENVIRONMENTAL MATTERS</b> .....		
43		
Section 13.1	<u>Environmental Representations of the Company</u> .....	43
Section 13.2	<u>Environmental Covenants of the Company</u> .....	44
Section 13.3	<u>Survival Provision</u> .....	46
<b>ARTICLE XIV MISCELLANEOUS</b> .....		
47		
Section 14.1	<u>Notices</u> .....	47
Section 14.2	<u>Binding Effect</u> .....	48
Section 14.3	<u>Severability</u> .....	48
Section 14.4	<u>Amendments, Changes and Modifications</u> .....	48
Section 14.5	<u>Execution of Counterparts</u> .....	48

Section 14.6	<u>Applicable Law</u> .....	48
Section 14.7	<u>List of Additional Equipment; Further Assurances</u> .....	48
Section 14.8	<u>Survival of Obligations</u> .....	48
Section 14.9	<u>Table of Contents and Section Headings Not Controlling</u> .....	48
Section 14.10	<u>Waiver of Trial by Jury</u> .....	48

SCHEDULE A	Legal Description of Real Property
SCHEDULE B	Equipment
SCHEDULE C	PILOT Schedule
SCHEDULE D	Mortgage Requirements
SCHEDULE E	Schedule of Definitions
EXHIBIT 3.6	Project Completion Certificate
EXHIBIT 5.2(d)(ii)	Sales Tax Agent Authorization Letter
EXHIBIT 5.2(h)	Sales Tax Registry
EXHIBIT 8.12	Annual Compliance Certificate

THIS LEASE AND PROJECT AGREEMENT, dated as of February 20, 2020 (this "**Lease Agreement**"), is between the VILLAGE OF FAIRPORT INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation, duly organized and validly existing under the laws of the State of New York, having its office at 31 South Main Street Fairport, New York 14450 (the "**Agency**"), and FAIRPORT CANNERY, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having its principal office at 195 Middle Road, Suite 400, Henrietta, New York 14467 (the "**Company**").

## RECITALS

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

WHEREAS, the aforesaid enabling statute 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, improve, maintain, 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 (the "**Public Purpose**"); and

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid enabling statute, as amended, and Chapter 779 of the Laws of 1976 of the State, as amended, State General Municipal Law Section 910-b was enacted (collectively, the "**Act**"), pursuant to which the Agency was created and empowered under the Act to undertake the Project Work and the leasing of the Facility defined below; and

WHEREAS, the Agency will assist with a certain project (the "**Project**") consisting of (A) the renovation and expansion of the former warehouse and industrial buildings (the "**Existing Improvements**") located at 25 Parce Avenue and 75 North Main Street, Village of Fairport, Town of Perinton, County of Monroe, State of New York (the "**Land**"); (B) construction in and around the Existing Improvements of a 400 foot long boardwalk, office space, retail space, flex space and related site improvements (collectively, the "**New Improvements**" and together with the Existing Improvements the "**Improvements**"); and (C) the acquisition and installation in and around the Improvements of certain items of furniture, furnishings, equipment, machinery and other tangible personal property (collectively, the "**Equipment**" and, together with the Land and the Improvements, the "**Facility**"); and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to complete the Project Work; and

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to the terms of the Company Lease (as hereinafter defined at Schedule E), and the Company has agreed to transfer to the Agency title to the Equipment pursuant to the Bill of Sale (as hereinafter defined at Schedule E) ; and

WHEREAS, the Agency has agreed to lease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions set forth in this Lease Agreement.

## AGREEMENT

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

### ARTICLE I DEFINITIONS

All capitalized terms used in this Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule E.

### ARTICLE II REPRESENTATIONS AND COVENANTS

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

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

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

(c) By resolution dated November 18, 2019 the Agency made determinations, based upon the review by the Agency of the materials submitted and the representations made by the Company relating to the Facility, relating to the Facility within the meaning of the SEQR Act.

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

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

(f) The Agency has been induced to enter into this Lease Agreement by the undertaking of the Company to utilize the Facility in the Village of Fairport, New York in furtherance of the Public Purposes of the Agency.

(g) The Agency will execute, acknowledge (if appropriate) and deliver from time to time such instruments and documents which are necessary or desirable to carry out the intent and purposes of this Lease 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, is in good standing under the laws of the State of and has full legal right, power and authority to execute, deliver and perform each of the Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

(b) Neither the execution and delivery of any of the Company Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Company Documents and the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Company's Organizational Documents, as amended, or any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of

the Company under the terms of any such law, ordinance, Organizational Documents, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

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

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

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

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

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

(h) The Company will lease the Facility in accordance with the provisions hereof, including, but not limited to, Section 9.3 hereof, and will annually provide a rent roll of the Company's tenants, sublessees, or subtenants of the Facility.

(i) The Company hereby represents to the Agency that facilities and property that are primarily used in making retail sales of goods and services to customers who personally visit the Facility will not constitute more than one-third (1/3) of the total costs of the Facility, except in accordance with State General Municipal Law (the "GML") Section 862. The Company further represents that the Project is a tourism destination, as the Project is likely to attract a significant number of visitors from outside the economic development region pursuant to Section 230 of the New York State Economic Development Law, as the Project's primary tenant is a new craft brewery and the



location of the Project among several craft brewery / distillery businesses in the Village of Fairport, and in close proximity to the Empire State Trail and Erie Canalway, which attracts a significant number of visitors from outside the economic development region, the Project thereby creates a tourism destination, and supports tourism initiatives including New York State's Empire Trail program, the Erie Canalway National Heritage Corridor, Empire State Development, and New York State's Empire State Trail Breweries Passport program.

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

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

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

### ARTICLE III CONVEYANCE OF FACILITY SITE; PROJECT WORK AND COMPLETION

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

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

Section 3.3 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Facility and the interest therein to be conveyed by this Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are

securing the financial obligations of the Company. The Facility and the leasehold interests therein secure the obligations of the Company to the Agency under this Lease Agreement, including the Company's obligation to acquire and maintain the Facility and complete the Project Work on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency.

#### Section 3.4 Project Work.

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

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

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

(d) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 3.4.

(e) The Company, as agent for the Agency, shall comply in all material respects with all provisions of the Labor Law of the State applicable to the completion of the Project Work and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions. The Company shall comply with the relevant policies of the Agency with respect to such laws. Except as provided in the preceding two sentences, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 3.5 Identification of Equipment. All Equipment which is or may become the Property of the Agency pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency. All Property of whatever nature affixed or attached to the Land or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Lease Agreement and such Property was properly identified by such appropriate records as were approved by the Agency.

Section 3.6 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Agency (i) a certificate signed by an Authorized Representative of the Company in substantially the form set forth in Exhibit 3.6 attached hereto, together with all attachments required thereunder stating (a) that the Project Work has been completed in accordance with the Plans and Specifications therefor, and (b) that payment for all labor, services, materials and supplies used in such Project Work has been made or provided for; (ii) the Final Project Cost Budget, which budget will include a comparison with the project cost budget information listed in the Project Application Information and shall include all costs paid or incurred by the Company in connection with the Facility and the Equipment, and (iii) such other certificates as may be reasonably satisfactory to the Agency. The Company shall not be entitled to any refund or credit of the Agency's fee if the Final Project Cost Budget is lower than provided in the Project Application Information. The Company agrees that the Completion Date shall be no later than December 31, 2020, provided, however, the Completion Date maybe extended, upon written request made by the Company to the Agency, at the sole discretion of the Agency's Executive Director.

Section 3.7 Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman, surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's sole cost and expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Net Proceeds of any recovery from a contractor or subcontractor or materialman or other person shall be paid to the Company.

#### ARTICLE IV LEASE OF FACILITY RENTAL PROVISIONS

Section 4.1 Lease of Facility. The Agency hereby leases the Facility, consisting of the Land as more particularly described in Schedule A attached hereto and the Improvements and the Equipment as more particularly described in Schedule B attached hereto, to the Company and the Company hereby takes the Facility from the Agency upon the terms and conditions of this Lease Agreement.

Section 4.2 Duration of Lease Term; Quiet Enjoyment.

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

(b) Except as provided in Sections 10.2 and 11.1 hereof, the estate created hereby shall terminate on the earlier of (i) the fifteenth (15<sup>th</sup>) anniversary of the Applicable Taxable Status Date or (ii) February 1, 2038 (the "**Lease Term**").

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

#### Section 4.3 Rents and Other Amounts Payable.

(a) The Company shall pay basic rent for the Facility as follows: One Dollar (\$1.00) per year commencing on the Closing Date and on each and every January 1 thereafter during the term of this Lease Agreement.

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

(c) The Company, under the provisions of this Section 4.3, 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 4.3(a) or 4.3(b), the Company shall pay the same together with interest on such payment at a rate equal to the Default Interest 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 4.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 4.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein, shall be general obligations 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, or (ii) fail to observe any of its other covenants or agreements in this Lease Agreement.

Section 4.5 No Warranty of Condition or Suitability by Agency. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT WORK. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OR THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

## ARTICLE V

### PILOT PAYMENTS; SALES TAX EXEMPTION; MORTGAGE RECORDING TAX EXEMPTION AND RECAPTURE OF BENEFITS

#### Section 5.1 PILOT Payments.

(a) As long as this Lease Agreement is in effect, the Company agrees to make payments in lieu of all real estate taxes and assessments (the "**PILOT Payments**") (in addition to paying all special ad valorem levies, special assessments or special district taxes/charges and service charges against real property located in the Village of Fairport, Fairport Central School District, Town of Perinton, County of Monroe (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) (the "**Taxing Authorities**") which are or may be imposed for special improvements or special district improvements) which would be levied upon or with respect to the Facility if the Facility were owned by the Company exclusive of the Agency's leasehold interest (the "**Taxes on the Facility**"). The method of calculation for such PILOT Payments is set forth in Schedule C attached hereto.

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

(c) Commencing with the applicable Tax Year for each of the Taxing Authorities following the Applicable Taxable Status Date, (as hereinafter defined at Schedule E) the Company shall pay, as payments in lieu of taxes and assessments, the amounts set forth on Schedule C attached hereto and made a part hereof.

(d) The Company shall pay, or cause to be paid, the amounts set forth in subsections (a), (b) and (c) above, as applicable, after receipt of bills for PILOT Payments from the Taxing Authorities. Failure to receive a bill for PILOT Payments shall not relieve the Company of its obligation to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate bill for PILOT Payments, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided therein. PILOT Payments shall be made directly to the Taxing Authorities. PILOT Payments made after the due date(s) as set forth in the applicable bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the GML, including Section 874(5) thereof, which currently provides for an initial penalty of five percent (5%) of the amount due and an additional penalty of two percent (2%) per month on payments more than one-month delinquent. Anything contained in this paragraph (d) to the contrary notwithstanding, the Company shall have the obligation to make all annual payments required by this paragraph (other than payments of penalties, if any) on the dates indicated on the bills for PILOT Payments or on such other dates as may be established from time to time during the Lease Term.

(e) During the Lease Term, the Company shall continue to pay all special ad valorem levies, special assessments, and service charges levied against the Facility for special improvements or special district improvements.

(f) In the event that any structural addition shall be made to the building or buildings included in the Facility subsequent to the Completion Date, or any additional building or improvement shall be constructed on the Land (such structural additions, buildings and improvements being referred to hereinafter as "**Additional Facilities**"), the Company agrees to make additional payments in lieu of taxes to the Taxing Authorities in amounts equal to the taxes that would have been levied upon or with respect to the Additional Facilities by the Taxing Authorities if the Additional Facilities were owned by the Company exclusive of the Agency's leasehold interest. All other provisions of this Section 5.1 shall apply to this obligation for additional payments.

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

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

(i) In the event the Company shall enter into a subsequent payment-in-lieu-of-tax agreement or agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities in the jurisdiction of which the Facility is located, the obligations of the Company under this Section 5.1, which are inconsistent with such future agreement or agreements, shall be superseded and shall, to such extent, be null and void.

(j) As long as this Lease Agreement is in effect, the Agency and the Company agree that (i) the Company shall be deemed to be the owner of the Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, administrative or judicial review of an assessment of the real estate with respect to the Facility and of the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Agency, at the request of the Company, shall request the Assessor of Town of Perinton, Village of Fairport, or any other assessor having jurisdiction to assess the Facility, to take into consideration the value of surrounding properties of like character when assessing the Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility and the Additional Facilities is reduced as a result of any such administrative or judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Facility and the Additional Facilities exclusive of the Agency's

leasehold interest therein, such complaining party shall not be entitled to receive a refund or refunds of the PILOT Payments paid pursuant to this Lease Agreement and the PILOT Payments set forth on Schedule C hereto shall not be reduced. In that event, such complaining party shall be entitled to receive a credit against future PILOT Payments to be paid pursuant to this Lease Agreement, as and when collected by the Agency or the respective Taxing Authorities (as the case may be), in an amount equal to any refund that such complaining party would be entitled to receive if such complaining party were the owner of the Facility and the Additional Facilities exclusive of the Agency's leasehold interest therein; provided, however, that the Agency shall have no obligation to provide a credit against PILOT Payments which it has remitted to any of the respective Taxing Authorities before the date the Agency receives written notice from the complaining party that it seeks a credit. In no event shall the Agency be required to remit to the Company or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Facility (or any part thereof) due to a certiorari review. If the Company receives a reduction in assessment in the last year of this Lease Agreement after it has made its final payments in lieu of taxes, the Company acknowledges that it shall look solely to the Taxing Authorities for repayment or for a credit against the first payment(s) of Taxes on the Facility which will be due after the Facility is returned to the tax rolls. The Company hereby agrees that it will notify the Agency if the Company shall have requested a reassessment of the Facility or a reduction in the taxes on the Facility or shall have instituted any tax certiorari proceedings with respect to the Facility. The Company shall deliver to the Agency copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company in connection with any reassessment of the Facility, reduction of taxes with respect to the Facility or tax certiorari proceedings with respect to the Facility.

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

#### Section 5.2 Sales Tax Exemption.

(a) The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency (i) to complete the Project Work in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for the Project Work with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in connection with the



Project Work, (iv) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project Work, and (v) to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Company from purchasing any motor vehicle, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets.

(b) Agency's Exempt Status. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Company, any Agent or any third party that any Sales Tax Exemption is available under this Lease Agreement.

(c) Scope of Authorization of Sales Tax Exemption. The Agency hereby authorizes the Company, subject to the terms and conditions of this Lease Agreement, to act as its agent in connection with the Facility for the purpose of effecting purchases and leases of Eligible Items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency's authorization with respect to such Sales Tax Exemption provided to the Company and its Agents pursuant to this Lease Agreement and any Sales Tax Agent Authorization Letters issued hereunder shall be subject to the following limitations:

- (i) The Sales Tax Exemption shall be effective only for a term commencing on the Closing Date and expiring upon the earliest of (A) the termination of this Lease Agreement, (B) the Completion Date, (C) failure of the Company to file Form ST-340, as described in Section 5.2(g) below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2 or (E) the date upon which the Company received the Maximum Company Sales Tax Savings Amount.
- (ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this Lease Agreement until such default is cured to the satisfaction of the Agency.
- (iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Lease Agreement.
- (iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for

use only by the Company at the Facility (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item to a Person as shall not constitute the Company), it being the intention of the Agency and the Company that the Sales Tax Exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Company at the Facility.

- (v) The Sales Tax Exemption shall not be used for any Ineligible Item.
- (vi) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Company, without the prior written consent of the Agency.
- (vii) By execution by the Company of this Lease Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.
- (viii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated.
- (ix) The Company agrees that the amount of Company Sales Tax Savings realized by the Company and by all Agents, if any, in connection with the Facility shall not exceed, in the aggregate, the Maximum Company Sales Tax Savings Amount.

(d) Procedures for Appointing Agents. If the Company desires to seek the appointment of a contractor, a subcontractor or other party to act as the Agency's agent (an "**Agent**") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Lease Agreement and which purchases are not available for exemption using NYSDTF Form ST-120.1, it must complete the following steps:

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

- (ii) Following receipt by the Agency of the completed Form ST-60, such Agent must be appointed as Agent by the Agency, by execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Exhibit 5.2(d)(ii). The determination whether to approve the appointment of an Agent shall be made by the Agency, in its sole discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Company. The Company must also provide a copy of an executed Sales Tax Agent Authorization Letter together with a copy of this Lease Agreement to the Agent within five (5) Business Days after receipt thereof by the Company.
- (iii) The Company shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Lease Agreement.

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

(f) Form ST-123 Requirement. As an agent of the Agency, the Company agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Agent, as agent for the Agency, for the Project Work. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state, "I, [Company/Agent], certify that I am duly appointed agent of the Village of Fairport Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the FAIRPORT CANNERY, LLC Facility located at 25 Parce Avenue, Fairport, New York and 75 North Main Street, Fairport, New York, IDA Project Number 2640 20 001." The Company shall retain copies of all such contracts,

agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the date thereof. The Company and each Agent shall complete the Form ST-123 as follows: (i) the "Project information" section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

(g) Form ST-340 Filing Requirement. The Company shall annually (currently, by each February 1<sup>st</sup> with respect to the prior calendar year) file a Form ST-340 with NYSDTF, and with a copy to the Agency, in a manner consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF (the "**Commissioner**"), of the value of all Company Sales Tax Savings claimed by the Company and each Agent in connection with the Facility. Should the Company fail to comply with the foregoing requirement, the Company and each Agent shall immediately cease to be agents of the Agency in connection with the Facility without any further action of the Agency and the Company shall immediately and without demand notify each Agent appointed by the Agency in connection with the Facility of such termination.

(h) Sales Tax Registry Filing Requirement. No later than December 1<sup>st</sup> of each year, the Company shall file with the Agency a completed Sales Tax Registry, in the form attached hereto as Exhibit 5.2(h), which accounts for all Company Sales Tax Savings realized by the Company and each Agent during the prior annual period ending on the preceding September 30<sup>th</sup> (or such shorter period beginning on the Closing Date and ending on the preceding September 30<sup>th</sup>), unless the Termination Date occurred prior to such September 30<sup>th</sup>. Within ten (10) days after the Termination Date, the Company shall file with the Agency a completed Sales Tax Registry which accounts for all Company Sales Tax Savings realized by the Company and each Agent during the period from the preceding October 1<sup>st</sup> to the Termination Date.

(i) Special Provisions Relating to Company Sales Tax Savings.

- (i) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of GML Sections 875(1) and (3) (the "**Special Provisions**"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Lease Agreement and the Special Provisions, the Special Provisions shall control.
- (ii) The Company acknowledges and agrees that pursuant to GML Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company, Company Sales Tax Savings taken or purported to be taken by the Company, any Agent or any other person or entity acting on behalf

of the Company to which the Company is not entitled or which are in excess of the Maximum Company Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such Company Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner to assess and determine Sales and Use Taxes due from the Company under Article 28 of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(j) Subject to the provisions of subsection (i) above, in the event that the Company or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Lease Agreement or any Sales Tax Agent Authorization Letter, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Company or any Agent (as applicable).

(k) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company under this Section 5.2.

Section 5.3 Mortgage Recording Tax Exemption. Section 874 of the Act exempts the Agency from paying certain mortgage recording taxes except for the portion of the mortgage recording tax allocated to transportation districts referenced in Section 253(2)(a) of the Tax Law. The Agency hereby grants to the Company exemption from mortgage recording taxes for one or more Mortgages securing an aggregate principal amount not to exceed \$7,600,000, or such greater amount as approved by the Agency in its sole and absolute discretion, in connection with the

financing of the Project Work and any future financing, refinancing or permanent financing of the costs of the Project Work for the Facility (the "**Mortgage Recording Tax Exemption**"). The Company represents and warrants (1) that the real property secured by the Mortgage is located within a transportation district referenced in Section 253(2)(a) of the Tax Law, and (2) that upon recording the Mortgage, the Company shall pay the mortgage recording tax allocated to transportation districts referenced in Section 253(a)(2) of the Tax Law.

#### Section 5.4 Recapture of Agency Benefits.

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

- (i) If there shall occur a Recapture Event after the Closing Date, but on or before March 1, 2026, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);
- (ii) If there shall occur a Recapture Event on or after March 1, 2026 but on or before March 1, 2027, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, eighty percent (80%) of the Recaptured Benefits;
- (iii) If there shall occur a Recapture Event on or after March 1, 2027 but on or before March 1, 2028, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, sixty percent (60%) of the Recaptured Benefits;
- (iv) If there shall occur a Recapture Event on or after March 1, 2028 but on or before March 1, 2029, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, forty percent (40%) of the Recaptured Benefits; and
- (v) If there shall occur a Recapture Event on or after March 1, 2029 but on or before March 1, 2030, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty percent (20%) of the Recaptured Benefits; and

- (v) If there shall occur a Recapture Event on or after March 1, 2030, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(b) The term "**Recaptured Benefits**" shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency's participation in the transaction contemplated by this Lease Agreement including, but not limited to, the amount equal to 100% of:

- (i) the Mortgage Recording Tax Exemption; and
- (ii) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to this Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the "**Company Sales Tax Savings**"); and
- (iii) real property tax abatements granted pursuant to Section 5.1 hereof (the "**Real Property Tax Abatements**");

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by written notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after receipt of such written notice.

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

- (i) The occurrence and continuation of an Event of Default under this Lease Agreement (other than as described in clause (iv) below or in subsections (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or
- (ii) The Facility shall cease to be a "project" within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Company; or
- (iii) The sale of the Facility or closure of the Facility and/or departure of the Company from Village of Fairport, except as due to casualty, condemnation or force majeure as provided in subsection (e) below or as provided in Section 9.3 hereof; or
- (iv) Failure of the Company to comply with Section 8.11 of this Lease Agreement, which failure is not reflective of the business conditions of the Company or the tenants, sublessees or subtenants of the

Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or

- (v) Any significant deviations from the Project Application Information which would constitute a significant diminution of the Company's activities in, or commitment to, Village of Fairport, New York; or
- (vi) The Company receives Sales Tax Savings in connection with the Project Work in excess of the Maximum Company Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that Company's failure to repay the excess Sales Tax Savings within thirty (30) days of written demand from Agency, shall constitute a Recapture Event with respect to all Recapture Benefits.

(d) Reserved.

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event (as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "**Loss Event**") to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company or any of its affiliates so long as the Company or any of its affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(f) The Company covenants and agrees to furnish, or cause the tenants, sublessees, and subtenants to furnish to the Agency (i) by December 1<sup>st</sup> of each year the Annual Compliance Certificate enumerated in Section 8.12 hereof, and (ii) within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company, in writing, of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

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



(h) The Agency shall be entitled to deduct all reasonable and actually incurred out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.4, from amounts received by the Agency pursuant to this Section 5.4.

ARTICLE VI  
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Facility by Company.

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

(b) 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. The Company may not make any changes to the footprint of the Facility, and any additions expanding the square footage of the Facility (including the addition of any stories whether above or below ground) or make any additions, modifications or improvements to the Facility which will materially and/or adversely affect the structural integrity or value of the Facility without the prior written consent of the Agency. All such additions, modifications or improvements made by the Company after the date hereof 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 or an interest in such Property.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 3.5 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility, so long as such additional property is properly identified by such appropriate records, including computerized records. 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 and is continuing or (ii) if any such removal shall adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided further, that if any damage to the Facility is occasioned by such removal,

the Company agrees promptly to repair or cause to be repaired such damage at its own expense.

### Section 6.3 Taxes, Assessments and Utility Charges.

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

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings and (ii) the Company shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency.

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

(d) The Company shall deliver to the Agency, official receipts of the appropriate taxing authorities or other proof reasonably satisfactory to the Agency evidencing payment of any tax within thirty (30) days of receiving such receipts or proof.

Section 6.4 Insurance Required. During the term of this Lease Agreement, the Company shall maintain insurance with respect to the Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance protecting the interests of the Company and the Agency as insureds as their interest may appear, against loss or damage to the Facility by fire, lightning, vandalism, malicious mischief and other perils normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount acceptable to the Company and the Agency.

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

(c) Insurance protecting the Company and the Agency against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Sections 8.2 of this Lease Agreement) and arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate umbrella liability policy with a limit of not less than \$5,000,000.

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

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

(ii) Comprehensive general liability providing coverage for:

Premises and Operations

Products and Completed Operations

Owners Protective

Contractors Protective

Contractual Liability

Personal Injury Liability

Broad Form Property Damage (including completed operations)

Explosion Hazard Collapse Hazard  
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 (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 (ii) and (iii) above with a limit of not less than \$3,000,000.

(e) A policy or policies of flood insurance in an amount not less than the greater of \$500,000 or the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Agency that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

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

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required above shall be procured and maintained in insurance companies selected by the Company and reasonably acceptable to the Agency and authorized to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance other than workers' compensation insurance and statutory disability insurance shall name the Company as insured and the Agency as an additional insureds, as their interest may appear, and provide for at least thirty (30) days' prior written notice to the Company and the Agency of the cancellation, lapse, reduction in policy limits or material change in coverage thereof. The policy evidencing the insurance required shall name the Agency as an additional insured on a primary and noncontributory basis with any coverage secured by the Agency, if any. All insurance required hereunder shall be in form, content and coverage reasonably satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency on or before the first Business Day of

each calendar year thereafter a certificate reciting that there is in full force and effect, with a term covering at least the next succeeding twelve month period, insurance in the amounts and of the types required by Sections 6.4 hereof. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Lease Agreement as the Agency may from time to time reasonably require.

(b) All premiums with respect to the insurance required shall be paid by the Company; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums for a period not to exceed twelve (12) months and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate, but in no event at a rate higher than the maximum lawful prevailing rate, as provided for in Section 6.7 below.

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

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

hereunder shall have occurred and be continuing. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Agency for any amount so paid or for reasonable expenses or costs actually incurred in the performance of any such act by the Agency pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon, from the date of payment of such amount, expense or cost by the Agency at a rate equal to the Default Interest Rate, but in no event at a rate higher than the maximum lawful prevailing rate.

## ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

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

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

- (i) the Agency shall have no obligation to replace, repair, rebuild, restore or relocate the Facility;
- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement, including, without limitation, the PILOT Payments (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated);
- (iii) the Company shall promptly give written notice thereof to the Agency;
- (iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be (A) paid to the Company or the Lender, as applicable, for the replacement, repair, rebuilding, restoration or relocation of the Facility as provided in Section 7.1(b) hereof or (B) applied pursuant to Section 7.1(e) hereof; and
- (v) if the Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.1(b) hereof, this Lease Agreement shall be terminated at the option of the Agency and the provisions of Section 7.1(e) hereof shall apply.

(b) Any replacements, repairs, rebuilding, restorations or relocations of the Facility by the Company 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 existed prior to the damage or destruction;
- (ii) the Facility shall continue to constitute a "project" as such term is defined in the Act;
- (iii) the Facility will be subject to no Liens, other than Permitted Encumbrances; and
- (iv) any other conditions the Agency may reasonably impose.

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

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

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

#### Section 7.2 Condemnation.

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

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

- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement including, without limitation, the PILOT Payments (whether or not the Facility is repaired, replaced, rebuilt, restored or relocated or Substitute Facilities are acquired);
- (iii) the Company shall promptly give written notice thereof to the Agency;
- (iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be (A) paid to the Company or the Lender, as applicable, for the replacement, repair, rebuilding, restoration or relocation of the Facility or acquisition of Substitute Facilities as provided in Section 7.2(b) hereof or (B) applied pursuant to Section 7.2(e) hereof; and
- (v) if the Facility is not repaired, replaced, rebuilt, restored or relocated, as provided herein and in Section 7.2(b) hereof, this Lease Agreement shall be terminated at the option of the Agency and the provisions of Section 7.2(e) hereof shall apply.

(b) Any repairs, replacements, rebuilding, restorations or relocations of the Facility by the Company 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 existed prior to the Condemnation;
- (ii) the Facility or the Substitute Facilities shall continue to constitute a "project" as such term is defined in the Act;
- (iii) the Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances; and
- (iv) any other conditions the Agency may reasonably impose.

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

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such repair, replacement, rebuilding, restoration, relocation or acquisition of Substitute Facilities, the Company shall nonetheless complete, or cause to be completed, the work or the acquisition pursuant to the terms of this Lease Agreement and pay from its own moneys, or cause to be paid by such other party as may be obligated for payment, that



portion of the costs thereof in excess of such Net Proceeds. All such repairs, replacements, rebuilding, restoration, relocations and such acquisition of Substitute Facilities made pursuant to this Section, whether or not requiring the expenditure of the Company's own money or moneys of any other person, shall automatically become a part of the Facility as if the same were specifically described herein.

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

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

Section 7.4 Waiver of Real Property Law Section 227. The Company 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 Right to Inspect Facility. The Agency and its duly authorized agents shall have the right at all reasonable times on reasonable notice to inspect the Facility, including, without limitation, for the purpose of ascertaining the condition of the Environment at, on or in the vicinity of the Facility.

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company), and employees (the "**Indemnified Parties**") shall not be liable for and agrees to protect, defend, indemnify, save, release and hold the Indemnified Parties harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses (including, without limitation, reasonable attorneys' and experts' fees, expenses and disbursements, incurred whether by reason of third party claims or to enforce the terms, conditions and provisions of this Lease Agreement) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Agency relating to, resulting from or arising out of: (i) loss or damage to Property or injury to or death of

any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Facility or the Land, (ii) the Project Work and the Agency's acquisition, owning, leasing and subleasing of the Facility, including, without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 5.2 of this Lease Agreement, and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Lease Agreement (including without limitation this Section) or any of the other documents delivered on the Closing Date by the Agency) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, (iii) the conditions of the Environment at, on or in the vicinity of the Facility, (iv) the Project Work or the operation or use of the Facility in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production or Disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, except in compliance with all applicable Environmental Laws, (v) the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance or waste on, at or from the Facility, (vi) the failure promptly to undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility, required by any Environmental Law, (vii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the Project Work, the condition of the Facility or the ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law, (viii) a violation of any applicable Environmental Law, (ix) non-compliance with any Environmental Permit, (x) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company in this Lease Agreement, or (xi) the costs of any required or necessary investigation, assessment, testing, repair, cleanup, or detoxification of the Facility and the preparation of any closure or other required plans; provided that any such losses, damages, liabilities or expenses of the Agency are not incurred on account of and do not result from the gross negligence or intentional or willful wrongdoing of the Indemnified Parties. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of any of the Indemnified Parties, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, the payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Indemnified Parties, relating to the enforcement of the provisions herein specified. The liability of the Company to the Agency hereunder shall in no way be limited, abridged, impaired or otherwise affected by (i) any amendment or modification of any of the Transaction Documents by or for the benefit of the Agency, the Company or any subsequent owners or users of the Facility, (ii) any extensions of time for payment or performance required by any of the Transaction Documents, (iii) the release of the Company or any other person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Transaction Documents by operation of law, either by the Agency's voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Transaction Documents, (v) any exculpatory provision contained in any of the Transaction Documents limiting the Agency's recourse to any other security or limiting the Agency's rights to a deficiency judgment against the Company, (vi) any investigation or inquiry conducted by or on the behalf of the Agency or any information which the Agency may have or obtain with respect to the condition of the Environment at, or ecological condition of, the Facility, (vii) the sale, assignment or foreclosure of any mortgage relating to all or any part of the Facility, but only with respect to a Release that has occurred prior to any such event, (viii) the sale, assignment, subleasing, transfer or conveyance of all or part of the Land or the Facility or the Company's interests and rights in, to, and under this Lease Agreement or the termination of this Lease Agreement, but only with respect to a Release that has occurred prior to any such event, (ix) **[INTENTIONALLY OMITTED]**, (x) the release or discharge, in whole or in part, of the Company in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, or (xi) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Company under this Lease Agreement, or any other Transaction Document.

(c) In the event of any claim against the Indemnified Parties 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 Company to Maintain Its Existence. The Company covenants and agrees that at all times during the Lease Term, it will (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of

the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Lease Agreement, (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it, and (v) not change more than 49% of the ownership and control of the Company or sell or transfer more than 49% of the equity interests in the Company, except with consent of the Agency, which consent shall not be unreasonably withheld or delayed or conditioned.

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

Section 8.5 Agreement to File Annual Statements and Provide Information. The Company shall file with the NYSDTF 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 GML as provided in Section 5.2(g) hereof. The Company shall submit a copy of such annual statement to the Agency at the time of filing with NYSDTF. The Company shall also provide the Agency with the information necessary for the Agency to comply with Section 874(9) of the GML. The Company further agrees to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs 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 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 8.6 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.

Section 8.7 Compliance with Orders, Ordinances, Etc.

(a) The Company, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee, tenant 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 Project Work, or to any use, manner of use or condition of the Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction over the Facility or any part thereof, or of the Project Work, or

of any use, manner of use or condition of the Facility or any part thereof or of any companies or associations insuring the premises.

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

#### Section 8.8 Discharge of Liens and Encumbrances.

(a) The Company, throughout the Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) above, 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 shall notify the Company in writing that by nonpayment of any such item or items, the Facility or any part thereof may be subject to loss or forfeiture. In the event of such notice the Company shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Agency, thereby causing such Lien to be removed, or by taking such other actions as may be satisfactory to the Agency to protect its interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the filing or perfection thereof.

Section 8.9 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 8.10 Employment Opportunities; Notice of Jobs. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which the Company is a party, cause any new

employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300), as superseded by the Workforce Innovation and Opportunity Act (PL. 113-128), in which the Facility is located (collectively, the "**Referral Agencies**"). The Company also agrees, and shall cause any and all sublessees to agree, that they will, where practicable, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 8.11 Employment at the Facility. The Company hereby agrees to use its best efforts to cause its tenants, sublessees or subtenants to maintain current levels of employment and to create employment opportunities at all times at the Facility. It is further provided that the Company may not actually provide such employment opportunities at the Facility, but rather shall sublease the Facility to various tenants, sublessees or subtenants, and jobs or employment opportunities created and maintained by the tenants, sublessees or subtenants at the Facility shall satisfy the requirements of this Section. The Company's obligation hereunder shall be (a) to use all reasonable efforts to lease up the Facility, and (b) include provisions in all subleases requiring any tenant to comply with the provisions of this Lease Agreement applicable to them.

Section 8.12 Annual Compliance Certificate. The Company shall deliver, or cause any sublessee to deliver, to the Agency each year no later than December 1<sup>st</sup>, a certificate signed by an Authorized Representative of the Company, or sublessee, as applicable, substantially in the form attached hereto as Exhibit 8.12, together with all attachments referenced therein. The Company shall also deliver to the Agency, within thirty (30) days from the date of receipt thereof, copies of its annual audited or reviewed financial statements.

## ARTICLE IX RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

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

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

(b) The Agency and the Company from time to time may release from the provisions of this Lease Agreement and the leasehold estate created hereby any part of, or interest in, the Land which is not necessary, desirable or useful for the Facility. In such event, the Agency, at the Company's sole cost and expense, shall execute and deliver any and all instruments necessary or appropriate so to release such part of, or interest in, the Land. As a condition to such release, the Agency shall be provided with

a copy of the instrument transferring such title or interest in such Land, an instrument survey of the Land to be conveyed, together with a certificate of an Authorized Representative of the Company stating that there is then no Event of Default under this Lease Agreement and that such part of, or interest in, the Land is not necessary, desirable or useful for the Facility.

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

#### Section 9.2 Removal of Equipment.

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

(b) Upon the request of the Company, the Agency shall execute and deliver to the Company all instruments 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 attorneys' fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

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

#### Section 9.3 Assignment and Subleasing.

(a) This Lease Agreement may not be assigned, in whole or in part, and the Facility may not be subleased, in whole or in part, except for commercial leases completed in the ordinary course of business ("Excluded Leases"), without the prior written consent of the Agency. Any assignment or sublease shall be on the following conditions, as of the time of such assignment or sublease:

- (i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder unless the Agency consents thereto, which consent shall be conditioned upon the Agency being indemnified and held harmless to its reasonable satisfaction;

- (ii) the assignee or sublessee (except in the case of a Excluded Leases) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;
- (iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;
- (iv) neither the validity nor the enforceability of this Lease Agreement shall be adversely affected thereby; and
- (v) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act, and, without limiting the generality of the foregoing, no assignment or sublease shall cause the Facility to be used in violation of Section 862(2)(a) of the Act and no assignment or sublease shall cause the Facility to be occupied by a sublessee in violation of Section 862(1) of the Act;

(b) If the Agency shall so request, as of the purported effective date of any assignment or sublease (except in the case of Excluded Leases) pursuant to subsection (a) of this Section 9.3, the Company at its sole cost and expense shall furnish the Agency with opinions, in form and substance satisfactory to the Agency, (i) of Transaction Counsel as to item (v) above, and (ii) of Independent Counsel as to items (i), (ii), and (iv) above.

(c) In accordance with Section 862(1) of the Act, the Facility shall not be occupied by a sublessee whose tenancy would result in the removal of a facility or plant of the proposed sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

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

#### Section 9.4 Merger of Agency.

(a) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or the transfer of the Agency's interest in the entire Facility to, any other public benefit corporation or political subdivision which



has the legal authority to own and lease the Facility and to continue the tax benefits contemplated by the Transaction Documents, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred.

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

## ARTICLE X EVENTS OF DEFAULT AND REMEDIES

### Section 10.1 Events of Default Defined.

(a) The following shall each be "Events of Default" under this Lease Agreement:

- (i) the failure by the Company to pay or cause to be paid, on the date due, the amounts specified to be paid pursuant to Section 4.3(a) and (b) hereof;
- (ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(e), (f) or (i), 5.2, 6.3, 6.4, 6.5, 8.2, 8.4, 8.5, 8.11, 9.3, and 10.4 and Article XIII hereof;
- (iii) the failure by the Company to pay or cause to be paid PILOT Payments or the Recapture Benefits, in each case on the dates due;
- (iv) the occurrence and continuation of a Recapture Event;
- (v) any representation or warranty of the Company herein, in any of the Company Documents or in the Project Application Information shall prove to have been false or misleading in any material respect;
- (vi) the failure by the Company to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii), (iii) and (vii)) for a period of thirty (30) days after written notice, specifying

such failure and requesting that it be remedied, has been given to the Company by the Agency;

- (vii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within sixty (60) 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; or 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), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for sixty (60) 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; or
- (viii) an Event of Default under the Mortgage, if any, shall have occurred and be continuing.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 3.4, 6.1 and 8.11 of this Lease Agreement, and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuation of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, 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 and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

- (i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 4.3(a) and (b) hereof, (B) all unpaid and past due PILOT Payments, (C) all due and owing Recapture Benefits, and (D) all other payments due under this Lease Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vii) hereof shall have occurred and be continuing beyond the expiration of any grace or cure period, such installments of rent and other payments due under this Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;
- (ii) terminate this Lease Agreement and the Company Lease, reconvey the Equipment to the Company and terminate the Sales Tax Exemption authorization. The Agency shall have the right to execute appropriate lease termination documents with respect to the Facility and to place the same on record in the Village of Fairport Clerk's office, at the sole cost and expense of the Company and in such event the Company waives delivery and acceptance of such lease termination documents 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 lease termination documents; or
- (iii) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements and covenants of the Company under this Lease Agreement.

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

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Lease Agreement.

Section 10.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI  
EARLY TERMINATION OF LEASE AGREEMENT  
OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of Lease Agreement. The Company shall have the option to terminate this Lease Agreement at any time upon filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and stating the date upon which such payments required by Section 11.2 hereof shall be made (which date shall not be less than forty five (45) nor more than ninety (90) days from the date such certificate is filed) and upon compliance with the requirements set forth in Section 11.2 hereof.

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

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

(b) To the Agency: the purchase price with respect to the Equipment of one dollar (\$1.00);

(c) To the Agency: all amounts due and payable under Section 5.4 hereof;

(d) To the Agency: an amount certified by the Agency to be sufficient to pay all unpaid fees and expenses of the Agency reasonably and actually incurred under the Agency Documents; and

(e) 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 Company Documents.

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

## ARTICLE XII LENDER PROVISIONS

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

Section 12.2 Mortgage and Pledge of Agency's Interests to Lender. The Agency shall at the request of, and at the sole cost and expense of, the Company (i) mortgage its interest in the Facility, and (ii) pledge and assign its rights to and interest in this Lease Agreement (other than Unassigned Rights) to the Lender as security for the payment of the principal of and interest on the Loan, in each case in accordance with the provisions attached hereto as Schedule D. 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.

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

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

Provided that the Agency shall have received the notice of the name and address of a Lender, the Agency agrees that simultaneously with its giving of any notice under this Lease Agreement (each a "Notice") it will send a copy of such Notice to each Lender. Each Notice shall be sent to each Lender in the manner provided herein at the address provided to the Agency by each Lender for such purpose. Each such Lender may change such address from time to time by written notice to the Agency in accordance herewith. The Agency shall reasonably cooperate with the Company in connection with the granting or modification by the Company of any Mortgage. Such cooperation shall include, without limitation, the execution and delivery of such documents and instruments in connection with a Mortgage as the Company or the Lender may reasonably request (the "Loan Documents"), provided that such documents and instruments shall contain the language set forth in Schedule D attached hereto and made a part hereof. The Company shall perform or cause to be performed for and on behalf of the Agency, and at the Company's sole cost and expense, each and every obligation of the Agency under and pursuant to such instruments.

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

ARTICLE XIII  
ENVIRONMENTAL MATTERS

Section 13.1 Environmental Representations of the Company. The Company hereby represents and warrants to the Agency that to the best of its knowledge:

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

(b) Underground storage tanks are not and have not been located on the Facility.

(c) The soil, subsoil, bedrock, surface water and groundwater of the Facility are free of Hazardous Substances, in violation of Environmental Law, other than any such substances that occur naturally.

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

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

(f) No event has occurred with respect to the Facility which, with the passage of time or the giving of notice, or both, would constitute a violation of or non-compliance with any applicable Environmental Law or Environmental Permit.

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

remedial action or capital expenditures in order for the Facility to be in compliance with any applicable Environmental Law or Environmental Permit.

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

Section 13.2 Environmental Covenants of the Company. The Company hereby covenants and agrees with the Agency as follows:

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

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

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



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

(e) The Company shall undertake and complete, or cause to be undertaken and completed, all investigations, studies, sampling and testing and all removal or remedial actions necessary to contain, remove and clean up all Hazardous Substances that are or may become present at the Facility and are required to be removed and/or remediated in accordance with all applicable Environmental Laws and all Environmental Permits. All remedial work shall be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer, (ii) pursuant to a detailed written plan for the remedial work approved by any public or private agencies or persons with a legal or contractual right to such approval, (iii) with such insurance coverage pertaining to liabilities arising out of the remedial work as is then customarily maintained with respect to such activities, and (iv) only following receipt of any required permits, licenses or approvals. In addition, the Company shall submit, or cause to be submitted, to the Agency, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, governmental comments or approvals, proposed removal or other remedial work contracts and similar information prepared or received by or on behalf of the Company in connection with any remedial work, or Hazardous Substances relating to the Facility. All costs and expenses of such remedial work shall be paid by or on behalf of the Company, including, without limitation, the charges of the remedial work contractors and the consulting environmental engineer, any taxes or penalties assessed in connection with the remedial work and the Agency's reasonable out-of-pocket costs incurred in connection with monitoring or review of such remedial work. The Agency shall have the right but not

the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any environmental proceedings.

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

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

ARTICLE XIV  
MISCELLANEOUS

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

To the Agency:

Village of Fairport Industrial Development Agency  
31 South Main Street  
Fairport, New York 14450  
Attention: Martha M. Malone, Executive Director

With a copy to:

Underberg & Kessler LLP  
300 Bausch & Lomb Place  
Rochester, New York 14604  
Attention: Edmund J. Russell, III, Esq.

To the Company:

FAIRPORT CANNERY, LLC  
195 Middle Road, Suite 400,  
Henrietta, New York 14467  
Attention: Sean G. Donohoe, Manager

With a copy to:

Harter Secrest & Emery LLP  
1600 Bausch & Lomb Place  
Rochester, New York 14604  
Attention: Patrick J. Quigley, Esq.

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

Copies of all notices given either to the Agency or to the Company shall also be sent to any Lender, if such Lender shall have delivered written instructions to the

Agency and the Company with the address of such Lender pursuant to Section 12.4 hereof.

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

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

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

Section 14.5 Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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

Section 14.7 List of Additional Equipment; Further Assurances. 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, a schedule listing all of the Equipment not previously described in this Lease Agreement. If requested by the Agency in writing, the Company shall thereafter furnish to the Agency, 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.

Section 14.8 Survival of Obligations. This Lease Agreement shall survive the performance of the obligations of the Company to make the payments required by Section 4.3, and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement.

Section 14.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

Section 14.10 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Lease Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Lease Agreement.

*Remainder of Page Intentionally Left Blank - Signature Pages Follow*

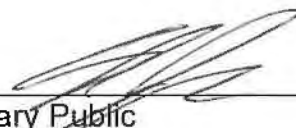
IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their duly authorized representatives, all as of the day and year first above written.

VILLAGE OF FAIRPORT INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: Martha M. Malone  
Title: Executive Director

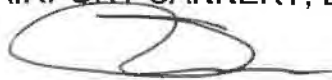
STATE OF NEW YORK    )  
                                  )ss.:  
COUNTY OF MONROE    )

On February 3, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared **Martha M. Malone**, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

  
Notary Public

EDMUND J. RUSSELL III  
Notary Public, State of New York  
Qualified in Monroe County  
Commission Expires February 14, 2022

FAIRPORT CANNERY, LLC




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

Name: Sean G. Donohoe

Title: Manager

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

On February 6, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared **Sean G. Donohoe**, 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

HEATHER MACDONALD  
Notary Public, State of New York  
Reg. No. 01MA6396782  
Qualified In Monroe County  
Commission Expires 08/26/2023

## SCHEDULE A

### Legal Description of Real Property

ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Fairport, Town of Perinton, County of Monroe, State of New York, being a portion of Town Lot #44, Township 12, Range 4, being more particularly bounded and described as follows:

Beginning at a PK nail, marking the northwest corner of land now or formerly owned by Brian E. and Jean A. Hall; thence S 00° 08' 55" E along the west line of land now or formerly owned by Hall, 88.13 feet to a point; thence N 89° 29' 26" W 15.41 feet to a point; thence S 00° 22' 00" E along the west line now or formerly of Frank D. Pappalardo and wife, recorded in deed in Liber 2780 of Deeds, page 308 and the west line of land now or formerly owned by Fairport Village Inn, 86.63 feet to a point in the north of lands now or formerly owned by Conrail; thence the following two courses along lands of Conrail, westerly along a curve to the left having a radius of 3869.50', a distance of 67.99 to a point of tangency and N 76° 17' 15" W, 392.54 feet to a point; thence N 14° 30' 20" E, through and within a concrete block and brick wall running generally northerly, 182.47 feet to a PK nail in the south line of Parce Avenue; thence S 75° 29' 40" E, along the south line of Parce Avenue, 429.85 feet to the point and place of beginning.

ALSO, ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Fairport, Town of Perinton, Monroe County and State of New York more particularly described as follows: Commencing at a point in the southerly highway boundary of Parce Avenue (60 feet wide), said point being 532.69 feet westerly of the westerly highway boundary of North Main Street (New York State Route 250 - 66 feet wide); thence A) South 14° 30' 20" West, along the westerly line of lands now or formerly owned by a Michael Hanna & James E. Woods as filed in the Monroe County Clerk's Office as Liber 7911 of Deeds, page 245, a distance of 182.47 feet to a point, thence B) North 76° 17' 15" West, a distance of 92.38 feet to the point of beginning, thence

1. South 76° 17' 15" East along the southerly line of lands now or formerly owned by A. Michael Hanna & James E. Woods, a distance of 422.58 feet to a point, thence
2. South 14° 08' 25" West, a distance of 66.13 feet to a point, thence
3. North 75° 51' 35" West, along the northerly line of lands now or formerly owned by Village of Fairport Industrial Development Agency (Tax Map #153.09-01-036.2), a distance of 422.57 feet to a point; thence
4. North 14° 08' 25" East, a distance of 62.98 feet to the point and place of beginning.

The aforesaid premises are more recently described according to a survey map made by Robert J. Avery of Arrowpoint Land Surveyors dated September 9, 2016, being Project No. 16-0360, as follows:

All that tract or parcel of land situate in the Village of Fairport, Town of Perinton, County of Monroe, and State of New York, being part of Town Lot 44, in Township  
Schedule A

12, Range 4, in the Phelps & Gorham Purchase, being more particularly described as follows:

Beginning at a point in the southerly right of way line of Parce Avenue (60.00' feet wide), said point being located 532.69' feet westerly from it's intersection with the westerly right of way line of North Main Street (NYS Route 250, 66.00' feet wide), thence;

1. South 75°30'00" East, and along the southerly right of way line of Parce Avenue, a distance of 429.85' feet to a point, thence;
2. South 00°09'15" East, and along the westerly boundary line of lands of now or formerly BJVET Properties LLC, a distance of 92.24' feet to a point, thence;
3. North 89°29'20" West, and along the northerly boundary line of lands of now or formerly Frank P., Frank S. and Fauna M. Pappalardo, a distance of 15.39' feet to a point, thence;
4. South 00°22'20" East, and along the westerly boundary line of lands of said Pappalardo, and the westerly boundary line of lands of now or formerly 103 North Main Street, LLC, a distance of 86.80' feet to a point, thence;
5. Westerly, and along northerly boundary line of Lot 3 (Lands of the Village of Fairport Subdivision, Liber 318 of Maps, Page 87), on a curve to the left having a central angle of 1°07'57", a radius of 3,869.50' feet, an arc distance of 76.48' feet to a point, thence;
6. North 76°17'35" West, and continuing along the northerly boundary line of Lot 3 (Lands of the Village of Fairport Subdivision, Liber 318 of Maps, Page 87), a distance of 53.89' feet to a point, thence;
7. South 14°08'05" West, and along the westerly boundary of Lot 3, a distance of 66.13' feet to a point, thence;
8. North 75°51'55" West, and along the northerly boundary line of lands of now or formerly Michael A. Hanna and James E. Woods, a distance of 422.57' feet to a point, thence;
9. North 14°08'05" East, and along the easterly boundary line of Lot R-2 (Lands of the Village of Fairport Subdivision, Liber 318 of Maps, Page 87), a distance of 62.98' feet to a point, thence;
10. South 76°17'35" East, and continuing along the easterly boundary line of Lot R-2, a distance of 92.38' feet to a point, thence;



11. North 14°30'00" East, and continuing along the easterly boundary line of Lot R-2 a distance of 182.47' feet to the Point of Beginning containing 107,179+- square feet or 2.461+- acres, more or less.

ALSO, ALL THAT TRACT OR PARCEL OF LAND, situate in the Village of Fairport, Town of Perinton, County of Monroe and State of New York, being more particularly bounded and described in accordance with a plat of survey prepared by James M. Parker, L.S. No. 49302 of Hershey, Malone and Associates, Engineers and Architects dated March 4, 1983, as follows:

Beginning at the intersection of the west line of North Main Street (66 feet wide) and the north property line of lands now or formerly owned by Donn Calabrese, and described in a deed recorded in Monroe County Clerk's Office in Liber 5333 of Deeds at page 21; thence (1) South 88° 54' 35" West, 272.01 feet; thence (2) North 52° 52' 50" West, 509.56 feet; thence (3) North 14° 09' 20" East, 45.08 feet; thence (4) South 75° 50' 40" East, 687.85 feet to a point on the west line of said North Main Street; thence (5) along said west line South 00° 05' 25" East, 177.83 feet to the point of beginning.

Containing 2.724 acres.

The aforesaid premises are more particularly described according to a survey map made by Robert J. Avery of Arrowpoint Land Surveyors dated September 9, 2016, being Project No. 16-0360, as follows:

All that tract or parcel of land situate in the Village of Fairport, Town of Perinton, County of Monroe, and State of New York, being part of Town Lot 44, in Township 12, Range 4, in the Phelps & Gorham Purchase, being more particularly described as follows:

Beginning at a point in the westerly right of way line of North Main Street (NYS Route 250, 66.00' feet wide), said point being located 250.44' feet southerly from its intersection with the southerly right of way line of Parce Avenue, thence;

1. South 00°06'40" East, and along the westerly right of way line of North Main Street (NYS Route 250), a distance of 177.83' feet to a point, thence;
2. South 88°53'20" West, and along the northerly boundary line of lands of now or formerly NCTB Calabrese, LLC, a distance of 272.01' feet to a point, thence;
3. North 52°54'03" West, and along the northerly boundary line of lands of now or formerly New York Central, LLC, a distance of 509.56' feet to a point, thence;
4. North 14°08'05" East (previously described as being North 14° 08' 05" West due to a scrivener's error), and along the easterly boundary line of Lot R-2 (Lands of the

Village of Fairport Subdivision, Liber 318 of Maps, Page 87), a distance of 45.08' feet to a point, thence;

5. South 75°51'55" East, and along the southerly boundary lines of Lot R-2 and Lot 3, a distance of 687.85' feet to the Point of Beginning containing 118,637+- square feet or 2.724+- acres, more or less.

EXCEPTING, ALL THAT TRACT OR PARCEL OF LAND containing 2,724 square feet more or less, situate in the Phelps and Gorham Purchase, Township 12, Range 4, Town Lot 44, Village of Fairport, County of Monroe, and State of New York, as shown on the drawing entitled "75 N. Main/25 Parce Subdivision, Being a resubdivision of Lots R-1 & 3 of the Village of Fairport Subdivision (L. 318 M., P. 87) and subdivision of lands of Fairport Cannery LLC," prepared by BME Associates, having drawing number 2611-22, last revised September 27, 2019, being more particularly bounded and described as follows:

Commencing at a point, said point being the intersection of the westerly right-of-way line of North Main Street (66' Right-of-Way) with the southerly boundary line of lands now or formerly of 103 North Main Street LLC (T.A. No. 153.09-1-35); thence

- A. S 00°06'20" E, along said westerly right-of-way line of North Main Street, a distance of 65.06 feet to a point on the northerly boundary line of lands now or formerly of Fairport Cannery LLC (T.A. No. 153.09-1-36.2); thence
- B. N 71°51'35" W, along said northerly boundary line of Fairport Cannery LLC., a distance of 18.65 feet to the Point of Beginning; thence
  - 1. N 89°51'27" W, a distance of 38.19 feet to a point; thence
  - 2. Northwesterly, along a curve to the right, having a radius of 243.00 feet, a distance of 61.08 feet to a point; thence
  - 3. N 75°27'20" W, a distance of 105.70 feet to a point; thence
  - 4. N 14°32'40" E, a distance of 15.70 feet to a point on the aforementioned northerly boundary line of Fairport Cannery LLC; thence
  - 5. S 75°51'35" E, along said northerly boundary line of Fairport Cannery LLC., a distance of 203.14 feet to the Point of Beginning.

ALSO, ALL THAT TRACT OR PARCEL OF LAND containing 4,675 square feet more or less, situate in the Phelps and Gorham Purchase, Township 12, Range 4, Town Lot 44, Village of Fairport, County of Monroe and State of New York, as shown on the drawing entitled "75 N. Main/25 Parce Subdivision, Being a resubdivision of Lots R-1 & 3 of the Village of Fairport Subdivision (L. 318 M., P. 87) and subdivision

of lands of Fairport Cannery LLC," prepared by BME Associates, having drawing number 2611-22, last revised September 27, 2019, being more particularly bounded and described as follows:

Beginning at a point, said point being the intersection of the southerly boundary line of lands now or formerly of 103 North Main Street, LLC. (T.A. No. 153.09-1-35) with the easterly boundary line of lands now or formerly of Fairport Cannery LLC. (T.A. No. 153.09-1-69.1), said point also having New York State Plan Coordinates (NAD '83) N=1,133,306.40, E=1,452,974.73; thence

1. S 14°51'19" W, a distance of 20.66 feet to a point; thence
2. N 75°27'27" W, a distance of 86.29 feet to a point; thence
3. S 14°32'40" W, a distance of 46.29 feet to a point; thence
4. N 75°51'35" W, a distance of 43.49 feet to a point; thence
5. N 14°08'25" E, a distance of 66.13 feet to a point; thence
6. S 75° 57'19" E, a distance of 53.89 feet to a point; thence
7. Southeasterly, along a tangent curve to the right, having a radius of 3,869.50 feet, a distance of 76.48 feet to the point of beginning.

## SCHEDULE B

### Equipment

All Eligible Items acquired, constructed, renovated or installed and/or to be acquired, constructed, renovated or installed by or on behalf of the Company, in connection with the completion of the Village of Fairport Industrial Development Agency's FAIRPORT CANNERY, LLC Facility located at 25 Parce Avenue, Fairport, New York and 75 North Main Street, Fairport, New York, and leased to the Company pursuant to the Lease Agreement.

## SCHEDULE C

### PILOT Schedule

#### Definitions

X = assessment based on the Land and those improvements existing as of the Closing Date.

Y = increase in assessment above X resulting from the renovation and equipping of the Facility.

Normal Tax Due = Those payments for taxes and assessments, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements, that the Company would pay without exemption.

Tax Year = The applicable tax year for each of the Taxing Authorities following the Applicable Taxable Status Date

<u>Tax Year</u>	<u>Formula</u>
1	100% Normal Tax Due on X and 0% Normal Tax Due on Y
2	100% Normal Tax Due on X and 0% Normal Tax Due on Y
3	100% Normal Tax Due on X and 0% Normal Tax Due on Y
4	100% Normal Tax Due on X and 0% Normal Tax Due on Y
5	100% Normal Tax Due on X and 0% Normal Tax Due on Y
6	100% Normal Tax Due on X and 10% Normal Tax Due on Y
7	100% Normal Tax Due on X and 20% Normal Tax Due on Y
8	100% Normal Tax Due on X and 30% Normal Tax Due on Y
9	100% Normal Tax Due on X and 40% Normal Tax Due on Y
10	100% Normal Tax Due on X and 50% Normal Tax Due on Y
11	100% Normal Tax Due on X and 60% Normal Tax Due on Y
12	100% Normal Tax Due on X and 70% Normal Tax Due on Y
13	100% Normal Tax Due on X and 80% Normal Tax Due on Y
14	100% Normal Tax Due on X and 90% Normal Tax Due on Y
15 and thereafter	100% Normal Tax Due on X and 100% Normal Tax Due on Y

Schedule C

## SCHEDULE D

### Mortgage Requirements

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

#### Non-Recourse and Hold Harmless Provisions to be included in the Lender's Mortgage and/or Assignment of Rents

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

Section \_\_\_\_\_. Hold Harmless Provisions. The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its 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 use thereof or under this [Mortgage/Assignment], or (ii) liability arising from or expense incurred by the Project Work or the Agency's acquiring, owning and leasing of the Facility, including

Schedule D-1

without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the [Mortgage/Assignment] (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents, or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this [Mortgage/Assignment], the obligations of the Company pursuant to this Section \_\_\_ shall remain in full force and effect after the termination of this [Mortgage/Assignment] until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents (except the Company) or employees by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section \_\_\_. Recordation of [Mortgage/Assignment]. The Agency covenants that it will record or cause this [Mortgage/Assignment] to be duly recorded in all offices where recordation thereof is necessary.

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

EXHIBIT 5.2(d)(ii)

FORM OF SALES TAX AGENT AUTHORIZATION LETTER

**SALES TAX AGENT AUTHORIZATION LETTER**

**EXPIRATION DATE:**

[ \_\_\_\_\_, 20\_\_ ]

**ELIGIBLE LOCATION:**

**25 PARCE AVENUE AND 75 NORTH MAIN STREET, FAIRPORT, NEW YORK**

\_\_\_\_\_, 20\_\_

[INSERT AGENT NAME AND ADDRESS]

Re: Village of Fairport Industrial Development Agency  
(FAIRPORT CANNERY, LLC Facility)

Ladies and Gentlemen:

The Village of Fairport Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. Pursuant to a certain Lease and Project Agreement, dated as of \_\_\_\_\_, 2020 (the "Lease Agreement"), between the Agency and FAIRPORT CANNERY, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having its principal office at 195 Middle Road, Suite 400, Henrietta, New York (the "Company"), the Agency has authorized the Company to act as its agent in connection with the Facility described therein located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Lease Agreement.

2. Upon the Company's request, the Agency has appointed **[insert name of Agent]** (the "Agent"), pursuant to this Sales Tax Agent Authorization Letter (the "Sales Tax Agent Authorization Letter") to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Lease Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Schedule A hereto with respect to the scope of Sales Tax Exemption provided under the Lease Agreement and hereunder.**

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project Operator

Exhibit 5.2(d)(ii)-1



or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which is to be completed by Agent and the Company). Pursuant to the exemptions from Sales and Use Taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the Facility and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, THE COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY-EIGHT AND THIRTY-SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate"** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes ("Form ST-123") for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the construction, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state, "I, [Agent], certify that I am duly appointed agent of the Village of Fairport Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the FAIRPORT CANNERY, LLC Facility located at 25 Parce Avenue, Fairport, New York and 75 North Main Street, Fairport, New York, IDA Project Number 2640 20 001." The Agent shall complete Form ST-123 as follows: (i) the "Project information" section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

6. The Agent agrees to comply with the terms and conditions of the Lease Agreement. The Agent must retain for at least six (6) years from the date of expiration of its contract copies of (a) its contract with the Company to provide services in connection with the Facility, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and

(c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

7. In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file semi-annually with the Company and the Agency (no later than October 15<sup>th</sup> and April 15<sup>th</sup> of each calendar year in which it has claimed sales and use tax exemptions in connection with the Facility) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding six-month period (ending on September 30<sup>th</sup> or March 31<sup>st</sup>, as applicable) in connection with the Facility by completing and submitting to the Company and the Agency the **Agent Sales Tax Registry** attached hereto as **Schedule B**. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Facility (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

8. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter, it shall pay any and all applicable Company Sales Tax Savings and any interest and penalties thereon. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

**9. Special Provisions Relating to Company Sales Tax Savings.**

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

(b) The Agent acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Agent, Company Sales Tax Savings taken or purported to be taken by the Agent or any other person or entity acting on behalf of the Agent to which Agent or the Company is not entitled or which are in excess of the Maximum Company Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company or the Agent failed to comply with a material term or condition to use property or services in the manner required by this Sales Tax Agent Authorization Letter or the Lease Agreement. The Agent shall and shall require any other person or entity acting on behalf of the Agent, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such Company Sales Tax Savings and shall

promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner") to assess and determine Sales and Use Taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

10. Subject to the provisions of Section 9 hereof, in the event that the Agent shall utilize the Sales Tax Exemption in violation of the provisions of the Lease Agreement or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Company and the Agency, and the Agent shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Agent.

11. Upon request by the Agency with reasonable notice to the Agent, the Agent shall make available at reasonable times to the Agency all such books, records, contracts, agreements, invoices, bills or purchase orders of the Agent, and require all appropriate officers and employees of the Agent to respond to reasonable inquiries by the Agency as shall be necessary (y) to indicate in reasonable detail those costs for which the Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Agent under Section 10.

12. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and represent and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter by the Agent is strictly for the purposes stated herein.

13. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date that is the earlier of (i) the Expiration Date referred to above, and (ii) the expiration or termination of the Lease Agreement. Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate.

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

The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

VILLAGE OF FAIRPORT INDUSTRIAL  
DEVELOPMENT AGENCY

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

ACCEPTED AND AGREED TO BY:  
[NAME OF AGENT]

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

**Schedule A**  
**To**  
**SALES TAX AGENT AUTHORIZATION LETTER**

Set forth below is a description of items that are eligible for the Sales Tax Exemption

**Eligible Items** shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility:

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

**Ineligible Items** shall mean the following items of personal property and services with respect to which the Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) ordinary office supplies such as pencils, paper clips and paper;
- (v) any materials or substances that are consumed in the operation of machinery;
- (vi) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (vii) maintenance of the type as shall constitute janitorial services.

Exhibit 5.2(d)(ii)-6

**Schedule B**

**To  
SALES TAX AGENT AUTHORIZATION LETTER  
AGENT SALES TAX REGISTRY**

Please Complete:                   **REPORTED PERIOD: SEMI-ANNUAL PERIOD FROM**  
[OCTOBER 1, 20\_\_ TO MARCH 31, 20\_\_] and [APRIL 1, 20\_\_ to SEPTEMBER 30,  
20\_\_]

Description of Item (incl. Serial #, if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings

<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL REPORTED PERIOD:</b>	
---	--

Certification: I, the undersigned, an authorized officer or principal owner of the Agent, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Company Sales Tax Savings realized by the Agent and its principals, affiliates, tenants, sublessees, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Agent, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Company, by the Village of Fairport Industrial Development Agency (the "Agency"). This form and information provided pursuant hereto may be disclosed to the Agency, and may be disclosed by the Agency in connection with the administration of the programs by the Agency; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

**Name of Agent:** \_\_\_\_\_

**Signature By:** \_\_\_\_\_

**Name (print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

EXHIBIT 5.2(h)

Sales Tax Registry

Please Complete:      **REPORTED PERIOD:** ANNUAL PERIOD FROM OCTOBER 1, 20\_\_ to SEPTEMBER 30, 20\_\_

Description of Item (incl. Serial #, if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
SEMI-ANNUAL PERIOD FROM OCTOBER 1, [ ] to MARCH 31, [ ]						
<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM OCTOBER 1, [ ] to MARCH 31, [ ]:</b>						
SEMI-ANNUAL PERIOD FROM APRIL 1, [ ] to SEPTEMBER 30, [ ]						
<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM APRIL 1, [ ] to SEPTEMBER 30, [ ]:</b>						
<b>TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:</b>						

Certification: I, the undersigned, an authorized officer or principal owner of the Company, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Company Sales Tax Savings realized by the Company and its principals, affiliates, tenants, sublessees, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Company, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Company, by the Village of Fairport Industrial Development Agency (the "Agency"). This form and information provided pursuant hereto may be disclosed by the Agency in connection with the administration of the programs by the Agency; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

**Company Name:** \_\_\_\_\_

**Signature By:** \_\_\_\_\_

**Name (print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

EXHIBIT 3.6

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

The undersigned, an Authorized Representative (as defined in the Lease Agreement referred to below) of FAIRPORT CANNERY, LLC (the "**Company**"), a limited liability company organized and existing under the laws of the State of New York, HEREBY CERTIFIES that this Certificate is being delivered in accordance with the provisions of Section 3.6 of that certain Agency Lease and Project Agreement, dated as of \_\_\_\_\_, 2020 (the "**Lease Agreement**"), between the VILLAGE OF FAIRPORT INDUSTRIAL DEVELOPMENT AGENCY (the "**Agency**") and the Company. If the Company's Final Cost Budget deviates materially (more than ten percent (10%)) from the information provided in the application, the Company shall provide a written statement explaining the difference to the Agency. The Agency may in its sole discretion, adjust the benefits to reflect such deviation.

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

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

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

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

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

(iv) check as applicable:

- all costs for Project Work have been paid, or
- all costs for Project Work have been paid except for

Exhibit 3.6-1



- amounts not yet due and payable (attach itemized list) and/or
- amounts the payments for which are being contested in good faith (attach itemized list with explanations); and

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

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

IN WITNESS WHEREOF, the undersigned has hereunto set its hand on \_\_\_\_\_, 2020.

FAIRPORT CANNERY, LLC

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

Exhibit 3.6-2

EXHIBIT 8.12

**[FORM ANNUAL COMPLIANCE CERTIFICATE  
FOR EITHER COMPANY OR ANY SUBLESSEE]**

The undersigned hereby certifies the following:

1. That s/he is [the duly appointed [\_\_\_\_\_] of] OR [ the duly appointed \_\_\_\_\_ of the \_\_\_\_\_ (the "Sublessee") which is subleasing \_\_\_\_\_ from] FAIRPORT CANNERY, LLC, a limited liability company duly organized and existing under the laws of the State of New York, having its office at 195 Middle Road, Suite 400, Henrietta, New York 14467 (the "**Company**").

2. That the Company has previously entered into a straight-lease transaction with the VILLAGE OF FAIRPORT INDUSTRIAL DEVELOPMENT AGENCY pursuant to a certain Company Lease Agreement, dated as of \_\_\_\_\_, 2020 (the "**Company Lease**") whereby the Company leased the Facility (as such term is defined in the hereinafter defined Lease Agreement) to the Agency, and a Lease and Project Agreement, dated as of \_\_\_\_\_, 2020 (the "**Lease Agreement**"), whereby the Agency leased the Facility to the Company.

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

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

5. That the Company has not received written notice of default in payment of any taxes, PILOT Payments, sewer rents or water charges which have not been paid, unless such default is currently being contested with due diligence in proceedings in a court or other appropriate forum.

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

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

Exhibit 8.12-1

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

9. That attached hereto as Exhibit C is a copy of the Form NYS-45 filed with respect to the New York State Department of Labor.

10. That attached hereto as Exhibit D hereto is a copy of the ST-340 filed with the New York State Department of Taxation and Finance in compliance with Section 874(8) of the General Municipal Law evidencing the annual value of all sales and use tax exemptions claimed in connection with Facility.

11. That attached hereto as Exhibit E hereto are copies of official receipts of the appropriate taxing authorities or other proof reasonably satisfactory to the Agency evidencing payment of any tax.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand on \_\_\_\_\_, 2020.

FAIRPORT CANNERY, LLC

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

Exhibit 8.12-2

Exhibit A

Insurance Certificates

Exhibit 8.12-3

Exhibit B

Certified Statement and Documentation Regarding FTEs

Exhibit 8.12-4

Exhibit C

Form NYS-45

Exhibit 8.12-5

Exhibit D

Form ST-340

Exhibit 8.12-6

## SCHEDULE E

### SCHEDULE OF DEFINITIONS

“Act” shall have the meaning assigned to such terms in the WHEREAS paragraphs of this Lease Agreement

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

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

“Agent” shall have the meaning set forth in Section 5.2(d).

“Applicable Taxable Status Date” means, the earlier of (i) the first taxable status date after the issuance of each respective certificate of occupancy for each building comprising a part of the Facility to the Company by the appropriate governmental entity with respect to the construction and equipping of the Facility or (ii) December 31, 2021.

“Approving Resolution” or “Authorizing Resolution” means the resolution adopted by the Agency on November 18, 2019, authorizing the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

“Authorized Representative” means, in the case of the Agency, the Chairman, the Vice Chairman, the Secretary, the Assistant Secretary, the Executive Director, the Deputy Executive Director or any member or officer of the Agency and such additional persons as, at the time, are designated to act on behalf of the Agency; and in the case of the Company, the Manager and such additional persons as, at the time, are designated to act on behalf of the Company.

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

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

“Closing Date” means February 7, 2020.

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



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

"Company Lease" means the Company Lease Agreement, dated as of February 7, 2020, by and between the Company and the Agency, as the same may be amended from time to time.

"Company Sales Tax Savings" means all Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent, pursuant to this Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

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

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

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

"Default Interest Rate" means two percent (2%) plus the Prime Rate.

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

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

## Schedule E-2

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

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

"Environmental Permits" means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, construction, renovation, equipping, use and/or operation of the Facility, for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Facility.

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

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

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

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

"Form ST-60" shall mean NYSDTF Form ST-60 "IDA Appointment of Project Operator or Agent" or such additional or substitute form as is adopted by NYSDTF to report the appointment of project operators or agents with respect to industrial development agency transactions.

"Form ST-123" shall mean NYSDTF Form ST-123 "IDA Agent or Project Operator Exempt Purchase Certificate" or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt for Sales and Use Taxes with respect to industrial development agency transactions.

"Form ST-340" shall mean NYSDTF Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority" or such additional or substitute form as is adopted by NYSDTF to

Schedule E-3

report Company Sales Tax Savings with respect to industrial development agency transactions.

“FTE” shall mean full time equivalent jobs, as provided for in Section 859-a of State General Municipal Law.

“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.

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

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

“Ineligible Items” shall mean the following items of personal property and services with respect to which the Company and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) ordinary office supplies such as pencils, paper clips and paper;

Schedule E-4

(v) any materials or substances that are consumed in the operation of machinery;

(vi) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and

(vii) maintenance of the type as shall constitute janitorial services.

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

“Lease Agreement” means the Agency Lease and Project Agreement, dated as of February 7, 2020 by and between the Agency, as lessor, and the Company, as lessee, with respect to the Facility, as the same may be amended from time to time.

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

“Lender” means any financial institution making a Loan to the Company to finance in whole or in part the Project Work, the acquisition and/or development of the Facility or any portion thereof.

“Lien” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar encumbrances, affecting real property. For the purposes of this definition, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

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

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

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

“Maximum Company Sales Tax Savings Amount” shall mean the aggregate maximum dollar amount of Company Sales Tax Savings that the Company and all

Agents acting on behalf the Company are permitted to receive under this Lease Agreement, which shall equal the amount listed in the Form ST-60, as filed by the Agency in relation to the Project, under the heading "Estimated value of New York State and local sales and use tax exemption provided:", including all amendments or modifications thereto, or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

"Mortgage" means any mortgage and security agreement granted by the Agency and the Company to a Lender which grants a mortgage lien on and security interest in the Facility in favor of the Lender as security for such Lender's Loan to the Company.

"Mortgage Recording Tax Exemption" has the meaning ascribed to such term in Section 5.3 of the Lease Agreement.

"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.

"NYSDTF" means the New York State Department of Taxation and Finance.

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

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

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

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

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

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

“Project” shall have the meaning assigned to such term in the WHEREAS paragraphs of this Lease Agreement.

“Project Application Information” means the application and questionnaire submitted to the Agency on November 6, 2019 by or on behalf of the Company, for approval by the Agency of the Project, together with all other letters, documentation, reports and financial information submitted in connection therewith.

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

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

“Public Purposes” shall have the meaning assigned to such term in the WHEREAS paragraphs of this Lease Agreement.

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

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

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

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

“Sales Tax Agent Authorization Letter” shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit 5.2(d)(ii) to the Lease Agreement – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 5.2(d) of the Lease Agreement or Section 5.1(d) of the Equipment Lease Agreement.

“Sales Tax Exemption” shall mean an exemption from Sales and Use Taxes resulting from the Agency’s participation in the Facility.

"Sales Tax Registry" shall mean the Sales Tax Registry in the form set forth in Exhibit 5.2(h).

"Sales and Use Taxes" shall mean local and State sales and compensating use taxes and fees imposed pursuant to Article 28 of the New York State Tax Law, as the same may be amended from time to time.

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

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

"Special Provisions" has the meaning ascribed to such term in Section 5.2 of the Lease Agreement.

"State" means the State of New York.

"Substitute Facilities" means facilities of substantially the same nature as the proposed Facility.

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

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

"Termination Date" shall mean such date on which the Sales Tax Exemption authorization may terminate pursuant to the terms and conditions of Section 5.2 of the Lease Agreement.

"Title Report" means Certificate of Title issued by Stewart Title Insurance Company to the Agency and redated and recertified on the Closing Date.

"Transaction Counsel" means the law firm of Underberg & Kessler, LLP.

"Transaction Documents" means the Agency Documents and the Company Documents.

"Unassigned Rights" means the rights of the Agency and moneys payable pursuant to and under Sections 4.3, 4.4, 5.1, 5.2, 5.4, 6.4(c) and (d), 6.7, 8.1, 8.2, 8.5, 8.7, 8.8, 8.10, 8.11, 9.3, 10.2(a), 10.4, 11.2, 11.3 and 14.8 and Article XIII of the Lease Agreement.