COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY
as sublessor

AND

WELLS ENTERPRISES, INC.
as sublessee

AGENCY LEASE AGREEMENT
(UNIFORM PROJECT AGREEMENT)
(Factory Site)

DATED AS OF MARCH 1, 2024

ADDRESS:	1 Ice Cream Drive
CITY:	Dunkirk
TOWN:	--
COUNTY:	Chautauqua
STATE:	New York

Prepared By:

Phillips Lytle LLP
201 West Third Street, Suite 205
Jamestown, New York 14701
Attention: Milan K. Tyler Esq.

AGENCY LEASE AGREEMENT
(UNIFORM PROJECT AGREEMENT)
(Factory Site)

THIS AGENCY LEASE AGREEMENT (UNIFORM PROJECT AGREEMENT) dated as of March 1, 2024 (this "Lease") by and between the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the "Agency"), and WELLS ENTERPRISES, INC., a corporation organized and existing under the laws of the State of Iowa and qualified to do business in the State of New York as a foreign corporation, having an address at 1 Blue Bunny Drive, Le Mars, IA 51031 (the "Company").

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to promote, develop, encourage and assist in the acquiring, renovating, construction, reconstruction, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, including industrial pollution control facilities, and to thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, in accordance with the provisions of the Enabling Act, the Agency was established pursuant to Chapter 71 of the 1972 Laws of the State of New York, as amended, constituting Section 895-h of the New York General Municipal Law (said Chapter and the Enabling Act, each as amended from time to time, collectively, the "Act"), for the benefit of the County of Chautauqua and its inhabitants; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, renovate, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, renovated, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, the Company submitted an application for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project consisting of the following: (A)(1) the acquisition of an interest in approximately 23 parcels of land aggregating approximately 18.3 acres located at 1 Ice Cream Drive, City of Dunkirk, County of Chautauqua, New York (the "Land"), (2) the redevelopment of the existing approximately 234,000 square foot building located on the Land (collectively, the "Building" and together with the Land, collectively, the "Facility"), together with related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the "Project

Facility"), all of the foregoing for use by the Company and/or its affiliates as a manufacturing facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Administrative Director/CEO of the Agency, (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the "Public Hearing") to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on December 7, 2023 to the chief executive officer of the County of Chautauqua (the "County") and of each other affected tax jurisdiction within which the Project Facility is or is to be located, and posted a copy of the Application on the Agency's website; (B) caused notice of the Public Hearing to be published on December 8, 2023 in *The Observer*, a newspaper of general circulation available to residents of the County; (C) caused the Public Hearing to be conducted on December 18, 2023, at 10:00 a.m., local time, at Fredonia Technology Incubator, Large Conference Room - 1st floor, 214 Central Avenue, City of Dunkirk, County of Chautauqua, New York; (D) caused the Public Hearing to be streamed on the Agency's website in real-time and a recording of the Public Hearing to be posted on the Agency's website, all in accordance with Section 857 of the Act, as amended; and (E) caused a written report of the Public Hearing to be prepared which fairly summarizes the views presented at the Public Hearing and collected written comments from the public (collectively, the "Report") and distributed the Report to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Company and made any necessary comments to the members of the Agency, the Agency conducted a coordinated review pursuant to SEQRA, and by resolution of the members of the Agency adopted on December 19, 2023 (the "SEQRA Resolution"), the Agency determined that (A) the Project is a Type I Action pursuant to SEQRA, and (B) the Project would have no significant adverse environmental impacts and issued a negative declaration in accordance with SEQRA; and

WHEREAS, in accordance with Section 874(4) of the Act, (A) the Administrative Director/CEO of the Agency caused a letter dated December 7, 2023 (the "Pilot Deviation Notice Letter") to be mailed to the chief executive officer of each affected tax jurisdiction and such other persons as are required by applicable law, informing said individuals that the Agency would, at its meeting on December 19, 2023 (the "IDA Meeting"), consider a proposed deviation from the Agency's Uniform Tax Exemption Policy and Guidelines (the "Tax Exemption Policy") with respect to the payment in lieu of taxes agreement to be entered into by the Agency with respect to the Project Facility; and (B) the members of the Agency conducted the IDA Meeting, reviewed any comments and correspondence received with respect to the proposed deviation

from the Tax Exemption Policy and approved the proposed deviation from the Tax Exemption Policy; and

WHEREAS, by resolution adopted by the members of the Agency on December 19, 2023 (the "Authorizing Resolution"), the Agency, following a review of the Report, determined to proceed with the Project, to grant the Financial Assistance and to enter into the "straight lease transaction" (as such quoted term is defined in the Act) contemplated by this Lease and the other Transaction Documents (as hereinafter defined); and

WHEREAS, the Agency proposes to sublease the Project Facility to the Company, and the Company desires to sublease the Project Facility from the Agency, all pursuant to the terms and conditions hereinafter set forth in this Lease and in the other Transaction Documents; and

WHEREAS, the acquisition of an interest in the Project Facility, the straight lease of the Project Facility and the granting of the Financial Assistance by the Agency to the Company are for proper purposes, including, without limitation, the advancement of the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State of New York and the prevention of unemployment and economic deterioration pursuant to the provisions of the Act; and

WHEREAS, the members of the Agency have determined that (A) the granting of the Financial Assistance by the Agency to the Company is necessary to induce the Company to proceed with the Project, and (B) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Company; and

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

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement of even date herewith between the Company and the Agency (the "PILOT Agreement"), the Company has agreed to make certain payments in lieu of real property taxes with respect to the Premises and the Agency has agreed to file certain paperwork for real property tax abatement on behalf of the Company with respect to the Project Facility;

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

ARTICLE I
DEFINITIONS

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

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

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

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

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

"Anti-Terrorism Laws" means any applicable laws relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, applicable laws comprising or implementing the Bank Secrecy Act, and applicable laws administered by the United States Treasury Department's Office of Foreign Asset Control (as any of the foregoing may from time to time be amended, renewed, extended, or replaced).

"Applicable Law" or "Applicable Laws" means, individually or collectively as the context may require, all current and future statutes, codes, laws, acts, ordinances, treaties, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, determinations and requirements, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of the foregoing to be determined both as if the Agency were the owner of an interest in the Project Facility and as if the Company and not the Agency were the owner of an interest in the Project Facility), including but not limited to (1) applicable health, building, zoning, use, rent, accessibility, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, (3) judgments, decrees, orders or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority, and (4) applicable covenants and restrictions relating in any way to the Project Facility.

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

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

"Authorized Representative" means the Person or Persons at the time designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Agency or the Company, as the case may be, containing the specimen signature of each such

Person and signed on behalf of (A) the Agency by its Chairman, Vice-Chairman, Secretary, Executive Director, Administrative Director, Chief Financial Officer or such other Person as may be authorized by resolution of the members of the Agency to act on behalf of the Agency, and (B) the Company by its President or any Vice President, if a corporation, or a member or a manager, if a limited liability company, or a general partner, if a partnership, or such other Person as may be authorized in writing by the members of such limited liability company or by the board of directors of such corporation or by the general partner of such partnership, to act on behalf of the Company, as the case may be.

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

"Business Day" means a day on which banks located in the County are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

"Closing" means the closing at which this Lease and the other Transaction Documents are executed and delivered by the Company, the Agency and the other parties thereto.

"Closing Date" means the date of the Closing.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

"Commissioner" means the Commissioner of Taxation and Finance of the State of New York.

"Company" means Wells Enterprises, Inc., a corporation organized and existing under the laws of the State of Iowa and qualified to do business in the State of New York as a foreign corporation, and its successors and assigns, to the extent permitted pursuant to this Lease.

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

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

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

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

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

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

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

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

"Financial Assistance" means, for purposes of this Lease, an exemption from real property taxes pursuant to the PILOT Agreement, which exemption from real property taxes the Agency has estimated to have a value of $3.

"Governmental Authority" means the United States of America, the State, any other state, the County, any political subdivision of any of the foregoing, and any court, tribunal, arbitrator, mediator, agency, department, commission, board, bureau, authority or instrumentality of any of them.

"Gross Proceeds" means one hundred percent (100%) of the proceeds of the transaction with respect to which such term is used, including, but not limited to, the settlement of any insurance or Condemnation award.

"Hazardous Materials" means all (i) hazardous materials including, without limitation, any explosives, radioactive materials, radon, asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, lead based paints, petroleum, petroleum products, methane, hazardous materials, hazardous chemicals, hazardous wastes, extremely hazardous wastes, restricted hazardous wastes, hazardous or toxic substances, toxic pollutants, hazardous air pollutants, pollutants, contaminants, toxic chemicals, toxics, pesticides or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Clean Water Act, as amended (33 U.S.C. Section 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.) the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), Articles 15 or 27 of the New York State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule or regulation of any Governmental Authority having jurisdiction, and (ii) substances identified as emerging contaminants by any Governmental Authority, including, but not limited to, (a) per- and polyfluoroalkyl substances ("PFAS"), including, but not limited to, perfluorooctanoic acid ("PFOA") and perfluorooctanesulfonic acid ("PFOS"), and (b) 1, 4 dioxane.

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

"Indebtedness" means (1) the monetary obligations of the Company to the Agency or to any of its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, under this Lease or any of the other Transaction Documents, and (2) all interest accrued on any of the foregoing.

"Land" shall have the meaning assigned to such term in the recitals to this Lease and is more particularly described in Exhibit A to this Lease.

"Lien" means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt

or a lease, consignment or bailment for security purposes or a judgment against the Company. The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including, but not limited to, mechanics', materialmen's, landlord's, warehousemen's and carriers' liens and other similar encumbrances affecting real property. For purposes of the Transaction Documents, a Person shall also be deemed to be the owner of any Property that it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

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

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

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

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

"Person" means an individual, partnership, limited liability company, corporation, trust, unincorporated organization or Governmental Authority.

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

"Premises" means the Land, together with the Building, and all buildings, structures and other improvements now or hereafter located thereon, and all fixtures and appurtenances and additions thereto and substitutions and replacements thereof, now or hereafter attached to or contained in or located on the Land; provided, however, that nothing in this definition shall constitute the Agency's consent to the construction of any new building or structure thereon or the construction of an addition to any existing building or structure thereon.

"Prevailing Wage Law" shall have the meaning assigned to such term in Section 8.15 of this Lease.

"Prohibited Person" means (i) any Person (A) that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency or any municipality within which the Project Facility is or will be located, or (B) that directly or indirectly controls, is controlled by or is under common control with a Person that is in default or

in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency or any municipality within which the Project Facility is or will be located, unless such default or breach has been waived in writing by the Agency or such municipality, as the case may be, and (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

"Project" means, for purposes of this Lease, the project being undertaken by the Agency consisting of (A) the acquisition of a leasehold interest in the Premises, (B) the redevelopment of the Building on the Land, (C) the granting of the Financial Assistance, and (D) the subleasing of the Premises by the Agency to the Company, all as more particularly described in the recitals to this Lease.

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

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

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

"Real Property Tax Exemption Form" shall have the meaning assigned to such term in Section 6.5(A) of this Lease.

"Recapture Event" shall have the meaning assigned to such term in Section 11.4 of this Lease.

"Recapture of Benefits" shall have the meaning assigned to such term in Section 11.4 of this Lease.

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

"Restricted Party" means any individual or entity: (a) listed in the Annex to the Executive Order No. 13224 or is otherwise subject to the provisions of such Executive Order; (b) listed on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury, as updated or amended from time to time, or any similar list issued by OFAC; or (c) whose property has been blocked, or is subject to seizure, forfeiture or confiscation, by any order relating to terrorism or money laundering issued by the President, Attorney General, Secretary of State, Secretary of Defense, Secretary of the Treasury or any other U.S. State or Federal governmental official or entity.

"Scheduled Completion Date" shall have the meaning assigned to such term in Section 4.2(A) of this Lease.

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

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

"State" means the State of New York.

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

"Taxing Entities" shall have the meaning assigned to such term in Section 6.5(B) of this Lease.

"Termination of Company Lease" means the Termination of Company Lease from the Agency to the Company, pursuant to which the Agency and the Company terminate the Company Lease, substantially in the form attached as Exhibit C to this Lease.

"Termination of Lease" means the Termination of Agency Lease Agreement (Uniform Project Agreement) between the Company and the Agency, pursuant to which the Agency and the Company terminate this Lease, substantially in the form attached as Exhibit F to this Lease.

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

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

"Unassigned Rights" means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.1, 3.2, 3.3, 4.1(B), 4.1(F), 4.1(G), 5.2 (A), 5.3, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.13, 8.14, 9.1, 9.3, 11.2, 11.4, 12.4, 12.7, 12.9 and 12.19 of this Lease, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents, servants and employees, past, present and future, of the Agency for their own account pursuant to Sections 2.2(F), 3.1, 3.3, 4.1, 5.2, 5.3, 6.3, 8.1, 8.9, 9.1, 9.3, 10.2, 10.4, 11.2 and 11.4 of this Lease, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.5 of this Lease and as Recapture of Benefits pursuant to Section 11.4 of this Lease, (D) the right of the Agency in its own behalf to enforce the obligation of the Company to undertake and complete the Project and to confirm the qualification of the Project as a "project" under the Act, and (E) the right to enforce the foregoing pursuant to the PILOT Agreement and Article X of this Lease.

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

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

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

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

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

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

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

ARTICLE II
REPRESENTATIONS, WARRANTIES AND COVENANTS

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

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

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

(C) Except as provided in Articles IX, X and XI hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the

Project Facility or any part thereof and shall maintain the Project Facility free and clear of all liens or encumbrances created by the Agency, except as contemplated or permitted by the terms of this Lease and the other Transaction Documents.

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

(A) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Iowa, is qualified and authorized to do business as a foreign corporation in the State of New York and in all other jurisdictions in which its operations or ownership of its Properties so require, and has the power to enter into this Lease and the other Transaction Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its board of directors, the Company has been duly authorized to execute, deliver and perform this Lease and the other Transaction Documents to which the Company is a party. No other consent, approval or action by the shareholders or directors of the Company or any other consent or approval (governmental or otherwise) or the taking of any other action is required as a condition to the validity or enforceability of this Lease or any of the other Transaction Documents.

(B) Neither the execution and delivery of this Lease or any of the other Transaction Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the provisions of this Lease or the other Transaction Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Company's certificate of incorporation or by-laws or any other company restriction, order, judgment, agreement, document or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any of the foregoing, other than Permitted Encumbrances, (2) conflict with or result in a violation of Applicable Laws, (3) require consent or approval (which has not been heretofore received and provided to the Agency) under any company restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent or approval (which has not been heretofore obtained and provided to the Agency) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any Governmental Authority having jurisdiction over the Company or any of the Property of the Company.

(C) The sublease of the Project Facility by the Agency to the Company and the operation thereof by the Company will not result in the removal of a facility or plant of the Company, or any part thereof, from one area of the State to another area of the State (other than relocations within the County) or in the abandonment of one or more plants or facilities of the Company, or any part thereof, located in the State (other than within the County); provided, however, that nothing in this Section shall constitute an authorization by the Agency for the Company to lease, sublease, sub-sublease or permit any other occupancy arrangements with respect to the Project Facility or any part thereof without the prior written consent of the Agency, except as set forth in Section 9.3 of this Lease. Therefore, the provisions of subdivision (1) of

Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Company.

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

(E) The Project Facility constitutes a commercial facility and the Project will advance the Agency's purposes by promoting job opportunities and preventing economic deterioration in the County. The Project Facility is, and so long as this Lease shall remain in effect, the Project Facility will continue to be a "project", as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action), or allow any action to be taken or not taken, which action, inaction or omission would in any way cause the Project Facility not to constitute a "project", as such quoted term is defined in the Act.

(F) The Project Facility and the operation thereof will comply with all Applicable Laws, and the Company will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure, or alleged failure, to comply with all Applicable Laws. The Company shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project or the operation of the Project Facility, and the Company will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future harmless, from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure, or alleged failure, to comply therewith; provided that such claims, liabilities, damages, fees, expenses, fines and penalties of the Agency are not incurred or do not result solely from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company), attorneys, servants or employees, and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(G) The Project will not have a "significant adverse environmental impact" (as such term is used in SEQRA) as determined by the members of the Agency on December 19, 2023 pursuant to the SEQRA Resolution. The Company hereby covenants to comply with all mitigating measures, requirements and conditions enumerated in the SEQRA Resolution applicable to the acquisition, renovation, installation, equipping and operation of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project Facility. No material changes with respect to any aspect of the Project Facility have arisen from the date of the adoption of the SEQRA Resolution which would cause the determinations contained therein to be untrue.

(H) The owner, occupant or operator receiving Financial Assistance hereby certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

(I) The Project is in substantial compliance with all provisions of the Act, including, but not limited to, the provisions of Section 859-a and 862(1) thereof.

(J) There are no actions, suits, investigations or proceedings of or before any Governmental Authority, pending or threatened against the Company or any of its Property which (i) either in any case or in the aggregate, if adversely determined, would materially, adversely affect the business, operations or condition, financial or otherwise, of the Company, or (ii) question the validity of any of the Transaction Documents or any action to be taken in connection with the transactions contemplated thereby.

(K) The Company is not in default with respect to any order, writ, injunction or decree of any Governmental Authority, or in violation of any law, statute or regulation, domestic or foreign, to which the Company or any of its Property is subject.

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

(M) The Company shall (i) maintain or cause to be maintained not less than four hundred one (401) full-time equivalent, private sector jobs as described in the Application throughout the term of this Lease, (ii) create or cause to be created at least sixty-four (64) new, full-time equivalent, private sector jobs within one (1) year after the Scheduled Completion Date as described in the Application and maintain such jobs throughout the term of this Lease, (iii) create or cause to be created at least an additional one hundred five (105) new, full-time equivalent, private sector job within two (2) years after the Scheduled Completion Date as described in the Application and maintain such jobs throughout the term of this Lease, (iv) create or cause to be created at least an additional eighty (80) new, full-time equivalent, private sector job within three (3) years after the Scheduled Completion Date as described in the Application and maintain such jobs throughout the term of this Lease, and (v) create or cause to be created at least one hundred fifty (150) new, full-time equivalent, private sector construction jobs during the period from the Closing Date until the Completion Date; all of which jobs shall, at all applicable times during the term of this Lease, be located at the Project Facility (collectively, the "Minimum Employment Requirement").

(N) The funds available to the Company are sufficient to pay all costs in connection with the undertaking and completion of the acquisition, renovation, installation and equipping of the Project Facility.

(O) The Company is not a Prohibited Person, no Affiliate of the Company is a Prohibited Person and no member, manager, director or shareholder of the Company is a Prohibited Person.

(P) Neither this Lease, any other Transaction Document, the Application nor any other document, certificate, agreement or instrument furnished to the Agency by or on behalf of the Company contains any untrue statement of a material fact or fails to state a material fact necessary to make the statements contained herein and therein not misleading.

(Q) No funds of the Agency shall be used in connection with the transactions contemplated by this Lease for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(R) Intentionally omitted.

(S) The Project Facility is located entirely within the boundaries of the City of Dunkirk, County of Chautauqua, State of New York, is not located within the boundaries of any other incorporated village or city, and is located only within the City of Dunkirk Central School District.

(T) The total cost of the Project is at least $250,000,000.

(U) As of the Closing Date, no leases, licenses or other occupancy arrangements exist with respect to the Project Facility or any part thereof except this Lease and the Company Lease, and no Person is in occupancy or possession of any portion of the Project Facility, other than the Company.

(V) The Company has not conveyed, assigned, transferred, mortgaged, hypothecated, pledged or granted a security interest in its interest in the Project Facility pursuant to a mortgage, security agreement, pledge or other agreement that prohibits the Company from executing and delivering the Company Lease, this Lease or any other Transaction Document. The Company covenants and agrees that it shall not enter into a mortgage, security agreement, pledge or other agreement pursuant to which the existence of the Company Lease, this Lease or any other Transaction Document would constitute a default or an event of default.

(W) Neither the Company nor any Affiliate of the Company has employed or retained any appointed or elected governmental official to solicit or secure the Agency's undertaking of the Project or its agreement to enter into this Lease or any other Transaction Document upon an agreement of understanding for a commission or percentage, brokerage or contingent fee.

(X) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under

Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers.

ARTICLE III
CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1 CONVEYANCE TO THE AGENCY. (A) Pursuant to the Company Lease, the Company has conveyed or will convey to the Agency a leasehold interest in and to the Premises for the purpose of undertaking and completing the Project. The Company hereby represents and warrants that the Company has good and marketable fee title to the Premises, free and clear from all Liens except for Permitted Encumbrances, and agrees that the Company will defend (with counsel selected by the Agency), indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto or due to any defect in the leasehold interest granted to the Agency pursuant to the Company Lease; provided that such expense or liability is not incurred or does not result solely from the gross negligence or willful misconduct of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees.

(B) The Company and the Agency acknowledge that the Project Facility and the leasehold interest therein conveyed to the Agency from the Company and subleased by the Agency back to the Company are not "property" as defined in Title 5-A of the Public Authorities Law of the State because such property and the interests therein are security for the Company's obligations to the Agency under this Lease and the other Transaction Documents, including, without limitation, the performance by the Company to the Agency of the Company's obligations under this Lease and the other Transaction Documents.

SECTION 3.2 USE OF PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Transaction Documents, provided such use causes the Project Facility to qualify or to continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project into disrepute as a public project; provided, further, however, that at no time shall any such use be other than for use by the Company as a manufacturing facility, together with uses incidental thereto, except with the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion. The Company shall not occupy, use or operate the Project Facility, or any part thereof, or permit or suffer the Project Facility, or any part thereof, to be occupied, used or operated (1) for any unlawful purpose, or (2) in violation of any certificate of occupancy affecting the Project Facility, or (3) for any use that constitutes a nuisance, public or private, or (4) for any use that makes void or voidable any insurance then in force with respect thereto, or (5) by any tenant, subtenant, user or occupant whose use, occupancy or operation of the Project Facility would be in violation of Applicable Laws. All permits and licenses necessary for the operation of the Project Facility as contemplated by this Section 3.2 shall be procured promptly by the Company. Any provision of this Lease to the contrary notwithstanding, the Company shall be liable at all times for all risk, loss and damage with respect to the Project Facility.

Nothing in this Section shall constitute an authorization by the Agency for the Company to lease, license, sublease, sub-sublease or permit any other occupancy arrangements with respect to the Project Facility or any part thereof, except in accordance with Section 9.3 of this Lease.

SECTION 3.3 HAZARDOUS MATERIALS.

(A) The Company represents, warrants and covenants that, (i) the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner that violates any Applicable Law, including, but not limited to, those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials (each, an "Environmental Law" and, collectively, the "Environmental Laws"), (ii) the environmental and ecological condition of the Project Facility is not in violation of any Applicable Law, including, without limitation, any Environmental Law, (iii) the Company has all Environmental Permits required to renovate and operate the Project Facility and is in compliance with their requirements, (iv) the Premises is not listed in CERCLIS, the NPL or any similar state or local listing nor is it included in an area included in such a list, and the Company has no knowledge that such a listing is pending or contemplated, (v) no event has occurred which, with the passage of time or the giving of notice or both, would constitute a violation of any Environmental Law, (vi) to the best of the Company's knowledge, there are not now any underground storage tanks on or under the Premises and any underground storage tanks that were previously on or under the Premises were removed and remediated in accordance with Environmental Laws, (vii) there are no actions, suits, claims or proceedings seeking money damages, injunctive relief, remedial action or any other remedy pending or, to the Company's knowledge, threatened relating to a violation of Environmental Law or the disposal, discharge or release of Hazardous Materials, and (viii) to the best of the Company's knowledge, no prior owner of the Project Facility or any tenant, subtenant, operator, occupant, prior tenant, prior subtenant, prior operator or prior occupant, has used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Environmental Law.

(B) The Company shall keep and shall cause the Project Facility to be kept free of Hazardous Materials except in compliance with Environmental Laws. Without limiting the foregoing, the Company shall not cause or permit the Project Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Environmental Laws, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company, an unlawful release of Hazardous Materials onto, under or from the Project Facility or onto any other property. The Company shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or its members, managers, shareholders, directors, officers, agents, servants, employees or representatives, a release of Hazardous Materials on, under or from the Project Facility, except in compliance with all Environmental Laws.

(C) The Company shall comply with all Environmental Laws whenever and by whomever triggered, and shall obtain and comply with any and all approvals, registrations or permits required thereunder. The Company agrees to provide the Agency with copies of any notifications given by the Company to any Governmental Authorities or received by the Company from any Governmental Authorities with respect to the environmental or ecological

condition of the Project Facility. The Company hereby agrees that at all times during which it owns, leases or operates the Project Facility, and whether or not this Lease or any other Transaction Document is in effect, to comply with, and ensure compliance by all tenants, subtenants, users and occupants of the Project Facility with, the provisions of the "Environmental Indemnification" given by the Company to the Agency on the date hereof with regard to the Project Facility.

(D) The Company shall (1) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Materials on, from or affecting the Project Facility (a) in accordance with all Environmental Laws, (b) to the satisfaction of the Agency, and (c) in accordance with the orders and directives of all Governmental Authorities, and (2) defend (with counsel selected by the Agency), indemnify, and hold harmless the Agency and its employees, agents, officers, attorneys, servants and members, past, present and future, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to: (a) the presence, disposal, release or threatened release of any Hazardous Materials on, from, under or affecting the Project Facility, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (c) any lawsuit brought or threatened, settlement reached, or any government order relating to such Hazardous Materials, and/or (d) any violations of Environmental Laws which are based upon or in any way related to such Hazardous Materials, including, without limitation, consultant fees, costs of remediation, investigation and laboratory fees, court costs, reasonable attorney fees and litigation expenses. Costs under this subsection (D) will be repaid immediately upon demand with interest at the Default Interest Rate commencing five (5) days after such demand.

(E) In the event this Lease is terminated, the Company shall deliver the Project Facility to the Agency free of any and all Hazardous Materials (except Hazardous Materials the presence of which do not violate any Environmental Laws), so that the condition of the Project Facility shall conform with all Environmental Laws affecting the Project Facility.

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

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

SECTION 3.4 NON-MERGER. During the term of this Lease, there shall be no merger of this Lease or the Company Lease nor of the leasehold estate created by the Company Lease or the subleasehold estate created by this Lease with the fee estate in the Premises or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Lease or the Company Lease or the subleasehold estate created by this Lease or the leasehold estate created by the Company Lease or any interest

in this Lease or the Company Lease or in any such leasehold or subleasehold estate and (2) the fee estate in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities, including any mortgagee having any interest in (x) this Lease or the Company Lease or the subleasehold estate created by this Lease or the leasehold estate created by the Company Lease and (y) the fee estate in the Premises or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

SECTION 3.5 TITLE INSURANCE. On or prior to the Closing Date, the Company will obtain and deliver to the Agency, in form, amount and substance satisfactory to the Agency, (a) a $100,000 leasehold owner's title insurance policy (the "Title Policy") insuring the Agency's leasehold interest in the Premises against loss as a result of defects in title, subject only to Permitted Encumbrances, (b) RESERVED, and (c) a current survey of the Premises certified to the Agency, the Company and the title insurance company issuing the Title Policy. Any proceeds of the Title Policy shall be paid to the Company and applied by the Company to remedy the applicable defect in title. If not so capable of being applied or if a balance remains after such application, the Net Proceeds or the remaining balance of the Net Proceeds, as the case may be, shall be applied to the payment of any sums due the Agency under this Lease or under any other Transaction Document, and any balance thereafter may be used by the Company for any lawful company purpose.

ARTICLE IV
UNDERTAKING AND COMPLETION OF THE PROJECT

SECTION 4.1 ACQUISITION, RENOVATION, INSTALLATION AND EQUIPPING OF THE PROJECT FACILITY.

(A) The Company shall, on behalf of the Agency, promptly acquire, renovate, install and equip the Project Facility, all in accordance with approved plans and specifications therefore, in a first-class, workmanlike manner using high grade materials, free of material defects in materials and workmanship. Notwithstanding the foregoing, the Company shall not, at any time during the term of this Lease, construct any new structure on the Land or construct an addition to or otherwise materially alter the Project Facility depicted in such plans and specifications or otherwise construct any additional improvements on the Land without the prior written consent of the Agency.

(B) No material change in the approved plans and specifications shall be made unless the Agency shall have consented thereto in writing (which consent shall not be unreasonably withheld or delayed).

(C) Reserved.

(D) Reserved.

(E) Reserved.

(F) The Company has given or will give or cause to be given all notices and has complied and will comply or cause compliance with all Applicable Laws applying to or

affecting the conduct of work on the Project Facility, and the Company will defend (with counsel selected by the Agency), indemnify and save the Agency and its officers, members, agents, attorneys, servants and employees, past, present and future, harmless from all fees, expenses, fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

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

(H) The Company agrees, for the benefit of the Agency, to undertake and complete or to cause to be undertaken and completed the Project and to pay or cause to be paid all such sums as may be required in connection therewith. A leasehold interest in portions of the Project Facility acquired, constructed and installed shall immediately upon such acquisition, construction or installation vest in the Agency, subject to Permitted Encumbrances. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's interest in and to such portions of the Project Facility.

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

(J) The Company covenants and agrees to make or cause to be made a total investment in the Project Facility as of the Scheduled Completion Date in an amount not less than $225,000,000.00 (which represents the product of (1) 0.90 and (2) the sum of $250,000,000.00 being the total project costs as stated in the Application). The Company shall provide or cause to be provided written documentation of such investment, in form and substance satisfactory to the Agency, no later than March 1st of the calendar year following the Scheduled Completion Date.

(K) The Company shall furnish to the Agency all information and/or documentation requested by the Agency pursuant to this Section 4.1 and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section 4.1.

SECTION 4.2 COMPLETION OF THE PROJECT FACILITY; FEES.

(A) The Company will proceed with due diligence to commence renovation, installation and equipping of the Project Facility in accordance with Section 4.1 of this Lease within thirty (30) days after the Closing Date and shall proceed with due diligence to complete the renovation, installation and equipping of the Project Facility on or before December 31, 2026 (the "Scheduled Completion Date") and shall at all times continue its operations in the Project Facility. The Company covenants to diligently prosecute an application for any required building permits for the Project Facility. Completion of the renovation, installation and equipping of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of the Company delivered to the Agency stating (a) the date of such completion, (b) that all labor, services, materials and supplies used therefor and all costs and expenses in

connection therewith have been paid, (c) that the acquisition, renovation, installation and equipping of the Project Facility have been completed in a good and workmanlike manner, (d) that the Company and the Agency have good and valid interests in and to all Property constituting a portion of the Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances, and (e) that the Project Facility is ready for use and operation for its intended purposes. Such certificate shall be accompanied by a permanent certificate of occupancy for the Building (if required) and any and all permissions, licenses or consents required of Governmental Authorities for the operation and use of the Project Facility for its intended purposes.

(B) The Company shall pay or cause to be paid within the time periods required by applicable Governmental Authorities, all construction related and other fees for the Project, including, without limitation, building permit fees, plumbing fixture permit fees, recreation fees, site planning fees, municipal consultant review fees, special use fees, variance fees, sewer hookup fees, water service installation fees and fire line fees, if any.

SECTION 4.3 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES. In the event of a default by any contractor, subcontractor or materialman under any contract made by it in connection with the acquisition, renovation, installation and equipping of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and the Agency against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Company may, in its own name or, with the prior written consent of the Agency, which consent shall not be unreasonably withheld, in the name of the Agency, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety which the Company deems reasonably necessary, and in such event the Agency hereby agrees, at the Company's sole expense, 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 Company shall advise the Agency of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Company as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Project Facility then to pay all reasonable costs and expenses incurred by the Agency in connection therewith, and thereafter be paid to the Company for its own use.

SECTION 4.4 PURPOSE OF THE PROJECT.

It is understood and agreed by the Agency and the Company that the purposes of the granting of the Financial Assistance are to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project Facility to advance the job opportunities, health, general prosperity and economic welfare of the people of the County and the State, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration, and to otherwise accomplish the purposes of the Act.

ARTICLE V
DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE

SECTION 5.1 SUBLEASE OF THE PROJECT FACILITY FROM THE AGENCY TO THE COMPANY. In consideration of the Company's covenant herein to make rental payments hereunder, and in consideration of the other covenants of the Company contained herein, including the covenant to make additional and other payments required hereby, the Agency hereby agrees to demise and sublease to the Company, and the Company hereby agrees to rent and sublease from the Agency, a subleasehold interest in the Project Facility, subject only to the Permitted Encumbrances.

SECTION 5.2 DURATION OF THE LEASE TERM; QUIET ENJOYMENT.

(A) The Agency shall deliver to the Company possession of the Project Facility, subject to the provisions of this Lease, and the subleasehold estate created hereby shall commence, on the Closing Date, and the Company shall accept possession of the Project Facility on the Closing Date.

(B) Provided that all amounts, costs and expenses payable by the Company to the Agency under this Lease and all other Transaction Documents are paid in full, the subleasehold estate created hereby shall terminate at 12:00 a.m. on the earlier to occur of (1) December 31, 2034, or (2) the date that this Lease shall terminate pursuant to Article X or Article XI hereof.

(C) The Agency shall take no action, other than pursuant to Article X or Article XI of this Lease, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Facility during the term of this Lease and will, at the request of the Company and at the Company's expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project Facility.

SECTION 5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.

(A) The Company shall pay on the date of execution and delivery of this Lease, as the basic sublease payments due hereunder: (1) the sum of $1.00, (2) all reasonable and documented fees and expenses of counsel to the Agency and Special Counsel to date with respect to the Project, and (3) all other reasonable and documented costs and expenses incurred by the Agency in connection with the transactions contemplated by this Lease and the other Transaction Documents.

(B) The Company agrees to pay to the Agency the following fees: (1) an Agency administrative fee as set forth in the Agency's fee invoice, with respect to the Project, and (2) the Agency's general counsel fee in an amount invoiced prior to the Closing Date (collectively, the "Administrative Fee"). The Administrative Fee is non-refundable and is deemed earned in full upon the execution and delivery of this Lease.

(C) Within ten (10) days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the reasonable and documented costs and

expenses of the Agency and the officers, members, agents, attorneys, servants and employees thereof, past, present and future, incurred by reason of the Agency's ownership, leasing, subleasing or sale of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease or any of the other Transaction Documents, and any other reasonable and documented fee or expense of the Agency with respect to the Project Facility or the leasing, subleasing or sale of the Project Facility to the Company, the payment of which is not otherwise provided for under this Lease.

(D) The Company agrees to make the above-mentioned payments in immediately available funds, without any further notice or demand, by wire transfer or other form of payment satisfactory to the Agency, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.3 within ten (10) days of the date such payment is due, the Company shall pay the same, together with interest thereon at the Default Interest Rate, from the date on which such payment was due until the date on which such payment is received by the Agency.

SECTION 5.4 NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER.

(A) The obligations of the Company to make the payments required by this Lease 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 right of setoff, recoupment, counterclaim or abatement that the Company may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, this Lease, or terminate this Lease (except as set forth in Section 11.1 hereof), for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease.

(B) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part expressly contained in this Lease, and, in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 12.9 hereof); provided, however, that the Company shall look solely to the Agency's estate and interest in the Project Facility for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Company), servants or employees, past, present and future, of the Agency shall be subject to levy, execution, attachment or other

enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Lease, the relationship of the Agency and the Company hereunder or the Company's use and operation of the Project Facility, or any other liability of the Agency to the Company.

SECTION 5.5 RESERVED.

ARTICLE VI
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1 MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY.

(A) The Company shall (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) use and operate the Project Facility, and shall cause the Project Facility to be used and operated, in the manner for which it was intended and contemplated by this Lease, (3) make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), (4) operate the Project Facility in a sound and economical manner, (5) not abandon the Project Facility, and (6) not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Project Facility, or any part thereof, or the interest of the Agency or the Company in the Project Facility, the Company Lease or this Lease, except for Permitted Encumbrances. The Agency shall have no obligation to replace, maintain or effect replacements, renewals or repairs of the Project Facility, or to furnish any utilities or services for the Project Facility and the Company hereby agrees to assume full responsibility therefor.

(B) Upon prior written notice to the Agency, the Company may make alterations, modifications or improvements to the Project Facility, or any part thereof, provided:

(1) the Company shall (a) give or cause to be given all notices and comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on such modification or improvement to the Project Facility, or any part thereof, (b) indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future harmless from all fees, expenses, fines and penalties due to failure to comply therewith, (c) promptly procure all permits and licenses necessary for the prosecution of any work described in this Section 6.1(B), and (d) not be in monetary default under this Lease or under any of the other Transaction Documents beyond applicable notice and cure periods;

(2) such alterations, modifications and improvements are effected with due diligence, in a good and workmanlike manner and in compliance with all Applicable Laws;

(3) the Company shall promptly and fully pay for such alterations, modifications and improvements in accordance with the terms of the applicable contract(s) therefor;

(4) the alteration, modification or improvement to the Project Facility shall not constitute or cause a default under any of the Transaction Documents;

(5) the Company shall furnish to the Agency, at least thirty (30) days prior to commencing such alteration, modification or improvement to the Project Facility, detailed plans and specifications therefor; provided, further, however, that such plans need not be furnished to the Agency for (a) nonstructural modifications or improvements to the Project Facility which do not exceed, at any one time, $50,000.00 in value, and (b) non-structural modifications or improvements, without limitation as to amount, performed in connection with customary and reasonable initial tenant improvements;

(6) as a result of such alterations, modifications or improvements, neither the usefulness, structural integrity nor operating efficiency of the Project Facility would be materially impaired in the reasonable judgment of the Agency;

(7) if the cost of such alterations, modifications or improvements is estimated to exceed $50,000.00, such alterations, modifications or improvements shall be conducted only after the Company shall have furnished to the Agency a labor and materials payment bond, or other security, naming the Agency as dual obligee and otherwise in form and substance satisfactory to the Agency; provided, however, that such bond or other security need not be furnished to the Agency in connection with the initial renovation, installation and equipping of the Project Facility;

(8) the Agency receives reasonably satisfactory evidence that such alterations, modifications and improvements do not change the nature of the Project Facility such that it would not comply with the terms of this Lease or such that it would not constitute a "project" (as such quoted term is defined in the Act);

(9) if such alterations, modifications or improvements involve an addition to the Project Facility or would otherwise result, but for the Agency's interest in the Project Facility, in an increase in the assessed value of the Premises, then the Agency may require an increase in the Administrative Fee and/or the sums payable under the PILOT Agreement, if any, before such alterations, modifications or improvements proposed can be undertaken or completed;

(10) no such alterations, modifications or improvements shall be entitled to any "financial assistance" (as such quoted term is defined in the Act) from the Agency unless agreed to in writing by the Agency; and

(11) an Event of Default shall not have occurred and be continuing under this Lease or any other Transaction Document.

All such alterations, modifications and improvements shall constitute a part of the Project Facility and the Company shall deliver or cause to be delivered to the Agency appropriate documents to convey title to or a leasehold interest in such property, as the case may be, to the Agency, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances, and to subject such property to this Lease.

The provisions of this Subsection (B) shall not apply to the initial renovation, installation and equipping of the Project Facility pursuant to the approved plans and specifications.

(C) The Company has given or will give or cause to be given all notices and required by Applicable Laws applying to or affecting the operation of the Project Facility and has complied or will comply or cause compliance with all Applicable Laws applying to or affecting the operation of the Project Facility, and the Company will defend (with counsel selected by the Agency), indemnify and save the Agency and its officers, members, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from all fees, expenses, fines and penalties due to failure to comply therewith; provided that such fees, expenses, fines and penalties are not incurred or do not result solely from the gross negligence or willful misconduct of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees.

(D) Any provision of this Lease to the contrary notwithstanding, the Company shall not construct any new building or structure on the Land or any addition to any existing building on the Land, without the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion.

SECTION 6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES.

(A) The Company shall pay as the same respectively become due: (1) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility (other than those taxes for which payments in lieu thereof are being paid pursuant to the PILOT Agreement), (2) all utility and other charges, including "service charges" and deposits, incurred or imposed for the operation, maintenance, use, upkeep and improvement of the Project Facility, and (3) all assessments and charges of any kind whatsoever lawfully made against the Project Facility by any Governmental Authority 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 hereunder to pay only such installments as are required to be paid during the term of this Lease.

(B) If the Company fails to pay any tax, assessment or charge required to be paid pursuant to this Section 6.2, the Agency may pay or cause to be paid such taxes, assessments or charges. The Company shall reimburse the Agency for any amount paid under this Section 6.1, together with interest thereon from the date of payment at the Default Interest Rate.

(C) Notwithstanding the provisions of this Section 6.2, the Company may withhold any such payment and the Company may in good faith actively contest the amount, validity or the applicability of any payment referred to in such subsection (A), provided that (1) the Company shall have first notified the Agency in writing of such contest, (2) no Event of Default shall have occurred and be continuing under any of the Transaction Documents beyond applicable notice and cure periods, (3) the overall operating efficiency of the Project Facility for the purposes for which it is intended is not materially impaired, (4) neither the Project 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, (5) the Company shall have set aside on its books adequate reserves with respect thereto, and (6) the Company diligently prosecutes such contest to completion. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

SECTION 6.3 INSURANCE REQUIRED.

(A) During the term of this Lease, the Company shall maintain insurance with respect to the Project Facility against such risks and liabilities and for such amounts as are, in the Agency's reasonable judgment, 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:

(1) Insurance protecting the interests of the Company, as named insured and the Agency, as loss payee, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils embraced by a so-called "Special Form" policy of property insurance, in amounts sufficient to prevent the Company and the Agency from becoming a co-insurer under such policy and not less than 100% of the replacement cost of the Project Facility, without deduction for depreciation, and including coverage against acts of terrorism. Additionally, during any period in which construction work or alterations are being performed at the Project Facility, the Company shall maintain "Special Form" property insurance in the form of a "Builder's Risk" completed value non-reporting policy in an amount satisfactory to the Agency and which shall contain a provision granting the insured permission to complete and/or occupy

(2) 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 Project Facility or who are responsible for the acquisition, renovation, installation and equipping of the Project Facility.

(3) Commercial general liability insurance protecting the Company, as named insured, and the Agency, as an additional insured, 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 Section 8.1 of this Lease), or 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 $1,000,000.00 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and $1,000,000.00 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 protecting the Company, as named insured, and the Agency, as an additional insured, with a limit of not less than $10,000,000.00, as said amounts may be adjusted by the Agency from time to time in its sole and absolute discretion.

(4) During any period of construction, renovation, improvement or reconstruction, to the extent not covered by the general liability insurance set forth in Subsection 6.2(C) above, Owners & Contractors Liability insurance for the benefit of the Company and the Agency in a minimum amount of $2,000,000.00 aggregate coverage for personal injury and property damage.

(5) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus, insuring risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar enterprises.

(6) A policy or policies of flood insurance in an amount not less than the maximum amount of flood insurance available with respect to the Project Facility under the Flood Disaster Protection Act of 1973, as amended. The requirements of this Subsection (F) shall be waived upon presentation of evidence satisfactory to the Agency that no portion of the Project Facility is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

(7) Such other insurance in such amounts and against such insurable hazards and risks as the Agency from time to time may reasonably require, including, without limitation, environmental hazard and liability insurance.

(B) All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and satisfactory and having an A.M. Best rating satisfactory to the Agency. 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 and shall provide that such insurance shall be without any right of contribution from any other insurance carried by the Agency. All policies evidencing such insurance shall name the Company, as named insured, and the Agency as an additional insured, with respect to liability policies, and name the Agency as loss payee with respect to casualty policies, and provide for at least thirty (30) days' written notice to the Company and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage 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 dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 hereof. At least fifteen (15) 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.

(1) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon

demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate.

(2) In the event of construction, reconstruction, improvement or renovation of any part of the Project Facility, the Company shall require its contractors and subcontractors, if any, to name the Agency as an additional insured on liability policies carried by such contractors or subcontractors with respect to their operations at the Premises or with respect to the Project.

(3) Each of the policies evidencing the insurance required by this Section 6.3 of this Lease shall provide that: (i) there shall be no recourse against the Agency for the payment of premiums or commissions or, if such policies provide for the payment thereof, additional premiums or assessments; (ii) in respect of the interest of the Agency in such policies, the insurance shall not be invalidated by any action or inaction of the Company or any other Person and shall insure the Agency regardless of, and any losses shall be payable notwithstanding, any such action or inaction; (iii) if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or if there shall occur any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency until at least thirty (30) days after receipt by the Agency of written notice by such insurers of such cancellation, lapse, expiration, reduction or change; and (iv) the insurers waive subrogation thereunder against any Person insured under such policy, and waive any right of the insurers to any setoff or counterclaim or other deduction, in respect of any liability of any Person insured under such policy. Any such insurance policies may be furnished under a so-called "master" or "blanket" policy covering locations other than the Project Facility; provided, however, that if casualty coverage for the Project Facility is provided under a master or blanket policy, such policy must contain an agreed amount endorsement evidencing that such coverage is in an amount sufficient to insure the full replacement cost of the Project Facility.

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

SECTION 6.4 APPLICATION OF NET PROCEEDS OF INSURANCE. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 hereof shall be applied as follows, subject to Section 6.5 of this Lease, (A) the Net Proceeds of the insurance required by Sections 6.3(A)(2) and 6.3(A)(7) hereof shall be applied as provided in Section 7.1 hereof, and (B) the Net Proceeds of the insurance required by Sections 6.3(A)(3-6) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

SECTION 6.5 PAYMENTS IN LIEU OF TAXES.

(A) It is recognized that, under the provisions of the Act, the Agency is not required to pay certain taxes or assessments upon the Property acquired by it or under its jurisdiction, control or supervision or upon its activities as more particularly set forth in Section 874 of the Act. It is the intention of the parties hereto that the Project Facility be treated as exempt from real property taxation to the extent set forth in the PILOT Agreement, a copy of which is attached hereto as Exhibit H. Accordingly and subject to the terms of the immediately preceding sentence, the parties hereto acknowledge that the Agency shall file New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility. The Company hereby consents to any enforcement action provided to the Taxing Entities pursuant to law in the event that the Company should fail to pay any taxes not exempted as aforesaid and shall not object to any such enforcement action on the grounds that a leasehold interest in the Project Facility is held by the Agency or that the Project Facility is under the Agency's jurisdiction, control or supervision or subject to its activities.

(B) The Agency and the Company hereby agree that the Company shall be required to make or cause to be made payments in lieu of taxes to the school districts, cities, towns, county, villages and other political unit(s) wherein the Project Facility is located having taxing powers (such political units are hereinafter collectively referred to as the "Taxing Entities"), in such amounts and at such times as are required by the PILOT Agreement.

(C) Within thirty (30) days after receipt of written request therefore, the Company shall deliver to the Agency official receipts of the Taxing Entities or other proof reasonably satisfactory to the Agency evidencing payment of any amount that the Company is required to pay under the PILOT Agreement.

ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1 DAMAGE OR DESTRUCTION.

(A) If the Project Facility becomes damaged or destroyed, in whole or in part at any time during the duration of this Lease:

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

(2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease or the PILOT Agreement (whether or not the Project Facility is replaced, repaired, rebuilt or restored);

(3) the Company shall promptly give notice thereof to the Agency; and

(4) except as otherwise provided in subsection (B) of this Section 7.1, (a) the Company shall promptly replace, repair, rebuild or restore the Project Facility to substantially the same condition and value as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and

consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project", as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b) (1) the Agency shall make available to the Company (solely from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Project Facility, and, in the event that the funds from the Net Proceeds of any insurance settlement provided by the Agency to the Company, if any, are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any insurance settlement, if any, remaining on deposit with the Agency after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be paid to the Company for its own purposes.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, the Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to terminate this Lease. In such event, subject to the provisions of Section 6.4 of this Lease, the Net Proceeds collected by the Agency under any and all policies of insurance covering the damage to or destruction of the Project Facility, after deducting the amount necessary to repay the Indebtedness, shall be paid to the Company for its own purposes. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay the Indebtedness in full, the Company shall pay to the Agency the difference between the Net Proceeds of such insurance and the amount necessary to repay the Indebtedness in full.

(C) Unless an Event of Default under any of the Transaction Documents shall have occurred and be continuing, the Company may adjust all claims under any policies of insurance required by Section 6.3 hereof.

(D) The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any laws of like import, now or hereafter in effect.

SECTION 7.2 CONDEMNATION.

(A) To the best of the Company's knowledge, no Condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility or the Agency's or the Company's interest therein or in the Company Lease or this Lease.

(B) If title to, or the use of, all or any part of the Project Facility shall be taken by Condemnation:

(1) the Agency shall have no obligation to restore the Project Facility, or any part thereof;

(2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease or the PILOT Agreement (whether or not the Project Facility is restored);

(3) the Company shall promptly give notice thereof to the Agency; and

(4) except as otherwise provided in subsection (C) of this Section 7.1, (a) the Company shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) as a complete architectural unit of substantially the same usefulness, design and construction as existed immediately prior to such Condemnation, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project" as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b)(1) subject to the provisions of Section 6.4 of this Lease, the Agency shall make available to the Company (solely from the Net Proceeds of any Condemnation award, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any Condemnation award on deposit with the Agency provided by the Agency to the Company are not sufficient to pay in full the costs of such restoration, the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any Condemnation award remaining on deposit with the Agency, if any, after payment of all of the costs of such restoration shall be paid to the Company for its own purposes.

(C) Notwithstanding anything to the contrary contained in subsection (B) of Section 7.1, the Company shall not be obligated to restore the Project Facility and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (B) (4) of this Section 7.1, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to terminate this Lease. In such event, subject to the provisions of Section 6.4 of this Lease, the Net Proceeds of any Condemnation award collected by the Agency, if any, after deducting the amount necessary to repay the Indebtedness, shall be paid over to the Company for its own purposes. If the Net Proceeds collected under any and all Condemnation awards are less than the amount necessary to repay the Indebtedness in full, the Company shall pay to the Agency the difference between such amounts and the Net Proceeds of such Condemnation awards so that the Indebtedness shall be repaid in full.

(D) Unless an Event of Default under any of the Transaction Documents shall have occurred and be continuing, the Company shall have sole control of any Condemnation proceeding with respect to the Project Facility or any part thereof or any interest therein or in the Company Lease or this Lease and may negotiate the settlement of any such proceeding. The Company shall notify the Agency of the institution of any Condemnation proceedings and,

within seven (7) days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(E) The Agency shall, at the expense of the Company, cooperate fully with the Company in the handling and conduct of any such Condemnation proceeding. In no event shall the Agency voluntarily settle, or consent to the settlement of, any such Condemnation proceeding without the written consent of the Company, which consent shall not be unreasonably withheld or delayed.

SECTION 7.3 ADDITIONS TO THE PROJECT FACILITY. All replacements, repairs, rebuilding or restoration made pursuant to Section 7.1, whether or not requiring the expenditure of the Company's own money, shall automatically become part of the Project Facility as if the same were specifically described herein and shall be subject to this Lease.

ARTICLE VIII
SPECIAL COVENANTS

SECTION 8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS". THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. HOLD HARMLESS PROVISIONS.

(1) The Company hereby releases the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, from, agrees that the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, shall not be liable for and agrees to indemnify, defend (with counsel selected by the Agency) and hold the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising directly or indirectly as a result of the Agency's undertaking the Project, including, but not limited to: (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project or the Project Facility or arising by reason of or in connection with the operation or the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, renovating, improving, equipping, installing, owning, leasing, subleasing, sub-subleasing or selling the Project Facility, or any part thereof, or arising from or incurred based on the Agency's involvement in the Project Facility, including,

without limiting the generality of the foregoing, (i) all liabilities or claims arising as a result of the Agency's obligations under this Lease or any of the other Transaction Documents or the enforcement of or defense of validity of any provision of any of the Transaction Documents, and (ii) all liabilities or claims arising as a result of the Agency's involvement in the Project or the granting of the Financial Assistance, (3) all liabilities and expenses arising from the failure or alleged failure of the Project Facility, the Company or the Company's members, managers, shareholders, directors, officers, agents, attorneys, servants or employees to comply with Applicable Laws, including, without limitation, any claim that the Agency aided or abetted in such failure or alleged failure to comply with Applicable Laws, and (4) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the gross negligence or willful misconduct of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company), attorneys, servants or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(2) In the event of any claim against the Agency or its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, by any employee of the Company or any 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 or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(3) To effectuate the provisions of this Section 8.1, the Company agrees to provide for and insure its liabilities assumed pursuant to this Section 8.1 in the liability policies required by Section 6.3 of this Lease.

(C) Notwithstanding any other provisions of this Lease, the obligations of the Company pursuant to this Section 8.1 shall remain in full force and effect after the termination or expiration of this Lease 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 the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency or its members, agents (other than the Company), attorneys, servants or employees, past, present or future, relating thereto.

SECTION 8.2 RIGHT OF ACCESS TO THE PROJECT FACILITY. The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to enter upon and to examine and inspect the Project Facility; provided, however, that no such notice shall be required in the event of an emergency or if an Event of Default has occurred and is continuing under this Lease. The Company further agrees

that the Agency shall have such rights of access to the Project Facility (subject to the provisions of the immediately preceding sentence of this Section) as may be reasonably necessary to cause the proper maintenance of the Project Facility in the event of failure by the Company to perform its obligations hereunder, but the exercise of such right shall in no event be construed to mean that the Agency has assumed any obligation hereunder to perform such maintenance.

SECTION 8.3 COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS. The Company agrees that, during the term of this Lease, it (A) will maintain its corporate existence as in effect on the Closing Date, (B) will not dissolve or otherwise dispose of all or substantially all of its assets, and (C) will not consolidate with or merge into another corporation or other Person, or permit one or more corporations or other Persons to consolidate with or merge into it, without giving prior written notice to the Agency and obtaining the consent of the Agency, which consent shall not be unreasonably withheld. Notwithstanding the foregoing sentence, the Company may merge its wholly-owned subsidiaries into the Company upon reasonable prior written notice to the Agency but without obtaining the consent of the Agency, provided that (i) the Company is the surviving entity of such merger, (ii) no such subsidiary is a Prohibited Person, and (iii) the Company provides written evidence reasonably satisfactory to the Agency that the net worth of the Company immediately following such merger would not be less than the net worth of the Company immediately prior to such merger. The Company agrees that it will not change its name or its state of organization without giving prior written notice to the Agency and obtaining the consent of the Agency, which consent shall not be unreasonably withheld or delayed.

SECTION 8.4 AGREEMENT TO PROVIDE INFORMATION. The Company agrees, whenever reasonably requested by the Agency, to promptly provide and certify or cause to be provided and certified such information concerning the Project Facility, the Company and/or the Company's finances, operations and affairs and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by Applicable Laws or other governmental regulation or to ensure compliance with the provisions of this Lease and the other Transaction Documents.

SECTION 8.5 BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES.

(A) The Company 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 business and affairs of the Company.

(B) Within thirty (30) days after the end of each fiscal year of the Company, the Company shall furnish to the Agency a certificate of an Authorized Representative of the Company stating that no Event of Default hereunder or under any other Transaction Document has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto. The Company represents to the Agency that the Company's fiscal year ends on December 31st.

SECTION 8.6 COMPLIANCE WITH APPLICABLE LAWS.

(A) The Company agrees, for the benefit of the Agency, that it will, during the term of this Lease, promptly comply with all Applicable Laws.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.6, the Company may in good faith actively contest the validity or the applicability of any Applicable Law, provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) no Event of Default shall have occurred and be continuing under any of the Transaction Documents beyond any applicable notice or cure period, (3) shall have set aside adequate reserves for any such requirement, (4) demonstrates to the reasonable satisfaction of the Agency that noncompliance with such Applicable Law will not subject the Project Facility or any part thereof to loss or forfeiture, (5) demonstrates to the reasonable satisfaction of the Agency that such contest shall not result in the Company or the Agency being in any danger of any civil or criminal liability for failure to comply therewith, and (6) diligently prosecutes such contest to completion. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.6, if the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees, past, present or future, may be liable for prosecution for failure to comply therewith, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

SECTION 8.7 DISCHARGE OF LIENS AND ENCUMBRANCES.

(A) The Company hereby agrees not to create or suffer to be created any Lien on any Properties of the Agency or on any funds of the Agency applicable to or deriving from the Project Facility.

(B) If any Lien (other than a Permitted Encumbrance) is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim, whether or not valid, is made against the Project Facility or any part thereof or the interest therein of the Company or the Agency or against any funds of the Agency applicable to or deriving from the Project Facility, the Company, immediately upon receiving notice of the filing, assertion, entry or issuance thereof, shall give written notice thereof to the Agency and take all action (including, without limitation, the payment of money and/or securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof and remove or nullify the basis therefor. Nothing herein shall be construed as constituting the consent to or permission of the Agency for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Project Facility.

SECTION 8.8 PERFORMANCE OF THE COMPANY'S OBLIGATIONS. Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but shall not be obligated to, without notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation,

appearing in and defending any action purporting to affect the rights or powers of the Company or the Agency, and paying all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Agency in connection therewith; and the Company shall pay immediately upon demand all sums so incurred or expended by the Agency under the authority hereof, together with interest thereon, at the Default Interest Rate.

SECTION 8.9 DEPRECIATION DEDUCTIONS AND TAX CREDITS. The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

SECTION 8.10 EMPLOYMENT OPPORTUNITIES.

(A) The Company shall ensure that all employees and applicants for employment with regard to the Project, including, without limitation, the employees of and applicants for employment with the Company, or any of its Affiliates, are afforded equal employment opportunities without discrimination.

(B) Pursuant to Section 858-b of the Act, except as otherwise provided by collective bargaining contracts or agreements, the Company agrees (1) to list or cause to be listed all new employment opportunities created as a result of the Project with the New York State Department of Labor, Community Services Division (the "NYSDOL") and with the administrative entity (collectively with NYSDOL, the "JTPA Referral Entities") of the service delivery area created by the federal Job Training Partnership Act (P.L. No. 97-300) (including any successor statute thereto, including without limitation, the Workforce Investment Act of 1998 (P.L. No. 105-270), collectively, the "JTPA") in which the Project Facility is located, and (2) where practicable, to first consider and to cause to be first considered for such new employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.

(C) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, prior to the effective date of this Lease, an employment plan, in form and substance satisfactory to the Agency.

(D) The Company agrees to file with the Agency, on a calendar year basis not later than February 11 of each year during the term of this Lease, measured as of December 31st of the immediately preceding calendar year, reports (i) enumerating the full-time equivalent jobs retained and the full time equivalent jobs created as a result of the granting of the Financial Assistance, by category, including full-time equivalent independent contractors and employees of independent contractors that work at the Project Facility, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were set forth in the Application are then still accurate or, if not then still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created.

Said annual reports shall be in substantially the form promulgated from time to time by the Agency. The current forms of reports are annexed hereto as Exhibit G. The Company shall provide such annual reports (and supporting documentation) and shall cause its Affiliates, tenants, occupants, operators, contractors and agents to provide such reports (and supporting documentation) with respect to their respective employees, if any, at the Project Facility. The Agency shall have the right, at the Company's expense, to audit, confirm and/or require additional information with regard thereto and the Company agrees to cooperate with the Agency in connection therewith.

(E) The Company shall, at all times during the term of this Lease, maintain or cause to be maintained the Minimum Employment Requirement. The Company agrees to give the Agency written notice of the occurrence of any default under this subsection (E) within five (5) days after the Company becomes aware of the occurrence of such default.

(F) Subject to (i) collective bargaining contracts or agreements and other existing contracts or agreements to which the Company is a party or by which the Company is bound and (ii) compliance with Applicable Laws, the Company agrees to list or cause to be listed all new employment opportunities created as a result of the Project on the County Jobs website or other website designated by the Agency from time to time, provided that such listing shall be at no cost to the Company.

(G) Subject to (i) collective bargaining contracts or agreements and other existing contracts or agreements to which the Company is a party or by which the Company is bound and (ii) compliance with Applicable Laws, the Company agrees that to the greatest extent possible all employment opportunities should be provided to residents of the County first.

SECTION 8.11 RESERVED.

SECTION 8.12 RESERVED.

SECTION 8.13 FINANCIAL STATEMENTS. Within ninety (90) days after the end of each fiscal year, the Company shall deliver to the Agency the financial statements of the Company prepared and compiled by an independent certified public accountant, certified by the chief financial officer of the Company, including a balance sheet as of the last day of such period and an operating statement through the last day of such period. The Company represents to the Agency that the Company's fiscal year ends on December 31st.

SECTION 8.14 ANTI-TERRORISM LAWS.

(A) General. Neither the Company nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(B) Executive Order No. 13224. Neither the Company, nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, nor their respective agents acting or benefiting in any capacity in connection with the

transactions contemplated by the Transaction Documents, is any of the following (each a "Blocked Person"):

(1) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(2) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

(3) a Person or entity with which any lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(4) a Person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224;

(5) a Person or entity that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list, or

(6) a Person or entity who is affiliated or associated with a person or entity listed above.

(C) Blocked Person or Transactions. Neither the Company, nor any director, officer, member, manager or shareholder of the Company, nor any Affiliate of any of the foregoing, nor to the Company's knowledge any of its agents acting in any capacity in connection with the transactions contemplated by the Transactions Documents (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

(D) Trading with the Enemy. The Company is not engaged, nor does it intend to engage, in any business or activity prohibited by the Trading with the Enemy Act.

(E) OFAC and Patriot Act. The Company represents, warrants, covenants and agrees as follows: (i) the Company, its directors, officers, members, managers, shareholders and Affiliates are in compliance with all Anti-Terrorism Laws; (ii) the Company shall immediately notify the Agency if it obtains knowledge that it or any of its Affiliates has become or been listed as a Restricted Party or has been charged with or has engaged in any violation of any Anti-Terrorism Law; (iii) the Company shall not receive any funds from a Restricted Party and, in any case, exclude any funds derived from any Restricted Party or from any person or entity involved in the violation of any Anti-Terrorism Law from being used to pay the Indebtedness or any part thereof; (iv) the Company shall not transfer or permit the transfer of any legal or beneficial ownership interest of any kind in the Company to a Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; (v) the Company shall not acquire, directly or indirectly, ownership interest of any kind in any Restricted Party or any person or entity

involved in the violation of any Anti-Terrorism Law, (vi) the Company shall not form any partnership or joint venture or conduct any business with any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law, (vii) the Company shall not act, directly or indirectly, as the agent or representative of any Restricted Party or any person or entity involved in the violation of any Anti-Terrorism Law; and (viii) the Company shall indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency from and against any costs incurred by the Agency, and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, as a result of any violation of an Anti-Terrorism Law by the Company or any of its directors, officers, members, managers, shareholders or Affiliates; provided that such costs are not incurred or do not result solely from the gross negligence or willful misconduct of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees.

SECTION 8.15 REQUIREMENTS OF LABOR LAW SECTION 224-a.

(A) The Company hereby acknowledges that the Agency has made the Company aware of the provisions of Part FFF of the New York State FY2020-21 Enacted Budget (Chapter 58 of the Laws of 2020 of the State of New York), which provisions are codified, in part, at Sections 224-a, 224-b and 224-c of the New York State Labor Law (the "Prevailing Wage Law"). The Company represents and warrants that it has read and made itself familiar with the requirements of the Prevailing Wage Law and the applicability of such requirements to the Project, including consultation with its counsel with respect to such requirements.

(B) If the Project is a "covered project" within the meaning of the Prevailing Wage Law, the Company covenants and agrees with the Agency to comply with the following requirements:

(i) The Company shall certify, under penalty of perjury, within five (5) days of commencement of construction work whether the Project is subject to the provisions of the Prevailing Wage Law. Such certification shall be made pursuant to a standard form developed by the Commissioner of Labor of the State of New York (the "Commissioner"). The current form developed by the Commissioner is attached to this Lease as Exhibit I. A copy of such certification shall be filed with the Agency not later than ten (10) days after any filing required by the Prevailing Wage Law.

(ii) The Company shall retain original payroll records in accordance with Section 220 of the New York State Labor Law for a period of six (6) years from the conclusion of the construction work. All such payroll records shall be subject to inspection on request of the Commissioner or the Agency. The Company may authorize the prime contractor of the Project to take responsibility for retaining and maintaining payroll records, but will be held jointly and severally liable for any violations of such contractor. All such records obtained by the Commissioner or the Agency shall be subject to the New York State Freedom of Information Law.

(C) In accordance with the Prevailing Wage Law, the Company may seek guidance from the "public subsidy board" contained in Section 224-c of the New York State

Labor Law as to whether or not the Project is subject to the requirements of the Prevailing Wage Law. If the Company obtains an opinion of the public subsidy board with respect to the Project, the Company shall deliver to the Agency: (1) a copy of such opinion within ten (10) days after receipt by the Company, and (2) any correspondence between the Company and the public subsidy board or the Commissioner promptly after receipt or delivery of same, as the case may be.

(D) In accordance with Section 224-a(8)(d) of the New York State Labor Law, the Agency is required to identify the nature and dollar value of the "public funds" (as such term is defined in the Prevailing Wage Law) provided by the Agency with respect to the Project and whether any such funds are excluded under Section 224-a(3) of the New York State Labor Law. The Agency shall comply with such requirement by delivering the statement attached to this Lease as Exhibit J on the Closing Date.

ARTICLE IX
ASSIGNMENTS; LEASING; MERGER OF THE AGENCY

SECTION 9.1 ASSIGNMENT OF THIS LEASE.

This Lease may not be sold, assigned or otherwise transferred by the Company, in whole or in part, without the prior written consent of the Agency, which consent may be granted or withheld in the Agency's sole and absolute discretion, and shall in all events be subject to and conditioned upon the payment of the then-standard fees of the Agency and the satisfaction of all requirements of the Act. Any such sale, assignment or transfer made by the Company without the prior written consent of the Agency as aforesaid shall be null and void. Any such sale, assignment or transfer consented to by the Agency shall be made pursuant to documentation satisfactory to the Agency. The Company shall pay all reasonable and customary fees and expenses incurred by the Agency in connection with such sale, assignment or transfer.

SECTION 9.2 MERGER OF THE AGENCY.

(A) Nothing contained in this Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other public benefit corporation of the State or any political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder and under the other Transaction Documents; provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Lease 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 Agency's rights and interests under this Lease shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the Agency shall endeavor to give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company may reasonably request.

SECTION 9.3 SALE OR LEASE OF THE PROJECT FACILITY.

(A) The Company shall not lease, sublease, sub-sublease, sub-sub-sublease, license or otherwise permit others to use or occupy the Project Facility or any portion thereof without the prior written consent of the Agency, which consent may be granted or withheld in the Agency's sole and absolute discretion, except for leases, subleases, sub-subleases, sub-sub-subleases and other occupancy arrangements as set forth in Subsection (B) of this Section 9.3, if any; provided, however, in each case (1) the Company shall remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Lease, and (2) any approved leases, subleases, sub-subleases, sub-sub-subleases and other occupancy arrangements will not diminish or impair the obligation of the Company to carry the insurance required under Article VI hereof, and that such insurance coverage shall in no manner by limited by such leases, subleases, sub-subleases, sub-sub-subleases and other occupancy arrangements.

(B) Intentionally omitted.

(C) Subject to Subsection (D) of Section 9.3 of this Lease, the Company shall not sell, transfer, convey or otherwise dispose of its interest in the Project Facility or any portion thereof without the prior written consent of the Agency, which consent may be granted or withheld in the Agency's sole and absolute discretion.

(D) Notwithstanding anything to the contrary contained in this Section 9.3, in any instance where the Company determines that any portion of the Project Facility has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such portion of the Project Facility and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Agency but, upon reasonable prior notice to the Agency, provided that such removal will not materially impair the value of the Project Facility as collateral and provided the same is forthwith replaced with items of similar quality and value as the items replaced as of the date of original installation of the replaced items. At the request of the Company, the Agency shall execute and deliver to the Company all instruments reasonably necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Property free from the Liens of the Transaction Documents. The Company shall pay all reasonable and customary fees and expenses (including reasonable attorneys' fees and expenses) incurred in transferring title to and releasing from the Liens of the Transaction Documents any item of Property removed pursuant to this Section 9.3.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1 EVENTS OF DEFAULT DEFINED.

(A) The following shall be "Events of Default" under this Lease, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

(1) A default by the Company in the due and punctual payment of any amount due under this Lease or under any other Transaction Document, and the continuance

thereof for a period of ten (10) days after written notice thereof is given by the Agency to the Company.

(2) A default in the performance or observance of any covenant, condition or agreement on the part of the Company in this Lease (other than as set forth in subsection (1) above or in any other subsection of this Section 10.1(A)) and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, or, if such covenant, condition or agreement is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the cure to completion with due diligence.

(3) The occurrence of an "Event of Default" under any other Transaction Document.

(4) The Company shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due.

(5) The Company shall conceal, remove or permit to be concealed or removed any part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within ten (10) days from the date thereof.

(6) (a) The filing by the Company (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy or insolvency statute; (b) the failure by the Company within thirty (30) days to lift any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder; (c) the commencement of a case under Title 11 of the United States Code against the Company as the debtor or commencement under any other federal or state bankruptcy or insolvency statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of thirty (30) days; (d) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company; or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver, liquidator or trustee of the whole or a substantial portion of the Property of the Company, unless such order, judgment or decree is vacated, dismissed or dissolved within thirty (30) days of such appointment.

(7) If any interest in the Company shall be sold, assigned, transferred, conveyed, mortgaged, pledged, hypothecated or alienated, or if any member or shareholder of the Company enters into an agreement or contract to do so, without the

prior written consent of the Agency, which consent shall not be unreasonably withheld by the Agency.

(8) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance and the failure of the Company to remove such Lien, whether by the payment of money, the securing of a bond or otherwise, within fifteen (15) days after the Company receives notice or becomes aware of such imposition.

(9) The removal of the Project Facility, or any portion thereof, outside the County, without the prior written consent of the Agency, other than in connection with a removal permitted under Section 9.3(D) of this Lease.

(10) If any certificate, statement, representation, warranty or financial statement made to the Agency by or on behalf of the Company shall prove to have been false, misleading or incorrect in any material respect at the time as of which the facts therein set forth were made, or to have omitted any material liability or claim against the Company.

(11) If the environmental or ecological condition of the Project Facility is in violation of any Environmental Law or any permit, license or approval related thereto or if the Project Facility, or any part thereof, contains any Hazardous Materials (except Hazardous Materials which do not violate Environmental Laws), and the Company is unable to comply with such Environmental Laws within twenty (20) days of the notification or discovery of such violation or complete all appropriate and lawful remedial containment and clean-up action within twenty (20) days of the notification or discovery of the existence of such Hazardous Materials.

(12) Any loss or impairment of the Agency's interest in and to the Project Facility, or any part thereof.

(13) The Company or any Affiliate of the Company or any director, member, manager, officer or shareholder of the Company shall become a Prohibited Person.

(14) Any assignment of this Lease or the Company Lease, in whole or in part, or any letting or subletting of the Project Facility, or any portion thereof, in violation of the terms of this Lease.

(15) An Event of Default shall occur under the Company Lease, under any other Permitted Encumbrance or under any other contract or agreement between the Agency and the Company entered into simultaneously herewith or prior to the Closing Date.

(16) Intentionally omitted.

(17) The Company defaults under or attempts to withdraw, rerate, cancel or disclaim liability under any guaranty or indemnity made by such party in favor of the Agency, including, without limitation, the Environmental Indemnification or the Guaranty.

(18) If the Company fails to maintain or fails to cause to be maintained the Minimum Employment Requirement at any time during the term of this Lease.

(19) Failure by the Company at any time to keep in full force and effect the insurance policies and coverages required by Section 6.3 of this Lease.

(20) Any loss or impairment of the Company's interest in and to the Project Facility, or any part thereof.

(B) Notwithstanding the provisions of Section 10.1(A) hereof if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Lease and if such party shall give notice and full particulars of such force majeure event or cause in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability to perform. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required under this Lease, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 2.2(F), 3.1, 3.3, 6.1, 8.1 and 12.9(C) hereof and to comply with the provisions of Sections 2.2(F), 6.3, 8.2, 8.4, 8.5 and 8.6(C) hereof. The term "force majeure" as used herein shall include acts outside of the control of the Agency and the Company, including, but not limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, restraint of government and people, civil disturbances, breakage or accident to transmission pipes or canals, and failure of utilities.

SECTION 10.2 REMEDIES ON DEFAULT.

(A) Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent not prohibited by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 hereof, and (b) all other payments due under this Lease or any of the other Transaction Documents, including, without limitation, any resulting Recapture of Benefits under Section 11.4 of this Lease; or

(2) re-enter and take possession of the Project Facility, enforce or terminate this Lease, sell or assign the Agency's interest in the Project Facility, subject to Permitted Encumbrances, at public or private sale, as a whole or piecemeal, in whole or in part, for such consideration as may be deemed appropriate in the circumstances by the Agency, and hold the Company liable for the amount, if any, by which the aggregate unpaid amounts due hereunder exceed the Net Proceeds received upon such sale, or manage and

operate the Project Facility, collect all or any rents accruing therefrom, let or relet the Project Facility or any part thereof for the Agency's own account or the account of the Company, holding the Company liable for payments due up to the effective date of such leasing and for the difference in the rent and other amounts paid by the sublessee pursuant to such lease and the rental payments and other amounts payable by the Company hereunder, cancel or modify leases, evict tenants, bring or defend any suits in connection with the possession of the Project Facility in its own name or in the Company's name, make repairs as the Agency deems appropriate, and perform such other acts in connection with the management, operation or disposition of the Project Facility, or any portion thereof, as the Agency, in its discretion, may deem proper; or

(3) terminate this Lease and/or terminate the Company Lease and/or convey to the Company all the Agency's right, title and interest in and to the Project Facility. The conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the execution by the Agency of the Termination of Lease and/or the Termination of Company Lease, as applicable. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such termination and conveyance. The Company hereby waives delivery and acceptance of such terminations as a condition to their validity, and 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 or filing of such documents; or

(4) bring an action for damages, injunction or specific performance; or

(5) reserved; or

(6) require the Company to make payments in lieu of real property taxes under the PILOT Agreement in amounts equal to the amounts the Company would otherwise be required to pay if the Company were the owner of the Project Facility (and the Agency did not hold an interest therein); or

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

(B) No action taken pursuant to this Section 10.2 (including repossession of the Project Facility) shall relieve the Company from its obligations to make all payments required by this Lease and the other Transaction Documents.

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 or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as

often as may be deemed expedient. In order to entitle the Agency 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.

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 or any other Transaction Document and the Agency should retain 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 such fees and expenses (including, without limitation, attorneys' fees and expenses) so incurred, whether an action is commenced or not.

SECTION 10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the 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
OPTIONS TO TERMINATE

SECTION 11.1 EARLY TERMINATION OF THE LEASE. The Company shall have the option to terminate this Lease at any time prior to the termination date specified in Section 5.2 hereof, by 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 11.1 and setting forth the effective date of such termination, which effective date shall not be less than thirty (30) days after the delivery of the certificate to the Agency. The exercise of the option to terminate pursuant to this Section 11.1 shall constitute a "Recapture Event" (as such term is defined in Section 11.4 hereof). The Company shall not, at any time, assign or transfer its option to terminate this Lease and purchase the Agency's interest in the Project Facility as contained in this Section 11.1 separate and apart from a permitted assignment of this Lease pursuant to Section 9.1 of this Lease without the prior written consent of the Agency.

SECTION 11.2 OBLIGATIONS UPON TERMINATION OF THE LEASE.

(A) Contemporaneously with the termination of this Lease in accordance with Section 5.2 or Section 11.1 hereof, the Company shall pay all sums required to be paid to the Agency or any other Person pursuant to this Lease and the other Transaction Documents then due and owing the Agency or such other Person at the time of termination or due and owing the Agency or such other Person as a result of such termination (including any applicable Recapture of Benefits). The obligation of the Agency under this Section 11.2 to convey its interest in the Project Facility to the Company will be subject to there being no Event of Default existing hereunder or under any other Transaction Document, and there being no other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default.

(B) The termination of this Lease and the conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the execution and delivery by the Agency of (1) the Termination of Company Lease (an unexecuted copy of which is attached

hereto as Exhibit C), and (2) the Termination of Lease (an unexecuted copy of which is attached hereto as Exhibit F). The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such termination, including, without limitation, all of the Agency's reasonable costs and expenses in connection therewith (including reasonable attorneys' fees and expenses).

(C) The Company agrees to prepare the Termination of Company Lease and/or the Termination of Lease, and all schedules thereto, together with all equalization and assessment forms and other necessary documentation, and to forward same to the Agency at least fifteen (15) days prior to the date that this Lease is to be terminated and the Agency's interest in the Project Facility or any portion thereof is to be conveyed to the Company. The Company hereby irrevocably appoints and designates the Agency as its attorney-in-fact for the purpose of executing, delivering and/or recording such documents and to take such other and further action as shall be necessary to terminate the Agency's interest in the Project Facility.

(D) This Lease shall survive the transfer of the Project Facility to the Company pursuant to this Section 11.2 and shall remain in full force and effect until ninety-one (91) days after all of the Indebtedness shall have been paid in full (excluding contingent indemnification obligations for which no claim has been asserted), and thereafter the obligations of the Company shall survive as set forth in Section 12.7 hereof.

(E) Upon the payment in full of all Indebtedness, and notwithstanding the survival of certain obligations of the Company as described in Section 12.7 hereof, the Agency shall upon the request of the Company execute and deliver to the Company such documents as the Company may reasonably request, in recordable form if so requested, to evidence the termination and release of all Liens granted to the Agency hereunder.

SECTION 11.3 RESERVED.

SECTION 11.4 RECAPTURE OF AGENCY BENEFITS.

(A) It is understood and agreed by the parties to this Lease that the Agency is entering into this Lease in order to provide the Financial Assistance to the Company for the Project and to accomplish the purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur a Recapture Event (as hereinafter defined), then the Agency at its option may pursue a recapture of public benefits conferred by the Agency (as defined in this Section 11.4) or waive such a recapture of public benefits in its sole and complete discretion. Should the Agency elect to pursue a recapture of public benefits conferred by the Agency following a Recapture Event, the amount of such benefits to be recaptured shall be as follows (such amount, the "Recapture of Benefits"):

(1) one hundred per cent (100%) of the Benefits (as defined below) if the Recapture Event occurs on or before the sixth (6th) anniversary of the Closing Date;

(2) eighty per cent (80%) of the Benefits if the Recapture Event occurs after the sixth (6th) anniversary of the Closing Date but on or before the seventh (7th) anniversary of the Closing Date;

(3) sixty per cent (60%) of the Benefits if the Recapture Event occurs after the seventh (7th) anniversary of the Closing Date but on or before the eighth (8th) anniversary of the Closing Date;

(4) forty per cent (40%) of the Benefits if the Recapture Event occurs after the eighth (8th) anniversary of the Closing Date but on or before the ninth (9th) anniversary of the Closing Date;

(5) twenty per cent (20%) of the Benefits if the Recapture Event occurs after the ninth (9th) anniversary of the Closing Date but on or before the tenth (10th) anniversary of the Closing Date; or

(6) zero per cent (0%) of the Benefits thereafter.

(B) The term "Benefits", in this Section 11.4, shall mean the Agency's calculation of, collectively:

(1) all real estate tax benefits which have accrued to the benefit of the Company during such time as the Agency held an interest in the Project Facility by reason of such interest, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under the PILOT Agreement (through the date that the Project Facility is returned to the tax rolls as taxable property) from those payments which the Company would have been required to pay through such date had the Company been the owner of the Project Facility and the Agency not been involved in the Project and based on the records of the Tax Assessor, and treating any negative result as $0.

(C) For the purposes of this Section 11.4 the term "Recapture Event" shall mean the occurrence of any of the following events:

(1) The Company shall have liquidated its operations and/or assets; or

(2) The Company shall have ceased all or substantially all of its operations at the Project Facility (whether by closure or by relocation to another facility either within or outside of the County); or

(3) All or substantially all of the employees engaged in the renovation, maintenance or operation of the Project Facility have been transferred to a location outside of the County; or

(4) The occurrence and continuance of an Event of Default under this Lease, under any other Transaction Document or under any other contract or agreement between the Agency and the Company entered into simultaneously herewith or prior to the Closing Date; or

(5) The Company shall have effected a substantial change in the scope and nature of the operations of the Company at the Project Facility without the prior written consent of the Agency; or

(6) The Company shall have sold, leased, subleased, sub-subleased, sub-sub-subleased, assigned, transferred or otherwise disposed of all or any part of its interest in the Project Facility in violation of this Lease; or

(7) The Company fails to maintain or fails to cause to be maintained the Minimum Employment Requirement at any time during the term of this Lease; or

(8) The Company elects to voluntarily terminate this Lease as provided in Section 11.1 hereof; or

(9) The Application, or documentation in support of the Application, contained a false or misleading statement as to any fact in the Application or omitted any information which, if included, would have rendered any information in the Application or supporting documentation false or misleading in any material respect, and such false or misleading statement or omission was made knowingly by the Company.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a Condemnation by governmental authority of all or substantially all of the Project Facility or any interest therein, or (ii) the inability at law of the Company to rebuild, repair, restore or replace the Project Facility after the occurrence of a casualty to substantially its condition prior to such casualty, which inability shall have arisen in good faith through no fault on the part of the Company.

(D) The Company covenants and agrees to furnish the Agency with written notification upon the occurrence of any Recapture Event, which notification shall set forth the terms of such Recapture Event.

(E) In the event any payment owing by the Company under this Section 11.4 shall not be paid on demand by the Company, such payment shall bear interest from the date of such demand at the Default Interest Rate until the Company shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

ARTICLE XII
MISCELLANEOUS

SECTION 12.1 NOTICES.

(A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given on the earlier of (1) three (3) Business Days after being sent to the applicable address stated below by registered or certified mail, return receipt requested, or two (2) Business Days after being sent by nationally recognized overnight courier service, or (2) the date on which delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

To the Agency: County of Chautauqua Industrial Development Agency

201 West Third Street, Suite 115
Jamestown, NY 14701
Attention: Administrative Director/CEO

With a Copy to: Phillips Lytle LLP
201 West Third Street, Suite 205
Jamestown, NY 14701
Attention: Milan K. Tyler, Esq.

To the Company: Wells Enterprises, Inc.
1 Blue Bunny Drive
Le Mars, IA 51031
Attention: Dick Kennedy

With a copy to: Wright, Wright & Hampton
525 Fairmount Avenue
Jamestown, NY 14701
Attention: Tad Wright, Esq.

(C) The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 12.2 BINDING EFFECT. This Lease shall inure to the benefit of the Agency and the Company and shall be binding upon the Agency, the Company and, as permitted by this Lease, their respective successors and assigns, but no assignment shall be effective to relieve the Company of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency.

SECTION 12.3 SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be held void, voidable, invalid or unenforceable by a court of competent jurisdiction, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Lease.

SECTION 12.4 AMENDMENT. This Lease may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 12.5 EXECUTION OF COUNTERPARTS. This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 12.6 APPLICABLE LAW. This Lease shall be governed by and construed in accordance with the applicable laws of the State, as in effect from time to time, without regard to its principles of conflicts of law.

SECTION 12.7 SURVIVAL OF OBLIGATIONS.

(A) The obligations of the Company to make the payments required by Sections 2.2(F), 3.1, 3.3, 4.1, 5.3, 5.4, 6.5, 8.2, 8.9, 9.1, 9.3, 10.2 10.4, 11.2 and 11.4 hereof and to provide the indemnity required by Sections 2.2(F), 3.1, 3.3, 6.3, 8.2 and 12.9(C) hereof shall survive the termination of this Lease, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Company to the Agency with respect to the Unassigned Rights shall survive the termination or expiration of this Lease until the expiration of the period stated in the applicable statute of limitation during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents (other than the Company), attorneys, servants or employees, past, present or future, related thereto.

SECTION 12.8 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Lease have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease.

SECTION 12.9 NO RECOURSE; SPECIAL OBLIGATION.

(A) The obligations and agreements of the Agency contained herein and in the other Transaction Documents and any other instrument or document executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company), servant or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company), servants and employees, past, present and future, of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State or the County and neither the State nor the County shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Agency's interest in the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1)

the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) business days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) business days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten (10) business day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company), servants or employees, past, present or future, shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its members, officers, agents (other than the Company), attorneys, servants and employees, past, present and future, against any liability incurred as a result of its compliance with such demand; provided that such liability is not incurred or does not result solely from the gross negligence or willful misconduct of the Agency or any of its members, officers, agents (other than the Company), attorneys, servants or employees, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company), servants and employees, past, present and future, against all liability expected to be incurred as a result of compliance with such request., and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company), servants and employees, past, present and future, against all liability expected to be incurred as a result of compliance with such request.

SECTION 12.10 NET LEASE. The obligation of the Company to make the payments specified in this Lease shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Lease shall yield, net, to the Agency, the payments set forth herein.

SECTION 12.11 WAIVER OF JURY TRIAL. THE COMPANY AND THE AGENCY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LEASE, ANY OTHER TRANSACTION DOCUMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THIS LEASE.

SECTION 12.12 PRIOR AGREEMENTS. This Lease and the other Transaction Documents shall completely and fully supersede all other prior understandings or agreements, written or oral, between the Company and the Agency relating to the Project.

SECTION 12.13 SERVICE OF PROCESS.

(A) The Company represents that it is subject to service of process in the State of New York and covenants that it will remain so subject so long as this Lease shall be in effect.

If for any reason the Company should cease to be so subject to service of process in the State of New York, the Company hereby designates and appoints, without power of revocation, Tad Wright, Esq., c/o Wright, Wright & Hampton, 525 Fairmount Avenue, Jamestown, NY 14701, and successor(s) as its agent for service of process, and if such agent shall cease to act or otherwise cease to be subject to service of process in the State of New York, the Secretary of State of the State of New York, as the agents of the Company upon whom may be served all process, pleadings, notices or other papers which may be served upon the Company as a result of any of its obligations under this Lease; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to the Company's obligations hereunder.

(B) The Company irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Lease or the other Transaction Documents may be brought in the courts of record of the State of New York in the County of Chautauqua or the courts of the United States, Western District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. For such time as this Lease is in effect, the Company's agents designated above shall accept and acknowledge in the Company's behalf service of any and all process in any such suit, action or proceeding brought in any such court. The Company agrees and consents that any such service of process upon such agents and written notice of such service to the Company in the manner set forth in Section 12.1 hereof shall be taken and held to be valid personal service upon the Company whether or not the Company shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process shall be of the same force and validity as if service were made upon the Company according to the laws governing the validity and requirements of such service in the State of New York, and waives all claim of error by reason of any such service. Such agents shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Company or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized by the Company.

SECTION 12.14 THIRD PARTY BENEFICIARIES. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto.

SECTION 12.15 NON-DISCRIMINATION.

(A) At all times during the term of this Lease, the Company shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, ethnicity, age, gender, pregnancy, sex, sexual orientation, gender identity, national origin, citizenship, marital status, domestic violence victim status, military status, veteran status, disability, familial status, genetic information, genetic predisposition or carrier status, or other characteristic or criteria protected by Applicable Law. The Company shall use reasonable efforts to ensure that employees and applicants for employment with any tenant, subtenant, occupant or user of the Project Facility, or any part thereof, or any contractor or subcontractor with respect to the Project Facility, are treated without regard to their race, color, religion, creed, ethnicity, age, gender, pregnancy, sex, sexual orientation, gender identity, national origin, citizenship, marital status, domestic violence victim status, veteran status, military status, disability, familial status,

genetic information, genetic predisposition or carrier status, or other characteristic or criteria protected by Applicable Law. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(B) The Company shall, in all solicitations or advertisements for employees placed by or on behalf of the Company (or any of its Affiliates), state that all qualified applicants will be considered for employment without regard to race, color, religion, creed, ethnicity, age, gender, pregnancy, sex, sexual orientation, gender identity, national origin, citizenship, marital status, domestic violence victim status, military status, veteran status, disability, familial status, genetic information, genetic predisposition or carrier status, or other characteristic or criteria protected by Applicable Law.

SECTION 12.16 DATE OF LEASE. The date of this Lease shall be for reference purposes only and shall not be construed to imply that this Lease was executed on the date first above written. This Lease was executed and delivered on March 8, 2024.

SECTION 12.17 RECORDING AND FILING. This Lease or a memorandum hereof shall be recorded by the Company in the appropriate office of the Clerk of the County, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

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

COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Richard E. Dixon
Chief Financial Officer

WELLS ENTERPRISES, INC.

By: _____
Jeremy Pinkerman
Chief Financial Officer

By: _____
Mark Meyer
Chief Operating Officer

By: _____
Liam Killeen
Chief Executive Officer

[Signature Page to Agency Lease Agreement]

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

COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Richard E. Dixon
Chief Financial Officer

WELLS ENTERPRISES, INC.

By: _____
Jeremy Pinkerman
Chief Financial Officer

By: _____
Mark Meyer
Chief Operating Officer

By: _____
Liam Killeen
Chief Executive Officer

[Signature Page to Agency Lease Agreement]

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INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Richard E. Dixon
Chief Financial Officer

WELLS ENTERPRISES, INC.

By: _____
Jeremy Pinkerman
Chief Financial Officer

By: _____
Mark Meyer
Chief Operating Officer

By: _____
Liam Killeen
Chief Executive Officer

[Signature Page to Agency Lease Agreement]

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

On the 15 day of February, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Richard E. Dixon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

GREGORY LYLE PETERSON #02PE4645823
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires June 30, 2027

STATE OF)
) ss.:
COUNTY OF)

On the ____ day of February, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Jeremy Pinkerman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

[Acknowledgment Page to Agency Lease Agreement]

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

On the ___ day of February, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Richard E. Dixon, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF Missouri)
) ss.:
COUNTY OF Stone)

On the 23rd day of February, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Jeremy Pinkerman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Alisha Fish
Notary Public

ALISHA FISH
Notary Public – Notary Seal
STATE OF MISSOURI
Stone County
My Commission Expires Nov. 19, 2024
Commission #12666469

[Acknowledgment Page to Agency Lease Agreement]

STATE OF Iowa)
) ss.:
COUNTY OF Plymouth)

On the 21 day of February, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Mark Meyer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Barbara J Kruth
Notary Public

Commission
ember 16, 24

STATE OF Iowa)
) ss.:
COUNTY OF Plymouth)

On the 27th day of February, 2024, before me, the undersigned, a notary public in and for said state, personally appeared Liam Killeen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

NOTARIAL SEAL IOWA

Kelly K Salker
Iowa Notarial Seal
Commission number
199111
My Commission Expires
10/26/25

[Acknowledgment Page to Agency Lease Agreement]

EXHIBIT A

DESCRIPTION OF THE NEW LAND

(96.07-2-18; 96.07-2-23; 96.07-2-24; 96.07-2-25; 96.07-2-26; 96.07-2-27; 96.07-2-28; 96.07-2-32; 96.07-2-36; 96.07-2-37; 96.07-2-38; 96.07-2-39; 96.07-2-40; 96.07-2-41; 96.07-2-42; 96.07-2-43; 96.07-2-44; 96,07-2-45; 96.07-2-46)

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Dunkirk, County of Chautauqua and State of New York and more particularly described as follows:

Beginning in the easterly line of Main Street (formerly known as Lion Street) as now laid out and occupied (66 feet wide) at the intersection thereof with the southerly line of lands conveyed to Dunkirk Ice Cream Company Inc. by deed recorded in Liber 1234 of Deeds at Page 1 in the Office of the Chautauqua County Clerk; thence North 02° 30' East (geodetic bearing) a distance of 592.20 feet along said easterly line of Main Street to the intersection thereof with the northwesterly line of lands conveyed to Dunkirk Ice Cream Company Inc. by deed recorded in Liber 2246 of Deeds at Page 7 in the Office of the Chautauqua County Clerk; thence northeasterly along said northwesterly line of last mentioned Dunkirk Ice Cream Company Inc. lands following a regular curve to the the left having a radius of 1,435 feet and a chord bearing of North 55° 56' East and a chord distance of 877.90 feet to the intersection of said northwesterly line of last mentioned Dunkirk Ice Cream Company Inc. lands with the westerly line of lands of Conrail (now or formerly); thence southerly along said westerly line of Conrail lands following a regular curve to the left having a radius of 1,360 feet and a chord bearing of South 05° 59' West and a chord bearing of 241.17 feet to a point of tangent; thence South 00° 54' West a distance of 125.22 feet along said westerly line of Conrail lands to the intersection thereof with the northwesterly line of Ice Cream Drive (formerly known as Doughty Street Extension) as conveyed to Chautauqua County Industrial Development Agency (IDA) by deed recorded in Liber 2079 of Deeds at Page 441 in the Office of the Chautauqua County Clerk; thence North 37° 24' East a distance of 491.54 feet along said northwesterly line of Ice Cream Drive to a deflection point therein; thence South 89° 21' East a distance of 15.90 feet along said northwesterly line of Ice Cream Drive to a deflection point therein; thence North 40° 21' East a distance of 24330 feet along said northwesterly line of Ice Cream Drive to the intersection thereof with the southwesterly line of Lamphere Street (also known as New York State Route 60) as now laid out and occupied; thence South 23° 08' East, a distance of 57.40 feet along said southwesterly line of Lamphere Street to the northerly corner of lands appropriated by the State of New York by instrument recorded in Liber 1279 of Deeds at Page 470 in the Office of the Chautauqua County Clerk; thence South 31° 10' West a distance of 82.5 feet along the northwesterly line of said New York State lands to the southwesterly corner thereof; thence South 33° 51' West a distance of 73.9 feet along the southeasterly line of Ice Cream Drive to a deflection point therein; thence South 89° 13' West a distance of 9.5 feet along the southeasterly line of Ice Cream Drive to a deflection point therein; thence South 37° 32' West a distance of 551.28 feet along said southeasterly line of Ice Cream Drive to the intersection thereof with the easterly line of lands of Conrail (now or formerly); thence South 00° 54' West a distance of 33.62 feet along said easterly line of Conrail lands to the intersection thereof with the

northeasterly extension of the southeasterly line of Doughty Street Extension (now or formerly); thence South 37° 24' West a distance of 110.96 feet along said northeasterly extension of the southeasterly line of Doughty Street Extension to the intersection thereof with said westerly line of Conrail lands; thence South 00° 54' West a distance of 258.37 feet along said westerly line of Conrail lands to the intersection thereof with the southeasterly line of lands conveyed to Dunkirk Ice Cream Company Inc. by deed recorded in Liber 1228 of Deeds at Page 42 in the Office of the Chautauqua County Clerk; thence southwesterly along the southeasterly line of last mentioned Dunkirk Ice Cream Company Inc. lands following a regular curve to the right having a radius of 307.90 feet and a chord bearing of South 64° 37' West and a chord distance of 292.12 feet to a point in the southerly line of said last mentioned Dunkirk Ice Cream Company Inc. lands; thence North 86° 58' West a distance of 24 feet along said southerly line of last mentioned Dunkirk Ice Cream Company Inc. lands to the intersection thereof with the southeasterly line of said Chautauqua County Industrial Development Agency (IDA) lands; thence South 37° 24' West a distance of 129.10 feet along said southeasterly line of Chautauqua County Industrial Development Agency (IDA) lands to a deflection point therein; thence South 02° 30' West a distance of 192.97 feet along said southeasterly line of Chautauqua County Industrial Development Agency (IDA) lands to a deflection point therein; thence North 87° 30' West a distance of 149.00 feet along said southeasterly line of Chautauqua County Industrial Development Agency (IDA) lands to a deflection point therein; thence North 02° 30' East a distance of 120.00 feet along said southeasterly line of Chautauqua County Industrial Development Agency (IDA) lands to the intersection thereof with said southerly line of first mentioned Dunkirk Ice Cream Company Inc. lands; thence North 89° 44' West a distance of 201.00 feet along said southerly line of first mentioned Dunkirk Ice Cream Company Inc. lands to the point or place of beginning.

(96.07-4-16; 96.07-4-26; 96.07-4-33)
ALSO, ALL THAT TRACT OR PARCEL OF LAND situate in the City of Dunkirk, County of Chautauqua and State of New York, being part of Blocks 415, 416, 417, and 418 as shown on the Doughty Map of the City of Dunkirk, and more particularly described as follows:

Beginning in the easterly line of Park Avenue (66 feet wide) as now laid out and occupied at the point located 150 feet northerly along said easterly line of Park Avenue from the intersection thereof with the northerly line of Newton Street (50 feet wide) as now laid out and occupied; thence South 89° 38' East (geodetic bearing) along a line parallel with and 150 feet northerly by rectangular measurement from said northerly line of Newton Street a distance of 605 feet to a point in the center line of unopened Leopard Street (40 feet wide); thence North 2° 30' East a distance of 91 feet along said center line of Leopard Street to the intersection thereof with the northerly line of lands of H. Phillips (now or formerly); thence South 89° 29' East a distance of 180 feet along said northerly line of H. Phillips lands to the intersection thereof with the westerly line of Main Street (formerly known as Lion Street) as now laid out and occupied (66 feet wide); thence North 2° 30' East a distance of 80 feet along said westerly line of Main Street to a point; thence North 89° 29' West a distance of 180 feet to a point in the said center line of Leopard Street; thence North 2° 30' East a distance of 174.1 feet along said center line of Leopard Street to a point located 100 feet southerly by rectangular measurement from the southerly line of Marsden Street (50 feet wide) as now laid out and occupied; thence South 87° 02' West a distance of 134.5 feet along a line located parallel with and 100 feet southerly by rectangular

measurement from said southerly line of Marsden Street to a point in the westerly line of lands conveyed from Battaglia to Strubing by deed recorded in Liber 1082 of Deeds at page 259 in the Office of the Chautauqua County Clerk; thence North 2° 51' East a distance of 100.5 feet along said westerly line of Strubing lands to the intersection thereof with said southerly line of Marsden Street; thence South 87° 02' West a distance of 77 feet along said southerly line of Marsden Street to the intersection thereof with the center line of (unopened) Deer Street (66 feet wide); thence South 3° 41' West a distance of 100.7 feet along said center line of Deer Street to a point located 100 feet southerly by rectangular measurement from said southerly line of Marsden Street; thence South 87° 02' West a distance of 396.3 feet along a line located parallel with and 100 feet southerly by rectangular measurement from said southerly line of Marsden Street to a point in said easterly line of Park Avenue; thence South 2° 09' West a distance of 309.6 feet along said easterly line of Park Avenue to the point or place of beginning.

(96.07-2-18)
ALSO, ALL THAT TRACT OR PARCEL OF LAND situate in the City of Dunkirk, County of Chautauqua and State of New York, being part of Block 444 according to the Doughty Map of the City of Dunkirk and more particularly described as follows:

BEGINNING in the southwesterly line of Lamphere Street (also known as New York State Route 60) as now laid out and occupied at the intersection thereof with the south line of the City of Dunkirk; thence South 89° 153' West (geodetic bearing) a distance of 127.4 feet along said south line of the City of Dunkirk to the intersection thereof with the southeasterly line of Ice Cream Drive (formerly known as Doughty Street Extension) as conveyed to the Chautauqua County Industrial Development Agency (IDA) by deed recorded in Liber 2079 of Deeds at Page 441 in the Office of Chautauqua County Clerk; thence North 33° 51' East, a distance of 73.9 feet along said southeasterly line of Ice Cream Drive to the southwesterly corner of lands appropriated by the State of New York by instrument recorded in Liber 1279 of Deeds at Page 470 in the Office of the Chautauqua County Clerk; thence North 66° 23' East a distance of 55.8 feet along the southerly line of said New York State lands to a point in said southwesterly line of Lamphere Street; thence South 23° 10' East a distance of 89.2 feet along said southwesterly line of Lamphere Street to the point or place of beginning.

EXHIBIT C

FORM OF TERMINATION OF COMPANY LEASE

WHEREAS, Wells Enterprises, Inc. (the "Company"), as landlord, and the County of Chautauqua Industrial Development Agency (the "Agency"), as tenant, entered into a company lease agreement dated as of March 1, 2024 (the "Company Lease Agreement") pursuant to which, among other things, the Agency leased the Project Facility (as defined in the Company Lease Agreement) from the Company; and

WHEREAS, pursuant to the Company Lease Agreement, the Company and the Agency agreed that the Company Lease Agreement would terminate on the earlier to occur of (1) December 31, 2034 (the "Stated Expiration Date") or (2) any earlier date the Company Lease Agreement would terminate pursuant to the terms thereof; and

WHEREAS, the Company and the Agency now desire to evidence the termination of the Company Lease Agreement;

NOW, THEREFORE, it is hereby agreed that the Company Lease Agreement has terminated as of the dated date hereof; provided, however, that, (i) as provided in the Company Lease Agreement, certain obligations of the Company shall survive the termination of the Company Lease Agreement, and the execution of this termination of company lease agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions thereof that expressly survive such termination, and (ii) in the event the Company Lease Agreement is being terminated pursuant to Article X or XI of the Lease Agreement, the Company shall pay to the Agency on the date hereof all fees and expenses of the Agency set forth in the Company Lease Agreement, in the Lease and in the other Transaction Documents.

IN WITNESS WHEREOF, the Company and the Agency have signed this termination of company lease agreement and caused same to be dated as of the __ day of _____, ____.

[_____]

By: _____
Authorized Officer

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Authorized Officer

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

On the ___ day of _____, in the year _____, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

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

On the ___ day of _____, in the year _____, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

EXHIBIT F

TERMINATION OF AGENCY LEASE AGREEMENT

WHEREAS, Wells Enterprises, Inc. (the "Company"), as subtenant, and the County of Chautauqua Industrial Development Agency (the "Agency"), as sublandlord, entered into an agency lease agreement (uniform project agreement) dated as of March 1, 2024 (the "Agency Lease Agreement") pursuant to which, among other things, the Agency subleased the Project Facility (as defined in the Agency Lease Agreement) to the Company; and

WHEREAS, pursuant to the Agency Lease Agreement, the Company and the Agency agreed that the Agency Lease Agreement would terminate on the earlier to occur of (1) December 31, 2034, or (2) the date the Agency Lease Agreement would terminate pursuant to Article X or Article XI of the Agency Lease Agreement; and

WHEREAS, the Company and the Agency now desire to evidence the termination of the Agency Lease Agreement;

NOW, THEREFORE, it is hereby agreed that the Agency Lease Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 12.7 of the Agency Lease Agreement, certain obligations of the Company shall survive the termination of the Agency Lease Agreement, and the execution of this termination of lease agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions of Sections 11.4 and 12.7 of the Agency Lease Agreement.

IN WITNESS WHEREOF, the Company and the Agency have signed this termination of Agency Lease Agreement and caused same to be dated as of the __ day of _____, ____.

[_____]

By: _____
Authorized Officer

COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Authorized Officer

STATE OF)
) ss.:
COUNTY OF)

On the ___ day of _____, in the year _____, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

STATE OF)
) ss.:
COUNTY OF)

On the ___ day of _____, in the year _____, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Notary Public

EXHIBIT G

FORMS OF ANNUAL
EMPLOYMENT REPORT

EMPLOYMENT PLAN STATUS REPORT

COMPANY NAME: _____

ADDRESS: _____

TYPE OF BUSINESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

			Number Filled	
Occupation	Number of New Jobs	Number Listed[1]	Community Services Division Applicants	Job Training Partnership Act eligible persons

Form of then current Annual Monitoring Questionnaire to be attached

[1] With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.

EXHIBIT H

COPY OF PILOT AGREEMENT

See Attached

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this "Agreement") is made as of the 1st day of March, 2024 ("Effective Date") by and between **WELLS ENTERPRISES, INC.**, a corporation organized and existing under the laws of the State of Iowa and qualified to do business in the State of New York as a foreign corporation, having an address at 1 Blue Bunny Drive, Le Mars, IA 51031 (the "Lessee"), and the **COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an address at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the "Agency").

W I T N E S S E T H:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the "Enabling Act") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, expand, construct, reconstruct, lease, improve, maintain, equip, furnish, and dispose of one or more projects for the purpose of promoting, developing, encouraging, and assisting in the acquisition, expansion, construction, reconstruction, improvement, maintaining, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities, and thereby advance the job opportunities, general prosperity, and economic welfare of the people of the State of New York;

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act and Chapter 71 of the 1972 Laws of New York, as amended (together with the Enabling Act, hereinafter referred to as the "Act"), the Agency, which has been created and established pursuant thereto for the benefit of the County of Chautauqua, proposes to undertake the Project (as defined in the hereinafter defined Agency Lease);

WHEREAS, the Agency on behalf of Lessee intends to acquire a leasehold interest in certain land more particularly described on Exhibit A attached hereto (the "Land") and the improvements that currently exist thereon (the "Improvements");

WHEREAS, Lessee is the holder of fee simple title to the Land and the Improvements (collectively, the "Facility");

WHEREAS, Lessee will lease the Facility to the Agency pursuant to a Company Lease Agreement dated as of the date hereof entered into between Lessee, as lessor, and the Agency, as lessee (as amended, modified, restated or replaced from time to time, the "Company Lease");

WHEREAS, the Agency proposes to undertake the Project as an authorized project under the Act and to sublease the interest of the Agency to Lessee pursuant to an Agency Lease Agreement (Uniform Project Agreement) dated as of the date hereof entered into between the Agency, as sublessor, and Lessee, as sublessee (as amended, modified, restated or replaced from time to time, the "Agency Lease");

WHEREAS, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York, upon a proper filing, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control;

WHEREAS, the Agency's grant of real property tax exemptions is guided by its Uniform Tax Exemption Policy and Guidelines ("UTEP") duly adopted by the members of the Agency. Lessee's request for a real property tax exemption with respect to the Facility constitutes a deviation from the UTEP;

WHEREAS, in response to the Project's proposed deviation from the UTEP, (A) the Administrative Director/CEO of the Agency caused notice of a meeting of the Agency (the "IDA Meeting") with respect to the proposed deviation from the UTEP to be mailed on December 7, 2023 to the chief executive officer of each Taxing Entity (as hereinafter defined) and such other persons as are required by applicable law; (B) the members of the Agency held the IDA Meeting on December 19, 2023, (C) the members of the Agency reviewed any comments or correspondence received regarding the proposed deviation from the UTEP, and (D) the members of the Agency passed a resolution on December 19, 2023 approving such proposed deviation (the "Deviation Resolution"); and

WHEREAS, by resolution adopted by the members of the Agency on December 19, 2023 (the "Authorizing Resolution"), the Agency determined to proceed with the Project, to grant the Financial Assistance (as defined in the Agency Lease) and to enter into the "straight lease transaction" (as such quoted term is defined in the Act) contemplated by the Agency Lease, this Agreement and the other Transaction Documents (terms not defined herein are defined in the Agency Lease);

NOW, THEREFORE, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, Lessee and the Agency formally covenant and agree as follows:

Section 1. Tax-Exempt Status of Facility

(a) Application. Lessee shall complete, and the Agency shall endeavor to submit to be filed, an application for tax exemption pursuant to Section 412-a of the Real Property Tax Law with respect to the Facility. Such application shall be submitted to the tax assessor of each of the various taxing entities having jurisdiction over the Facility, including without limitation, the County of Chautauqua, the City of Dunkirk and the City of Dunkirk Central School District (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the "Taxing Entities" and individually, as a "Taxing Entity"). The Facility shall not be entitled to

exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the first taxable status date of such Taxing Entity occurring subsequent to the Agency becoming the holder of a leasehold estate in the Facility, the filing by the Agency of the appropriate applications for tax exemption, and the acceptance of such applications by the appropriate tax assessors (such date, the "PILOT Commencement Date"). Subject to acceptance of such application by the appropriate tax assessors, it is the intention of the parties that the PILOT Commencement Date shall be the first day of the 2024/25 School Tax Year for purposes of School Taxes and the first day of the 2025 General Tax Year for purposes of General Taxes.

(b) RESERVED.

(c) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Agency Lease, Lessee will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility.

(d) Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Agency or Lessee on the rents under the Agency Lease or the Company Lease or the occupancy of or any interest of the Agency or Lessee in the Facility or any part thereof or any personal property used in connection with the business conducted and located therein, the amount of any tax, assessment or charges shall be paid by Lessee. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid directly by Lessee and shall not be credited against nor affect in any manner any payment in lieu of general real estate taxes in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

Section 2. Payments.

(a) Tax Payments. Prior to the Facility becoming entitled to exempt status on the PILOT Commencement Date as set forth in Section 1(a) above, the applicable real estate tax levies on the Facility shall be payable in full by Lessee to the applicable Taxing Entity.

(b) RESERVED

(c) From the PILOT Commencement Date through and including the last day of the tenth (10th) fiscal tax year thereafter (such date, the "Abatement Expiration Date" and such period, the "PILOT Term"), the Company shall make payments in lieu of general real estate taxes to the Agency for the account and benefit of each Taxing Entity with respect to the Facility as follows (collectively, the "PILOT Payments"):

PILOT Year	Annual PILOT Payment
1	$196,303
2	$198,266
3	$200,249

4	$202,251
5	$204,274
6	$206,316
7	$208,380
8	$210,463
9	$212,568
10	$214,694

(d) Maximum Payment. Notwithstanding anything to the contrary herein, the PILOT Payments shall not exceed the amount Lessee would pay under normal calculations for any tax year with respect to the Facility. Hence, if the general real estate tax (calculated as if Lessee were the record owner of the Facility and the Agency held no interest therein, and the Facility were assessed at full value for purposes of taxation) otherwise due any Taxing Entity decreases due to a reduction in tax rates or otherwise below the PILOT Payments specified in Section 2(c) above, then the PILOT Payments due that Taxing Entity shall be decreased to equal the tax that would otherwise be due. If, however, a PILOT Payment has been so reduced, and the taxes that would otherwise be due subsequently increase, the PILOT Payment shall similarly increase, but not in excess of the amount specified in Section 2(c) above. Except as set forth in this paragraph, such PILOT Payments shall not be reduced during the Term of the PILOT, regardless of any reduction in the underlying assessment for the Facility.

(e) Payments to Agency. All PILOT Payments shall be made by Lessee directly to the Agency promptly upon receipt of billings from the Agency at the address set forth in such billings, or at such other address as the Agency may specify in writing to Lessee. It is understood that the Agency shall receive the PILOT Payments in trust for each of the Taxing Entities, and the Agency shall forward such payments to each such Taxing Entity within thirty (30) days after receipt thereof. All PILOT Payments hereunder shall be allocated among the Taxing Entities in proportion to the amount of real property and other taxes and assessments that would have been received by each Taxing Entity had the Improvements not been tax exempt due to the status of the Agency as of the Closing Date. This provision constitutes the formula for the calculation of the amounts of the PILOT Payments for each Taxing Entity as required by Section 859-a(6) of the General Municipal Law.

(f) Due Dates; Interest; and Penalties. The Agency will bill Lessee for the respective PILOT Payments as if the Facility were on the tax rolls at the time when taxes for each Taxing Entity are due. All payments are net if paid on or before the due dates listed below. If any PILOT Payment is not made on or before the due date, such payment shall be delinquent and the unpaid amount(s) shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Entities and as further provided in the General Municipal Law, including Section 874(5) thereof, which currently provides for a late charge equal to five (5%) percent of the unpaid amount for the first month, and for each month, or part thereof, that the payment is delinquent beyond the first month, interest shall accrue to and be paid to the Taxing Entities on the total amount due plus an additional late charge equal to one

(1%) percent per month of the total amount payable. Lessee agrees to pay all such late charges, interest and penalties when due.

As of the date of this Agreement, the due dates for the PILOT Payment are as follows:

County Taxes:	January 30th
School Taxes:	September 30th
City Taxes:	April 30th

(g) Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the term of this Agreement, in the event that the Agency's interest in any portion of the Facility is sold or disposed of by the Agency, the transferees thereof will thereafter pay the real property taxes on the portion of the Land and the Improvements as may be located on the portion of the Land sold as may be required by applicable law.

(h) Sale; Lessee's Obligation. In the event that the Agency terminates its interest in and/or transfers the Facility to any party other than Lessee, Lessee's obligation for PILOT Payments shall be prorated to the date of the closing of the transaction and thereupon all obligations of Lessee for PILOT Payments shall cease, but the Agency shall take such steps with the purchaser other than Lessee to assure that each of the Taxing Entities shall suffer no loss of revenue until the Facility can be placed back on the tax rolls and taxes levied and billed therefor.

(i) PILOT Payments after Term of the PILOT. From and after the end of the Term of the PILOT, and until the Agency's interest in the Facility is conveyed to Lessee pursuant to the terms of the Agency Lease and the Facility has been returned to the tax rolls as fully taxable property, Lessee shall make PILOT Payments equal to one hundred percent (100%) of the amount of real property taxes and assessments that would have been levied and/or assessed against or with respect to the Facility as if the Facility were owned by Lessee and the Agency were not otherwise involved in the Project.

Section 3. Jobs. Lessee covenants and agrees that it shall, throughout the term of this Agreement, maintain or cause to be maintained the Minimum Employment Requirement (as defined in the Agency Lease) as and when required by the Agency Lease. Lessee agrees to deliver to the Agency on each annual anniversary of this Agreement a written report describing its compliance or noncompliance with the provisions of this Section 3 and to permit the Agency to audit the books and records of Lessee supporting such report.

Section 4. Effective Date; Duration of Agreement. This Agreement shall become effective upon the delivery of the Agency Lease and the Company Lease by Lessee and the Agency and shall continue in effect until the earlier of (i) last day prior to the taxable status date following the final tax fiscal year of a Taxing Entity in which a PILOT Payment is payable pursuant to Section 2(c) above, or (ii) the date on which the Agency's interest in the Facility is terminated pursuant to the Agency Lease or this Agreement.

Section 5. Events of Default. The following shall constitute "Events of Default" under this Agreement:

(a) failure by Lessee to make any payment specified herein and the continuance of such failure for a period of ten (10) days following written notice from the Agency or any Taxing Entity;

(b) failure by Lessee to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days following written notice thereof by the Agency to Lessee; and/or

(c) default in the terms of or the occurrence of an Event of Default under any agreement entered into between the Agency and Lessee simultaneously herewith or prior to the Closing Date (beyond any applicable grace period).

Upon the occurrence and continuance of an Event of Default hereunder, Lessee shall be required to make payments in lieu of general real estate taxes levied by the Taxing Entities on the Facility (or those portions of the Facility then exempt) as if it were owned by Lessee and the Agency held no interest therein, such amounts to commence to be paid for the period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the jurisdiction(s) in which the Facility is (or those portions of the Facility then exempt are) located.

Upon the occurrence and continuance of an Event of Default hereunder, the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments in default from Lessee, together with all the costs and expenses of the Agency, its successors or assigns, paid or incurred in such recovery (including court costs and attorney's fees and expenses) and interest at the rate specified in Section 2(f) above. In addition, the Agency shall have the right to terminate the Agency Lease and the Company Lease at any time.

The Agency, in enforcing payment by Lessee of said amounts, may take whatever action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every Event of Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises. Lessee irrevocably agrees that any suit, action, or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York, or the courts of United States District Court for the Western District of New York, consents to the jurisdiction of each such court in any such suit, action, or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action, or proceeding in any of such courts.

No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or 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 by the Agency. Further, no payment by Lessee or

receipt by the Agency or a Taxing Entity of a lesser amount than the correct amount or manner of payment due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to effect or evidence an accord and satisfaction, and the Agency and/or any Taxing Entity may accept any check or payment as made without prejudice to the right to recover the balance or pursue any other remedy in this Agreement or otherwise provided at law or in equity

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not Lessee makes such payments. Lessee hereby agrees to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency from and against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

Section 6. Covenants by the Agency. The Agency covenants that, unless otherwise required by law, the Agency will not enact or adopt any laws, ordinances, rules, or regulations imposing any taxes, assessments, or other charges or payments on the Facility or Lessee's subleasehold interest or personal property therein, or its use or occupancy thereof or its gross receipts or income therefore, except as Lessee and the Agency have herein agreed, or may agree from time to time in the future.

Section 7. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given, if by delivery, when delivered and, if delivered by mail, on the second day following the day on which mailed by certified mail, postage prepaid, addressed as follows:

To the Agency:	County of Chautauqua Industrial Development Agency 201 West Third Street Suite 115 Jamestown, NY 14701 Attention: Administrative Director
With a copy to:	Phillips Lytle LLP 201 West Third Street, Suite 205 Jamestown, NY 14701 Attention: Milan K. Tyler, Esq.
To Lessee:	Wells Enterprises, Inc. 1 Blue Bunny Drive Le Mars, IA 51031 Attention: Dick Kennedy
With a copy to:	Wright Calimeri, PLLC 525 Fairmount Avenue Jamestown, NY 14701 Attention: Edward P. Wright, Esq.

The Agency or Lessee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 8. Assignment of Agreement. This Agreement shall be binding upon the successors and assigns of Lessee, but no assignment shall be effective to relieve Lessee of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency. The rights and obligations of Lessee hereunder may not be assigned except in connection with a permitted assignment of Lessee's interest in and to the Agency Lease. Nothing herein is intended to be for, or to inure to, the benefit of any Person other than the parties hereto and the Taxing Entities.

Section 9. Independent Agreement. Notwithstanding any other provision of this Agreement, including the recitals hereof, the parties agree that the Agency Lease and Company Lease executed between the parties hereto shall be separate and independent documents from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Agency Lease and the Company Lease shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Agency Lease and the Company Lease are the only considerations and terms for which the parties hereto have executed this Agreement.

Section 10. Amendments. This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency, Lessee and any Taxing Entity which is affected by the amendment.

Section 11. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12. Prior Agreements; Counterparts. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 13. Delivery of Agreement. The Agency agrees to use its best efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution by the Agency.

Section 14. Applicable Law. This Agreement shall be governed and construed under the internal laws of the State of New York, as the same may be in effect from time to time, without regard to principles of conflicts of law.

Section 15. WAIVER OF JURY TRIAL. THE AGENCY AND LESSEE HEREBY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING IN CONNECTION WITH THIS AGREEMENT.

[Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Agency and Lessee have executed this Agreement as of the date first above written.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Richard E. Dixon
Chief Financial Officer

WELLS ENTERPRISES, INC.

By: _____
Jeremy Pinkerman
Chief Financial Officer

By: _____
Mark Meyer
Chief Operating Officer

By: _____
Liam Killeen
Chief Executive Officer

[Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the Agency and Lessee have executed this Agreement as of the date first above written.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Richard E. Dixon
Chief Financial Officer

WELLS ENTERPRISES, INC.

By: _____
Jeremy Pinkerman
Chief Financial Officer

By: _____
Mark Meyer
Chief Operating Officer

By: _____
Liam Killeen
Chief Executive Officer

[Signature Page to PILOT Agreement]

IN WITNESS WHEREOF, the Agency and Lessee have executed this Agreement as of the date first above written.

COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Richard E. Dixon
Chief Financial Officer

WELLS ENTERPRISES, INC.

By: _____
Jeremy Pinkerman
Chief Financial Officer

By: _____
Mark Meyer
Chief Operating Officer

By: _____
Liam Killeen
Chief Executive Officer

[Signature Page to PILOT Agreement]

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

On the 15 day of February, 2024, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard E. Dixon, personally known to me or proved to me on the basis of satisfactory evidence to by the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

Notary Public

GREGORY LYLE PETERSON, #02PE4645823
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires June 30, 2027

STATE OF)
) SS.:
COUNTY OF)

On the ___ day of February, 2024, before me, the undersigned, a Notary Public in and for said state, personally appeared Jeremy Pinkerman, personally known to me or proved to me on the basis of satisfactory evidence to by the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

Notary Public

[Acknowledgment Page to PILOT Agreement]

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

On the ___ day of February, 2024, before me, the undersigned, a Notary Public in and for said state, personally appeared Richard E. Dixon, personally known to me or proved to me on the basis of satisfactory evidence to by the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

_____
Notary Public

STATE OF Missouri)
) SS.:
COUNTY OF Stone)

On the 23rd day of February, 2024, before me, the undersigned, a Notary Public in and for said state, personally appeared Jeremy Pinkerman, personally known to me or proved to me on the basis of satisfactory evidence to by the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

Alisha Fish
Notary Public

ALISHA FISH
Notary Public – Notary Seal
STATE OF MISSOURI
Stone County
My Commission Expires Nov. 19, 2024
Commission #12686469

[Acknowledgment Page to PILOT Agreement]

STATE OF Iowa)
) SS.:
COUNTY OF Plymouth)

On the 20 day of February, 2024, before me, the undersigned, a Notary Public in and for said state, personally appeared Mark Meyer, personally known to me or proved to me on the basis of satisfactory evidence to by the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

Barbara A. Kreitzer
Commission number
My Commission Expires
November 13, 2024

Barbara A. Kreitzer
Notary Public

STATE OF Iowa)
) SS.:
COUNTY OF Plymouth)

On the 21st day of February, 2024, before me, the undersigned, a Notary Public in and for said state, personally appeared Liam Killeen, personally known to me or proved to me on the basis of satisfactory evidence to by the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed this instrument.

Notary Public

NOTARIAL SEAL IOWA

Kelly K. Salker
Iowa Notarial Seal
Commission number
199111
My Commission Expires
10/26/25

[Acknowledgment Page to PILOT Agreement]

Doc #1740623.2

EXHIBIT A

LAND DESCRIPTION

(96.07-2-18; 96.07-2-23; 96.07-2-24; 96.07-2-25; 96.07-2-26; 96.07-2-27; 96.07-2-28; 96.07-2-32; 96.07-2-36; 96.07-2-37; 96.07-2-38; 96.07-2-39; 96.07-2-40; 96.07-2-41; 96.07-2-42; 96.07-2-43; 96.07-2-44; 96,07-2-45; 96.07-2-46)

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Dunkirk, County of Chautauqua and State of New York and more particularly described as follows:

Beginning in the easterly line of Main Street (formerly known as Lion Street) as now laid out and occupied (66 feet wide) at the intersection thereof with the southerly line of lands conveyed to Dunkirk Ice Cream Company Inc. by deed recorded in Liber 1234 of Deeds at Page 1 in the Office of the Chautauqua County Clerk; thence North 02° 30' East (geodetic bearing) a distance of 592.20 feet along said easterly line of Main Street to the intersection thereof with the northwesterly line of lands conveyed to Dunkirk Ice Cream Company Inc. by deed recorded in Liber 2246 of Deeds at Page 7 in the Office of the Chautauqua County Clerk; thence northeasterly along said northwesterly line of last mentioned Dunkirk Ice Cream Company Inc. lands following a regular curve to the the left having a radius of 1,435 feet and a chord bearing of North 55° 56' East and a chord distance of 877.90 feet to the intersection of said northwesterly line of last mentioned Dunkirk Ice Cream Company Inc. lands with the westerly line of lands of Conrail (now or formerly); thence southerly along said westerly line of Conrail lands following a regular curve to the left having a radius of 1,360 feet and a chord bearing of South 05° 59' West and a chord bearing of 241.17 feet to a point of tangent; thence South 00° 54' West a distance of 125.22 feet along said westerly line of Conrail lands to the intersection thereof with the northwesterly line of Ice Cream Drive (formerly known as Doughty Street Extension) as conveyed to Chautauqua County Industrial Development Agency (IDA) by deed recorded in Liber 2079 of Deeds at Page 441 in the Office of the Chautauqua County Clerk; thence North 37° 24' East a distance of 491.54 feet along said northwesterly line of Ice Cream Drive to a deflection point therein; thence South 89° 21' East a distance of 15.90 feet along said northwesterly line of Ice Cream Drive to a deflection point therein; thence North 40° 21' East a distance of 24330 feet along said northwesterly line of Ice Cream Drive to the intersection thereof with the southwesterly line of Lamphere Street (also known as New York State Route 60) as now laid out and occupied; thence South 23° 08' East, a distance of 57.40 feet along said southwesterly line of Lamphere Street to the northerly corner of lands appropriated by the State of New York by instrument recorded in Liber 1279 of Deeds at Page 470 in the Office of the Chautauqua County Clerk; thence South 31° 10' West a distance of 82.5 feet along the northwesterly line of said New York State lands to the southwesterly corner thereof; thence South 33° 51' West a distance of 73.9 feet along the southeasterly line of Ice Cream Drive to a deflection point therein; thence South 89° 13' West a distance of 9.5 feet along the southeasterly line of Ice Cream Drive to a deflection point therein; thence South 37° 32' West a distance of 551.28 feet along said southeasterly line of Ice Cream Drive to the intersection thereof with the easterly line of lands of Conrail (now or formerly); thence South 00° 54' West a distance of

33.62 feet along said easterly line of Conrail lands to the intersection thereof with the northeasterly extension of the southeasterly line of Doughty Street Extension (now or formerly); thence South 37° 24' West a distance of 110.96 feet along said northeasterly extension of the southeasterly line of Doughty Street Extension to the intersection thereof with said westerly line of Conrail lands; thence South 00° 54' West a distance of 258.37 feet along said westerly line of Conrail lands to the intersection thereof with the southeasterly line of lands conveyed to Dunkirk Ice Cream Company Inc. by deed recorded in Liber 1228 of Deeds at Page 42 in the Office of the Chautauqua County Clerk; thence southwesterly along the southeasterly line of last mentioned Dunkirk Ice Cream Company Inc. lands following a regular curve to the right having a radius of 307.90 feet and a chord bearing of South 64° 37' West and a chord distance of 292.12 feet to a point in the southerly line of said last mentioned Dunkirk Ice Cream Company Inc. lands; thence North 86° 58' West a distance of 24 feet along said southerly line of last mentioned Dunkirk Ice Cream Company Inc. lands to the intersection thereof with the southeasterly line of said Chautauqua County Industrial Development Agency (IDA) lands; thence South 37° 24' West a distance of 129.10 feet along said southeasterly line of Chautauqua County Industrial Development Agency (IDA) lands to a deflection point therein; thence South 02° 30' West a distance of 192.97 feet along said southeasterly line of Chautauqua County Industrial Development Agency (IDA) lands to a deflection point therein; thence North 87° 30' West a distance of 149.00 feet along said southeasterly line of Chautauqua County Industrial Development Agency (IDA) lands to a deflection point therein; thence North 02° 30' East a distance of 120.00 feet along said southeasterly line of Chautauqua County Industrial Development Agency (IDA) lands to the intersection thereof with said southerly line of first mentioned Dunkirk Ice Cream Company Inc. lands; thence North 89° 44' West a distance of 201.00 feet along said southerly line of first mentioned Dunkirk Ice Cream Company Inc. lands to the point or place of beginning.

(96.07-4-16; 96.07-4-26; 96.07-4-33)
ALSO, ALL THAT TRACT OR PARCEL OF LAND situate in the City of Dunkirk, County of Chautauqua and State of New York, being part of Blocks 415, 416, 417, and 418 as shown on the Doughty Map of the City of Dunkirk, and more particularly described as follows:

Beginning in the easterly line of Park Avenue (66 feet wide) as now laid out and occupied at the point located 150 feet northerly along said easterly line of Park Avenue from the intersection thereof with the northerly line of Newton Street (50 feet wide) as now laid out and occupied; thence South 89° 38' East (geodetic bearing) along a line parallel with and 150 feet northerly by rectangular measurement from said northerly line of Newton Street a distance of 605 feet to a point in the center line of unopened Leopard Street (40 feet wide); thence North 2° 30' East a distance of 91 feet along said center line of Leopard Street to the intersection thereof with the northerly line of lands of H. Phillips (now or formerly); thence South 89° 29' East a distance of 180 feet along said northerly line of H. Phillips lands to the intersection thereof with the westerly line of Main Street (formerly known as Lion Street) as now laid out and occupied (66 feet wide); thence North 2° 30' East a distance of 80 feet along said westerly line of Main Street to a point; thence North 89° 29' West a distance of 180 feet to a point in the said center line of Leopard Street; thence North 2° 30' East a distance of 174.1 feet along said center line of Leopard Street to a point located 100 feet southerly by rectangular measurement from the southerly line of Marsden Street (50 feet wide) as now laid out and occupied; thence South 87° 02' West a

distance of 134.5 feet along a line located parallel with and 100 feet southerly by rectangular measurement from said southerly line of Marsden Street to a point in the westerly line of lands conveyed from Battaglia to Strubing by deed recorded in Liber 1082 of Deeds at page 259 in the Office of the Chautauqua County Clerk; thence North 2° 51' East a distance of 100.5 feet along said westerly line of Strubing lands to the intersection thereof with said southerly line of Marsden Street; thence South 87° 02' West a distance of 77 feet along said southerly line of Marsden Street to the intersection thereof with the center line of (unopened) Deer Street (66 feet wide); thence South 3° 41' West a distance of 100.7 feet along said center line of Deer Street to a point located 100 feet southerly by rectangular measurement from said southerly line of Marsden Street; thence South 87° 02' West a distance of 396.3 feet along a line located parallel with and 100 feet southerly by rectangular measurement from said southerly line of Marsden Street to a point in said easterly line of Park Avenue; thence South 2° 09' West a distance of 309.6 feet along said easterly line of Park Avenue to the point or place of beginning.

(96.07-2-18)
ALSO, ALL THAT TRACT OR PARCEL OF LAND situate in the City of Dunkirk, County of Chautauqua and State of New York, being part of Block 444 according to the Doughty Map of the City of Dunkirk and more particularly described as follows:

BEGINNING in the southwesterly line of Lamphere Street (also known as New York State Route 60) as now laid out and occupied at the intersection thereof with the south line of the City of Dunkirk; thence South 89° 153' West (geodetic bearing) a distance of 127.4 feet along said south line of the City of Dunkirk to the intersection thereof with the southeasterly line of Ice Cream Drive (formerly known as Doughty Street Extension) as conveyed to the Chautauqua County Industrial Development Agency (IDA) by deed recorded in Liber 2079 of Deeds at Page 441 in the Office of Chautauqua County Clerk; thence North 33° 51' East, a distance of 73.9 feet along said southeasterly line of Ice Cream Drive to the southwesterly corner of lands appropriated by the State of New York by instrument recorded in Liber 1279 of Deeds at Page 470 in the Office of the Chautauqua County Clerk; thence North 66° 23' East a distance of 55.8 feet along the southerly line of said New York State lands to a point in said southwesterly line of Lamphere Street; thence South 23° 10' East a distance of 89.2 feet along said southwesterly line of Lamphere Street to the point or place of beginning.

EXHIBIT I

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

See Attached

EXHIBIT J

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

I, Richard E. Dixon, as Chief Financial Officer of the County of Chautauqua Industrial Development Agency (the "Agency"), DO HEREBY STATE, as follows:

1. The Agency is an industrial development agency duly established under Title One of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 71 of the Laws of 1972 the State of New York (collectively, the "Act") and is a corporate governmental agency constituting a public benefit corporation of the State of New York.

2. In accordance with the Act, the Agency intends to undertake a project (the "Project") on behalf of [___] (the "Company") consisting of the following: [insert project description]. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agency Lease Agreement (Uniform Project Agreement) dated as of [__] 1, 2024 between the Agency and the Company (the "Agency Lease").

3. Pursuant to the requirements of Section 224-a(8)(d) of the New York State Labor Law, the Agency hereby identifies the nature and dollar value of the following "public funds" being provided by the Agency to the Company with respect to the Project (collectively, the "Public Funds"):

a. Savings from mortgage recording tax exemptions in the maximum amount of $_____;

b. Savings from sales and use tax exemptions in the maximum amount of $_____;

c. Interest rate savings on tax-exempt and/or taxable obligations issued by the Agency with respect to the Project, which the Agency estimates to have a dollar value of $_____; and

d. Savings from payments in lieu of real property taxes, which the Agency estimates to have a dollar value of $_____.

4. The following portions of the Public Funds are excluded under Section 224-a(3) of the New York State Labor Law for purposes of calculating the portion of "construction work done under contract which is paid for in whole or in part out of the public funds" (as such quoted term is used in Section 224-a(1) of the New York State Labor Law): _____.

5. THIS STATEMENT OF DETERMINATION IS BEING DELIVERED TO THE COMPANY PURSUANT TO SECTION 224-a(8)(d) OF THE NEW YORK STATE LABOR

LAW AND THE COMPANY IS HEREBY NOTIFIED OF ITS OBLIGATIONS UNDER SECTION 224-a(8)(a) OF THE NEW YORK LABOR LAW.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 2024.

_____

[Name]
[Title]