

DRAFT FOR DISCUSSION PURPOSES ONLY
DRAFT DATED: APRIL 2, 2024

CLOSING ITEM NO.: A-3

LEASE AGREEMENT

Between

CITY OF HUDSON INDUSTRIAL DEVELOPMENT AGENCY

and

PROVIDENCE AND SCHUYLER APARTMENTS PRESERVATION LLC

Dated as of April [__], 2024

PROVIDENCE AND SCHUYLER APARTMENTS PRESERVATION LLC PROJECT

Affecting That Real Property Located at:
20 Columbia Street and 119 Columbia Street, Hudson, New York 12534
City of Hudson, Columbia County
Tax Map ID Nos. 109.35-2-51 and 109.35-2-1
As more particularly described in Exhibit A to this instrument

THIS LEASE AGREEMENT CONSTITUTES A SECURITY AGREEMENT
UNDER THE UNIFORM COMMERCIAL CODE OF THE STATE OF NEW
YORK

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LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of April [], 2024 (the “Lease Agreement”), is by and between the **CITY OF HUDSON INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation organized and existing under the laws of the State of New York with offices at City Hall, 520 Warren Street, Hudson, New York 12534 (the “Agency”) and **PROVIDENCE AND SCHUYLER APARTMENTS PRESERVATION LLC**, a limited liability company duly organized and existing under the laws of the State of New York, with offices at 641 Lexington Avenue, 15th Floor, New York, New York 10022 (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”) has been heretofore enacted by the Legislature of the State of New York for the purposes, among others, of providing for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York, to promote, develop, encourage, assist and 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, the Agency has been established under said Enabling Act pursuant to Chapter 677 of the Laws of 1975 of New York, as amended, constituting Section 902-b of said General Municipal Law (as amended, the Enabling Act and such chapter are herein collectively called the “Act”) and is authorized to acquire the real property and interests therein, buildings and other improvements thereon in connection therewith for the purposes set forth above, and to lease the same as herein more particularly described; and

WHEREAS, the Company was established as a limited liability company of the State pursuant to the certain Articles of Organization filed March 24, 2023; and

WHEREAS, the Company has presented a verified application to the Agency (as amended and supplemented, the “Application”), a copy of which is on file with the Agency, requesting the Agency’s assistance with a project described herein located on parcels of land totaling approximately 3.7 acres located at 20 Columbia Street and 119 Columbia Street in the City of Hudson, New York, more particularly described at Exhibit A attached hereto; and

WHEREAS, the Company has requested the Agency’s assistance with a proposed project (the “Project”) described as follows: the acquisition, reconstruction, rehabilitation, and equipping of an existing multifamily housing complex consisting of: (A) the acquisition by the Agency of title to or a leasehold (or other) interest in an approximately 1.20-acre site with existing improvements at 119 Columbia Street, Hudson, New York, Tax ID 109.35-2-51, and in an approximately 2.50-acre site with existing improvements at 20 Columbia Street, Hudson, New York, Tax ID 109.35-2-1 (collectively, the “Land”); (B) rehabilitation of the existing approximately 152-unit housing complex (the “Improvements”); and (C) the acquisition of and installation in and around the Improvements of certain machinery, equipment and other items of tangible personal property (the “Equipment” and, collectively with the Land and the

Improvements, the “Facility”), with an estimated total cost of \$23,089,654; the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales and use taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the “Financial Assistance”); and the lease (with an obligation to purchase) or sale of the Facility to the Company; and

WHEREAS, pursuant to the Act and the resolutions adopted on August 2, 2023, September 6, 2023, and April [3], 2024 (collectively, the “Resolution”), the Agency has approved the undertaking of the Project by the Company, as agent of the Agency, and the Agency has approved in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (A) an exemption from all New York State and local sales and compensating use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, renovation, construction, reconstruction, rehabilitation or installation of the Facility; (B) an exemption from deed transfer taxes on any real estate transfers, if any; (C) an exemption from mortgage recording tax; and (D) a partial real property tax abatement through a Payment in Lieu of Tax Agreement (collectively, the sales and use tax exemption benefit, the transfer tax exemption, the mortgage recording tax benefit and the real property tax benefit are hereinafter collectively referred to as the “Financial Assistance”); and

WHEREAS, the Financial Assistance to be provided pursuant to this Lease Agreement and the other Project Documents defined herein deviates from the Agency’s Uniform Tax Exemption Policy, has been approved by the Agency after the notice and hearing required by the Act, and does not require the consent of the Taxing Jurisdictions; and

WHEREAS, the Agency has agreed to acquire a leasehold interest in the Land and Facility pursuant to a Company Lease Agreement from the Company to the Agency dated as of the date hereof (the “Company Lease”); and

WHEREAS, the parties desire to: (1) enter into this Lease Agreement with respect to the Facility pursuant to which the Agency will sublease its interest in the Facility to the Company and the Company will agree to undertake the Project, and (2) enter into the Uniform Agency Project Agreement providing for certain Financial Assistance with respect to the Facility subject to certain conditions; and

WHEREAS, in order to define the obligations of the Company regarding its ability to utilize the Agency’s sales and use tax exemption benefit as agent of the Agency to acquire, construct, renovate and equip the Facility and to undertake the Project, the Agency and the Company will enter into an Agent Agreement, dated as of the date hereof (the “Agent Agreement”); and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolution, that the Company provide assurances with respect to the terms and conditions under which Financial Assistance shall be provided to the Company as set forth in the Uniform Agency Project Agreement; and no Financial Assistance shall be provided to the Company prior to the effective date of the Uniform Agency Project Agreement; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of the City of Hudson, New York by undertaking the obligations of the lessee under the Lease Agreement and the construction, reconstruction, rehabilitation and operation of the Project; and

WHEREAS, the Company makes the representations, covenants and warranties set forth herein and in the Uniform Agency Project Agreement to induce the Agency to enter into this Lease Agreement; and

WHEREAS, all things necessary to constitute this Lease Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Lease Agreement have in all respects been duly authorized;

NOW, THEREFORE, in consideration of covenants herein contained, it is mutually agreed as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1. DEFINITIONS. The terms defined in this Section 1.1 (unless a different meaning clearly appears from the context) for all purposes of this Lease Agreement shall have the respective meanings specified in this Section 1.1.

“Accountant” means an independent certified public accountant or a firm of independent certified public accountants which is not a full-time employee of the Company.

“Act” means collectively Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 677 of the 1975 Laws of New York, as amended, constituting Section 902-b of said General Municipal Law.

“Additional Collateral” means additional property described at Exhibit D attached hereto, if any, which additional property is included in the Mortgage solely as security for the obligations of the Company to the Lender, provided that none of the Project shall be constructed on such additional property and such additional property shall not be deemed to be part of the Project for purposes of this Lease Agreement.

“Agency” means (A) the City of Hudson 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 City of Hudson Industrial Development Agency or its successors or assigns may be a party.

“Agent Agreement” means that certain Agent Agreement dated as of the date hereof between the Agency and the Company, as such agreement may be amended or supplemented from time to time.

“Assignment of Company Lease” means the assignment from the Agency to the Company with respect to the Agency’s interest in and to the Company Lease, substantially in the form attached as Exhibit C to the Agreement.

“Authorized Representative of the Company” means the chief executive officer of the managing member of the Company, or such other Person or Persons designated to act on behalf of the Company by certificate furnished to the Agency and signed on behalf of the Company by the chief executive officer of its managing member, or such other Person as may be authorized by resolution of the Company.

“Authorized Representative of the Agency” means the Chair, Vice Chair, or Secretary of the Agency or any other Person or Persons designated to act on behalf of the Agency by certificate signed by any of such officers of the Agency.

“Bill of Sale to Agency” means the bill of sale delivered on the Closing Date from the Company to the Agency conveying all of the Company’s interest in the Equipment to the Agency.

“Business Day” means any day other than a Saturday, Sunday, legal holiday or a day on which banking institutions located in the State are authorized or required by law to remain closed.

“City” means the City of Hudson, a municipal corporation of the State of New York having its offices at City Hall, 520 Warren Street, Hudson, New York 12534, and its successors and assigns.

“Closing Date” means the date of the Closing, April [], 2024.

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

“Company” means Providence and Schuyler Apartments Preservation LLC, a limited liability company duly formed and validly existing pursuant to the laws of this State, or successors or assigns to the extent permitted pursuant to this Lease Agreement.

“Company Lease” means the Company Lease Agreement dated as of the date hereof from the Company to the Agency with respect to the Land and the Facility.

“Completion Date” means the earlier of the date on which a certificate of occupancy has been issued with respect to the Improvements, or such date as shall be certified by the Company as the date of completion of the Project as provided in Section 4.2 of this Lease Agreement.

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

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

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

“Environmental Indemnity Agreement” means the Environmental Compliance and Indemnification Agreement dated as of the date hereof between the Company and the Agency, as such agreement may be amended or supplemented from time to time.

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

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

“Equipment” shall mean all of Company’s fixtures, machinery, equipment, building materials and items of personal property and all appurtenances intended to be acquired in connection with the completion of the Project prior to the Completion Date with the proceeds of any payment made by the Company pursuant to Section 4.3 of this Lease Agreement, and such substitutions and replacements thereof as may from time to time be made pursuant to this Lease Agreement, including without limitation all the Property described in Exhibit B attached to this Lease Agreement, but excluding all machinery, equipment and other personal property released pursuant to Section 9.3 of this Lease Agreement.

“Event of Default” means any of those events defined as Events of Default by the terms of Section 10.1 hereof.

“Facility” means, collectively, the Land, the existing improvements, if any, on said Land and all improvements thereto and thereon, including, but not limited to, all buildings and parking areas, and all equipment, materials, machinery, fixtures or furnishings that are located in or on said improvements and said Land.

“Fiscal Year” means each period of twelve (12) months commencing January 1 and ending December 31, or, at the option of the Company, any other annual accounting period adopted for the Project upon notice to the Agency.

“Governmental Authority” means the United States, the State, any other state of the United States and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them.

“Hazardous Substance” means, without limitation, any flammable, explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the

Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601 et seq.), Federal Waters Pollution Control Act, as amended (33 U.S.C. Sections 1251 et seq.), Articles 17 and 27 of the New York State Environmental Conservation Law or any other applicable Environmental Law and the regulations promulgated thereunder.

“Lease Agreement” means this lease agreement dated as of the date set forth on the cover page hereof by and between the Agency and the Company, as the same may be supplemented or amended from time to time, pursuant to which the Agency has agreed to sublease its interest in the Land and Facility to the Company on the terms set forth herein.

“Lender” means the mortgagee of a Permitted Mortgage executed by the Agency, and successors and assigns as mortgagee with respect to the Permitted Mortgage.

“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. 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, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes hereof, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Mortgage” means a Permitted Mortgage executed by the Company and the Agency with respect to the Mortgage Collateral, including the [name of mortgage] dated the date of this Lease Agreement in favor of [lender name].

“Mortgage Collateral” means (i) the Facility and (ii) the Additional Collateral, if any.

“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.

“Permitted Encumbrances” means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens to the extent permitted by Section 8.7, (C) Liens for taxes, assessments and utility charges (1) to the extent permitted by Section 6.2 (B), or (2) at the time not delinquent, and (D) any Lien on the Facility obtained through any Project Document; (E) any Permitted Mortgages; and (F) any other Lien requested by the Company in writing and consented to in writing by the Agency pursuant to due authorization of its Agency board in its discretion.

“Permitted Mortgage” means a mortgage approved and executed by the Agency in the manner set forth at Section 4.6 of this Lease Agreement.

“Person” means an individual, partnership, corporation, trust, unincorporated organization or Governmental Authority.

“PILOT Agreement” means that certain Payment In Lieu of Tax Agreement dated as of the date hereof between the Agency and the Company, as such agreement may be amended from time to time in accordance with its terms.

“Plans” means the plan for improvement and use of the Facility located on the Land, as described in the Application and the Resolution, as it may be modified with the approval of the Agency pursuant to Section 4.1 hereof.

“Prohibited Person” shall mean:

(i) any Person (A) that is in default or in breach, beyond any applicable grace period, of its obligations under any material written agreement with the City or the Agency, 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 period, of its obligations under any material written agreement with the City or the Agency, unless such default or breach has been waived in writing by the City or the Agency, respectively;

(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;

(iii) any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof; or

(iv) any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended (including the Arms Export Control Act of 1979, as amended).

“Project Documents” means the Company Lease, this Lease Agreement, the Uniform Agency Project Agreement, the Environmental Compliance and Indemnity Agreement, the Agent

Agreement, the PILOT Agreement, the Regulatory Agreement and any other document now or hereafter executed by the Agency or the Company in connection therewith, as the same may be amended or supplemented from time to time.

“Project Purposes” means use of the Facility for the reconstruction and rehabilitation of an existing multifamily housing complex containing approximately 152 units, conforming with the requirements of Exhibit G of the Uniform Agency Project Agreement.

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

“Regulatory Agreement” means the Agency Regulatory Agreement dated as of the date set forth on the cover page hereof, by and between the Agency and the Company, as the same may be supplemented or amended from time to time, pursuant to which the Company has agreed to comply with affordability and rent regulations set forth therein in the manner required by the Resolution.

“Related Operator” shall mean an entity duly organized under the laws of the State of New York, provided that such entity is not a Prohibited Person, the membership of such entity is owned at least 51% by the members of the Company, and such entity has an outstanding agreement with the Company for the purpose of operating one or more of the Project Purposes described in Section 3.02 of the Lease Agreement and in Section 3.01 of the Uniform Agency Project Agreement.

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

“State” means the State of New York.

“Unassigned Rights” means (i) the right of the Agency in its own behalf to receive all opinions of counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or their notices or communications require to be delivered to the Agency under the Project Documents; (ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency under the Project Documents; (iii) the right of the Agency to enforce in its own behalf the obligation of the Company to complete the Facility; (iv) the right of the Agency to enforce or otherwise exercise in its own behalf all agreements of the Company with respect to ensuring that the Facility shall always constitute a qualified “project” as defined in and as contemplated by the Act; (v) the right of the Agency to require any indemnity from any Person; (vi) the right of the Agency in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 3.1, 3.4, 4.5, 5.3(B), 6.2, 6.3, 6.4, 6.5, 8.2, 8.11, and 10.4 of the Lease Agreement; (vii) the right of the Agency to enforce for its own account or the members, officers, agents and employees of the Agency for their own account pursuant to Sections 5.3(B) and 8.2 of the Lease Agreement; and (ix) the right of the Agency in its own behalf to declare an Event of Default under Article X of the Lease Agreement or with respect to any of the Agency’s Unassigned Rights.

“Uniform Agency Project Agreement” means that certain Uniform Agency Project Agreement dated as of the date hereof between the Agency and the Company, as such agreement may be amended from time to time.

SECTION 1.2. INTERPRETATION.

(A) In this Lease Agreement, unless the context otherwise requires:

(1) the terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms as used in this Lease Agreement refer to this Lease Agreement, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Lease Agreement;

(2) words of masculine gender shall mean and include correlative words of feminine and other genders, and words importing the singular number shall mean and include the plural number, and vice versa;

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

(4) any headings preceding the texts of the several articles and sections of this Lease Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Lease Agreement nor affect its meaning, construction or effect;

(5) all references herein to specific articles or sections shall be to the articles and sections of this Lease Agreement unless otherwise expressly provided;

(6) all references to time in this Lease Agreement refer to Hudson, New York time; and

(7) any certificates, letters or opinions required to be given pursuant to this Lease Agreement 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 Agreement.

(B) If any one or more of the covenants or agreements provided herein on the part of the Company or the Agency 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, subsections or sections herein should be contrary to law, 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 Agreement.

ARTICLE II

REPRESENTATIONS, WARRANTIES AND GENERAL COVENANTS

SECTION 2.1. REPRESENTATIONS BY THE AGENCY. The Agency makes the following representations:

(A) The Agency is a public benefit corporation duly organized under the Act, has the full legal right, power and authority to enter into the Project Documents to which it is a party, and has the power to carry out its obligations thereunder. By proper actions, the Agency has duly authorized the execution and delivery of, and its performance under, the Project Documents to which it is a party.

(B) The execution and delivery by the Agency of the Project Documents to which it is a party and its compliance with the terms and conditions thereof will not conflict with or result in the breach of or constitute a default under any of the terms of the Act, the bylaws of the Agency or an order, judgement, restriction, agreement or instrument to which the Agency is a party or by which it is bound, or will constitute a default by the Agency under the foregoing.

(C) The Agency has the right, power and authority to enter into this Lease Agreement.

SECTION 2.2. REPRESENTATIONS, WARRANTIES AND GENERAL COVENANTS OF COMPANY. The Company makes the following representations, warranties and covenants:

(A) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, has the power to enter into the Project Documents to which it is a party and to perform the transactions contemplated thereby and its obligations thereunder and by proper action has duly authorized the execution and delivery of such Project Documents and the performance of its obligations thereunder.

(B) No litigation at law or in equity or proceeding before any federal, State or local governmental agency involving the Company is pending or, to the best of its knowledge, after due inquiry, threatened, in which any liability of the Company is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of the Company or that would affect the Company's existence or authority to do business, the development, acquisition, rehabilitation, or operation of the Facility, the validity of any Project Document to which it is a party or the performance of any of its obligations hereunder or thereunder.

(C) The Company is not in default under, or in violation of, any indenture, mortgage, declaration, lien, lease, contract, note, order, judgment, decree or other instrument of any kind to which any of its assets are subject, and the execution, delivery and compliance by the Company with the terms and conditions of the Project Documents to which it is a party do not and will not conflict with or constitute or result in a default by the Company in any material respect under or violation of, (1) the Company's certificate of organization or operating agreement, (2) any agreement or other instrument to which the Company is a party or by which, to the Company's knowledge, it is bound, or (3) any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over

the Company or its property, and no event has occurred and is continuing which, with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

(D) The Company is not in default under, or in violation of, any provision of the Project Documents, and no event has occurred and is continuing which, with the lapse of time or the giving of notice, or both, would constitute or result in such default or violation.

(E) The Company has the right, power and authority to enter into this Lease Agreement.

(F) The Company has obtained, or will obtain in a timely manner when required, and will submit to the Agency all consents, approvals, permits, authorizations and orders of any governmental or regulatory agency that are required to be obtained by the Company as a condition precedent to the execution and delivery of the Project Documents to which it is a party or the performance by the Company of its obligations thereunder, or that are required for the acquisition, reconstruction, rehabilitation, equipping or operation of the Facility.

(G) The completion of the Project will not result in the removal of a commercial, industrial or manufacturing plant of the Company or any other proposed occupant of the Facility from one area of the State of New York to another area of the State of New York or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located in the State of New York. The financing by the Agency of the acquisition, reconstruction, rehabilitation and installation of the Facility, through the provision of the Financial Assistance described herein pursuant to the Act, will advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the City of Hudson and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act.

(H) The financial assistance (within the meaning of the Act) provided by the Agency to the Company as contemplated by this Lease Agreement is reasonably necessary to induce the Company to proceed with the Project.

(I) The Company, upon completion of the Project, will be in substantial compliance with all Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality applicable to the Project and the operation of the Facility.

(J) The Project has been designed, and upon completion will be, in substantial compliance with all applicable Federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality; and the Company intends to operate the Facility or cause the Facility to be operated in accordance with this Lease Agreement and as a qualified "project" in accordance with and as defined under the Act.

(K) The Company has filed all required Federal, State and local tax returns or any equivalent reports which the Company is required to file with Federal, State or local government entities as they have become due and no claims have been assessed by any Federal, State or local authorities and are unpaid with respect to such taxes.

(L) Neither the Company nor any member thereof nor Person which directly or indirectly controls, is controlled by, or is under common control with the Company, is a Prohibited Person.

(M) The Facility is and 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 required by the Project Documents or which the Agency advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way (1) cause the Facility not to constitute a “project”, as such quoted term is defined in the Act.

(N) Except as otherwise set forth at Schedule B attached to the Environmental Indemnity Agreement: (i) neither the Facility nor, to the Company’s actual knowledge, any property adjacent to or within the immediate vicinity of the Facility is being or has been used in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste management or disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products; (ii) underground storage tanks are not and have not been located on the Facility; (iii) the soil, subsoil, bedrock, surface water and groundwater of the Facility are free of Hazardous Substances, other than any such substances that occur naturally or otherwise authorized by the Environmental Laws; (iv) there has been no Release or threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility which through soil, subsoil, bedrock, surface water or groundwater migration could come to be located on or at the Facility, and the Company has not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Facility or any property adjacent to or within the immediate vicinity of the Facility or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility; (v) all Environmental Permits necessary for the construction, reconstruction, rehabilitation, equipping, ownership, use or operation of the Facility have been obtained and are in full force and effect; (vi) no event has occurred with respect to the Facility which, with the passage of time or the giving of notice, or both, would constitute a violation of or non-compliance with, any applicable Environmental Law or Environmental Permit; (vii) there are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future construction, reconstruction, rehabilitation, equipping, ownership, use, operation, sale, transfer or conveyance of the Facility which require any change in the present condition of the Facility or any work, repairs, construction, containment, clean up, investigations, studies, removal or remedial action or capital expenditures in order for the Facility to be in compliance with any applicable Environmental Law or Environmental Permit; and (viii) there are no actions, suits, claims or proceedings, pending or to the knowledge of the Company, threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or remedy that arise out of, relate to or result from (i) environmental conditions at, on or in the vicinity of the Facility, (ii) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit, (iii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or

within the immediate vicinity of the Facility, or (iv) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Facility or the acquisition, construction, reconstruction, rehabilitation, equipping, ownership, use, operation, sale, transfer or conveyance thereof.

(O) Neither the Company nor any member thereof nor Person which directly or indirectly controls, is controlled by, or is under common control with the Company, directly or indirectly controls, is directly or indirectly controlled by, or is under common control with, the Lender.

SECTION 2.3. PUBLIC AUTHORITIES LAW REPRESENTATIONS. The parties hereto hereby acknowledge and agree that the Project and their interest therein conveyed to the Agency under the Company Lease and conveyed by the Agency back to the Company pursuant to the terms of this Lease Agreement are not “Property” as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Project and the leasehold interests therein are securing the financial obligations of the Company. The Project and the leasehold interests therein secure the Company’s obligations to the Agency under the Project Documents and this Lease Agreement, including the Company’s obligation to acquire, rehabilitate, equip and maintain the Project on behalf of the Agency and the performance by the Company of the Unassigned Rights.

ARTICLE III

CONVEYANCE AND USE OF THE FACILITY

SECTION 3.1. AGREEMENT TO CONVEY TO AGENCY. The Company has or will convey, or will cause to be conveyed, to the Agency, pursuant to the Company Lease and the Bill of Sale to Agency, all the Company’s right, title and interest in and to the Facility. The Company represents and warrants that it has good and marketable title to the portions of the Facility that exist on the date hereof, free and clear from all Liens except Permitted Encumbrances, and agrees that it will defend, indemnify and hold the Agency harmless from any expenses or liability due to any defect in title thereto. The Company also agrees to pay all reasonable expenses incurred by the Agency in defending any action with respect to title to or a Lien affecting the Facility, except for Permitted Encumbrances.

SECTION 3.2. USE OF THE FACILITY. During the term of this Lease Agreement, the Company shall be entitled to use the Facility for the Project Purposes, and such other purposes as may constitute permitted uses under the applicable zoning requirements and constituting a “project” under the Act as may be specifically approved by the Agency for the Facility. The Company shall manage and operate the Facility in compliance with the Act and any and all rules and regulations promulgated thereunder by the Agency. The Company specifically agrees and undertakes to maintain the Facility in operation for the term of this Lease Agreement, with the employment goals at such Facility set forth in the Uniform Agency Project Agreement.

SECTION 3.3. HAZARDOUS MATERIALS. (A) The Company shall reconstruct, rehabilitate, equip, use, operate and manage the Facility, in accordance with all applicable Environmental Laws and Environmental Permits, and shall cause all operators, tenants, subtenants, licensees and occupants of the Facility to construct, reconstruct, rehabilitate, equip, use, operate and manage, in

accordance with any applicable Environmental Laws and Environmental Permits, and shall not cause, allow or permit the Facility or any part thereof to be operated or used for the storage, treatment, generation, transportation, processing, handling, production, management or disposal of any Hazardous Substances other than in accordance with all applicable Environmental Laws and Environmental Permits.

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

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

(D) The Company shall notify the Agency promptly in the event of any spill or other release of any Hazardous Material at, on, under or about the Facility which is required to be reported to a Governmental Authority under any Environmental Law. The Company shall promptly provide the Agency with a copy of all notifications which the Company gives or receives with respect to environmental conditions at or in the vicinity of the Facility, any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility. If the Company receives or becomes aware of any such notification which is not in writing or otherwise capable of being copied, the Company shall promptly advise the Agency of such verbal, telephonic or electronic notification and confirm such notice in writing.

(E) The Company shall undertake and complete all investigations, studies, sampling and testing and all removal or remedial actions necessary to contain, remove and clean up all Hazardous Substances that are or may become present at the Facility and are required to be removed and/or remediated in accordance with all applicable Environmental Laws and all Environmental Permits.

(F) If the Company fails to cause any release of a Hazardous Substance at, on, under or about the Facility to be contained, removed, cleaned up and otherwise remediated within sixty (60) days after receiving notice thereof or within such shorter period as may be required by such Government Authority, the Agency shall have the right (but not the obligation), upon twenty (20) days' written notice to the Company (or without notice in the case of emergency), to take or complete such action on behalf of the Company. The contractors and subcontractors selected by the Agency shall have the right to enter the Facility with such persons, machinery and equipment, and to undertake such investigative, containment, removal, clean-up and other remedial actions, as they shall deem necessary and appropriate without thereby incurring any liability to the

Company on account thereof. The Company agrees to cooperate with all contractors and subcontractors engaged in such investigative, containment, removal, clean-up or other remedial actions. The Company shall be liable to the Agency for all costs and expenses, including, without limitation, reasonable attorneys' and experts' fees, expenses and disbursements, paid or incurred on account of such actions undertaken on the Company's behalf and shall promptly reimburse the Agency therefor on demand. All such costs and expenses shall constitute additional rent hereunder.

(G) Upon advance written notice to the Company (or without notice in case of emergency) the Company shall allow the Agency and their respective officers, members, employees, agents, representatives, contractors and subcontractors reasonable access to the Facility during regular business hours of the Company for the purposes of ascertaining the environmental conditions at, on or in the vicinity of the Facility, including, but not limited to, subsurface conditions. The Company shall not be liable for any injury to any person, or any damage to any property or the Facility, unless resulting from any grossly negligent or intentional action of any such officer, employee, agent, representative, contractor, or subcontractor sent by the Agency.

(H) If at any time any Agency obtains any notice or information that the Company or the Facility or the reconstruction, rehabilitation, equipping, use or operation of the Facility may be in violation of an Environmental Law or in non-compliance with any Environmental Permit or standard, the Agency may require that a full or supplemental environmental inspection and audit report with respect to the Facility of a scope and level of detail reasonably satisfactory to the Agency be prepared by a professional environmental engineer or other qualified environmental scientist reasonably acceptable to the Agency, at the Company's sole cost and expense. Said audit may, but is not required to or limited to, include a physical inspection of the Facility, a records search, a visual inspection of any property adjacent to or within the immediate vicinity of the Facility, personnel interviews, review of all Environmental Permits and the conduct of a scientific testing, if necessary to determine whether a violation of an Environmental Law exists, such inspection may also include subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance on, at or from the Facility, the Company shall promptly undertake and diligently pursue to completion all necessary, appropriate investigative, containment, removal, cleanup and other remedial actions required by any Environmental Law, using methods recommended by the professional engineer or other environmental scientist who prepared said audit report and acceptable to the appropriate federal, state and local agencies or authorities.

SECTION 3.4. INDEMNIFICATION PROVISIONS.

(A) The Company hereby covenants and agrees, at its sole cost and expense, to indemnify, protect, defend, save and hold harmless the Agency, their respective officers, directors, members, employees, agents and representatives acting in their official capacity (the "Indemnitees"), from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses (including, without limitation, reasonable attorneys' and experts' fees, expenses and disbursements, and reasonable attorneys' fees incurred to enforce the terms, conditions and

provisions of this Lease Agreement) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Indemnitees relating to, resulting from or arising out of (i) the environmental conditions at, on or in the vicinity of the Facility, (ii) any past or present Release or threat of a Release of Hazardous Substances at the Facility, (iii) the reconstruction, rehabilitation, equipping, operation or use of the Facility in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, (iv) the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any hazardous substance or waste on, at or from the Facility, (v) the failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, cleanup and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility, required by any Environmental Law, (vi) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Facility or the reconstruction, rehabilitation, equipping, ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law, (vii) a violation of any applicable Environmental Law, (viii) non-compliance with any Environmental Permit or (ix) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company in this Lease Agreement (collectively, the "Indemnified Matters"). The indemnification hereinabove set forth shall not be applicable to any claim, demand, penalty, cause of action, fine, liability, settlement, damage, cost or other expense of any type whatsoever occasioned arising and caused solely and directly as the result of the gross negligence or willful misconduct of any Indemnitee, its nominee or wholly owned subsidiary or their respective employees or agents subsequent to the date upon which an Indemnitee, its nominee or wholly owned subsidiary acquires possession of the Facility by termination of this Lease Agreement, acceptance of a deed or assignment in lieu of termination.

(B) The liability of the Company to the Indemnitees hereunder shall in no way be limited, abridged, impaired or otherwise affected by (i) any amendment or modification of any of the other provisions of this Lease Agreement or any other Project Document by or for the benefit of the Indemnitees, the Company or any subsequent owners or users of the Facility, (ii) any extensions of time for payment or performance required by this Lease Agreement or any other Project Document, (iii) the release of the Company or any other person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the agreements, covenants, terms or conditions contained in this Lease Agreement or any other Project Document by operation of law, either by the Indemnitees' voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the other terms or provisions of this Lease Agreement or any other Project Document, (v) any exculpatory provision contained in this Lease Agreement or any other Project Document limiting any Indemnitees' recourse to any other security or limiting any Indemnitees' rights to a deficiency judgment against the Company, (vi) any applicable statute of limitations, (vii) any investigation or inquiry conducted by or on the behalf of any Indemnitees or any information which any Indemnitees may have or obtain with respect to the environmental or ecological condition of the Facility, (viii) the sale, assignment, subleasing, transfer or conveyance of all or part of the Land or the Facility or the Company's interests and rights in, to, and under this Lease Agreement, or the termination of this Lease Agreement, but only with respect

to a Release that has occurred prior to any such event, (ix) the liquidation or termination of the Company, (x) the release or discharge, in whole or in part, of the Company in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, or (xi) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Company under this Lease Agreement or any other Project Document.

(C) The indemnification agreement contained herein is wholly independent of and in addition to any other indemnification agreement heretofore or hereafter given to any Indemnitees.

(D) Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and indemnifications of the Company contained in Sections 2.2(N), 3.3 and 3.4 of this Lease Agreement shall continue and remain in full force and effect and shall survive any termination, conveyance, assignment, subleasing or defeasance of any right, title or interest of any Indemnitees in and to the Facility or in, to or under this Lease Agreement.

ARTICLE IV

FINANCING AND ACQUISITION OF THE FACILITY

SECTION 4.1. RECONSTRUCTION, REHABILITATION OF THE FACILITY; ACQUISITION AND INSTALLATION OF EQUIPMENT. (A) The Company shall, in accordance with the Plans, (1) reconstruct and rehabilitate the Facility or cause the Facility to be reconstructed and rehabilitated, and (2) acquire and install the Equipment in the Facility, or cause the acquisition and installation of the Equipment in the Facility, and in order to complete the Project by the Completion Deadline (as such term is defined in the Uniform Agency Project Agreement).

(B) No material change in the Project description shall be made unless (1) the Agency shall have consented thereto in writing (which consents shall not be unreasonably withheld or delayed, provided that the Agency approval may be conditioned on findings that the Project is reasonably expected to provide at least the level of Public Benefits identified in the Resolution and set forth in the Uniform Agency Project Agreement) and (2) the Company shall furnish the Agency with an unqualified opinion of counsel acceptable to the Agency that reconstruction, rehabilitation of the Facility and acquisition and installation of the Equipment will not cause the project to fail to comply with the requirements of the Act.

(C) Title to all materials, equipment, machinery and other items of Property intended to be incorporated or installed in and to become part of the Facility shall vest in the Agency immediately upon deposit on the Land or incorporation or installation in the Facility, whichever shall first occur. The Company shall execute, deliver and file all instruments necessary or appropriate to vest title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(D) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all laws, ordinances, rules, regulations and requirements of all Governmental Authorities applying to or affecting the conduct of work on the Facility (the applicability of such laws, ordinances, rules and regulations to be determined both as

if the Agency were the owner of the Facility and as if the Company and not the Agency were the owner of the Facility), and the Company will defend, indemnify and save the Agency and their officers, members, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Facility shall be procured promptly by the Company.

(E) To the extent required by applicable law, the Company will cause the Project to be and remain in full compliance with the requirements of the New York Labor Law, including any applicable requirements for the payment of prevailing wages to the extent applicable to the Project, and the Company will cause any contractor, subcontractors and other persons involved in the acquisition, reconstruction, rehabilitation, equipping and installation of the Facility to comply with the New York Labor Law. Prior to commencement of any work at the Property, the Company shall certify under penalty of perjury whether the project at issue is subject to the provisions of Section 224-a of the Labor Law. The Agency hereby certifies that the nature and dollar value of the financial assistance is in the amounts and of the types set forth in the Uniform Project Agreement and such financial assistance would not be excluded under subdivision 3 of Section 224-a of the Labor Law, to the extent otherwise applicable.

SECTION 4.2. COMPLETION OF THE FACILITY. The Company will proceed with due diligence to complete the reconstruction, rehabilitation of the Facility and the acquisition and installation of the Equipment. Completion of the same 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 reconstruction, rehabilitation of the Facility and the acquisition and installation of the Equipment have been completed with the exception of ordinary punchlist items and work awaiting seasonal opportunity, (D) that the Company or the Agency has good and valid title to all Property constituting a portion of the Facility, and that the Facility are subject to the Lease Agreement, and (E) that the Facility are ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate may state (1) that it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being, (2) that it is given only for the purposes of this Section 4.2, and (3) that no Person other than the Agency may benefit therefrom. Such certificate shall be accompanied by (a) a certificate of occupancy, or a letter from the local governmental authority stating no certificate of occupancy is required, and any and all permissions, licenses or consents required of Governmental Authorities for the occupancy, operation and use of the Facility for its intended purposes, and (b) an opinion of counsel to the Company addressed to the Agency that the Facility will serve the purposes contemplated by the Lease Agreement.

SECTION 4.3. COMPLETION BY COMPANY. (A) The Company agrees, for the benefit of the Agency, to complete the acquisition, reconstruction, rehabilitation and installation of the Facility and to pay all such sums as may be necessary therefor. Title to the interest in the Land acquired and the Facility constructed or installed at Company's cost shall immediately upon such acquisition, reconstruction, rehabilitation or installation vest in the Agency. 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 title to or interest in such portions of the Land and the Facility.

(B) No payment by the Company pursuant to this Section 4.3 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 the Lease Agreement.

(C) Prior to the commencement of reconstruction and rehabilitation of the Improvements, the Company shall cause to be delivered to the Agency a dual obligee rider substantially in the form of Exhibit F listing the Agency as dual obligee with the Lender with respect to a payment and performance bond securing the completion of the project and the payment of the costs of reconstruction and rehabilitation thereof.

SECTION 4.4. 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 reconstruction and rehabilitation of the Facility or the acquisition and installation of the Equipment 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, 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 4.4 shall be used to the extent necessary to complete the Facility.

SECTION 4.5. LIMITATION OF AGENCY'S LIABILITY. (A) The obligations and agreements of the Agency contained herein and in the other Project 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) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees 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. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State or of the City of Hudson, and neither the State nor the City of Hudson 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 sale or other disposition of the Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(B) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or any other Project Documents shall be sought or enforced against the

Agency unless a) 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) 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) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, b) 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 reasonable fees and expenses; and (c) 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) or employees shall be subject to potential liability, the party seeking such order or decree shall (i) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (ii) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

SECTION 4.6. MORTGAGE AND PLEDGE OF AGENCY'S INTERESTS TO LENDER. (A) Concurrent with the execution and delivery of this Lease Agreement, the Company has executed and delivered the Mortgage to the Lender to secure financing for the acquisition of and improvements to the Facility. The Agency has executed the Mortgage solely for the purpose of subjecting its interest in the Facility to the lien of the Mortgage and subject to the limitations set forth therein. Upon the written request of the Company not less than sixty (60) days in advance of any proposed date of execution, and at the expense of the Company, the Agency shall execute and deliver a mortgage or mortgages with respect to its interest (other than the Unassigned Rights) in the Facility, or joinder to such mortgage, to a bank or other institutional lender unrelated to the Company, provided that (i) the mortgagee is not a Prohibited Person, (ii) such mortgage or mortgages shall contain the limitation of liability set forth at Sections 3.4, 4.5 and 8.2 hereof, (iii) such mortgage or mortgages shall not contain any covenant or condition inconsistent with the terms and conditions of the Uniform Agency Project Agreement, (iv) such mortgage or mortgages shall contain provisions substantially in the form of Exhibit G attached hereto, (v) the aggregate amount secured by any such mortgage or mortgages shall not exceed the Total Project Cost as defined in the Uniform Agency Project Agreement, (vi) the proceeds of such mortgage or mortgages are to be used with respect to the Facility, and (vii) such mortgage or mortgages shall be in form and substance satisfactory to the Agency and its counsel.

(B) The Company shall pay and provide for the payment of all expenses of the Agency with respect to any Permitted Mortgage, including without limitation attorneys' fees, title insurance protecting the interests of the Agency, recording, and closing costs.

ARTICLE V

DEMISE OF FACILITY; TERM; RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE

SECTION 5.1. DEMISE OF FACILITY. In consideration of the Company's covenant herein to make rental payments, 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 lease to the Company, and the Company hereby agrees to rent and lease from the Agency, the Facility.

SECTION 5.2. TERM; QUIET ENJOYMENT. (A) The Agency shall deliver to the Company sole and exclusive possession of the Facility and the leasehold estate created hereby shall commence, on the date of execution and delivery of this Lease Agreement, and the Company shall accept possession of the Facility on such date.

(B) The leasehold estate created hereby shall terminate on [February 28, 2055] or on such earlier date as determined pursuant to Article X or Article XI.

(C) The Agency shall take no action, other than pursuant to Article X of this Lease Agreement, to prevent the Company from having quiet and peaceable possession and enjoyment of the Facility during the term of this Lease Agreement 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 Facility.

SECTION 5.3. RENTAL PAYMENTS AND ADDITIONAL AMOUNTS PAYABLE. (A) Rental Payments. The Company shall pay to the Agency for the account of the Agency as rent for the Facility the following amounts: (1) an initial administrative fee in the amount set forth at Exhibit E attached hereto and incorporated herein by reference; (2) an annual administrative fee, payable on the annual dates and in the amount set forth at Exhibit E attached hereto and incorporated herein by reference.

(B) Additional Rental Payments. The Company shall pay as additional rental payments the following:

(1) The Company shall pay all payments, including recapture amounts if applicable, at the times and in the amounts due pursuant to the PILOT Agreement.

(2) Within seven (7) Business Days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of any other reasonable expenses of the Agency (including reasonable attorneys' fees and expenses and accounting fees and expenses) and the officers, members, agents and employees thereof incurred by reason of the Agency's interest in the Facility or its financing of the Project or in connection with the carrying out of the Agency's duties and obligations under this Lease Agreement or the Uniform Agency Project Agreement or the Environmental Indemnity Agreement, and any other expense of the Agency with respect to the Facility or the Project Documents, the payment of which is not otherwise provided for under this Lease Agreement.

(3) The Company shall pay all recapture payments, any other amounts payable, at the times and in the amounts due pursuant to the Uniform Agency Project Agreement.

(C) Manner of Payments; Late Payments. The Company agrees to make the above-mentioned payments, without any further notice, 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 that the Company shall fail to make any payment required by this Section 5.3 for a period of more than ten (10) days from the date such payment is due, the Company shall pay the same, together with interest thereon at a rate of two percent (2%) per month or the maximum permitted by law, whichever is less, from the date on which such payment was due until the date on which such payment is made.

SECTION 5.4. COMPANY OBLIGATIONS UNCONDITIONAL. The obligations of the Company to make the rental payments required by this Lease Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be absolute and unconditional irrespective of any defense or any rights of set-off, recoupment or counterclaim the Company may otherwise have against the Agency or any other person. The Company shall not suspend or discontinue any such payment hereunder, fail to perform and observe any of its other amendments and covenants contained herein or terminate this Lease Agreement for any cause, including, without limiting the generality of the foregoing, any acts or circumstances that may deprive the Company of the use and enjoyment of the Facility, failure of the consideration or commercial frustration of purpose, any damage to or destruction of the Facility or any party thereof, the taking by eminent domain of title to or the right to temporary use of all or any part of the Facility, any change in the tax or other laws of the United States of America, the State or any political or taxing subdivision of either thereof, or any failure by the Agency to perform and observe any agreement or covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease Agreement.

SECTION 5.5. GRANT OF SECURITY INTEREST. The Company hereby grants the Agency a security interest in all of the right, title and interest of the Company in the Facility and in all additions and accessions thereto, all replacements and substitutions therefor and all proceeds thereof and all books, records and accounts of the Company pertaining to the Facility as security for payment of the lease payments and all other payments and obligations of the Company hereunder. The Company hereby irrevocably appoints the Agency as its attorney-in-fact to execute and deliver and file any instruments necessary or convenient to perfect and continue the security interest granted herein.

ARTICLE VI

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1. MAINTENANCE AND MODIFICATIONS OF FACILITY. (A) During the term of this Lease Agreement, the Company shall (1) keep the Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) make all necessary repairs and replacements to the Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), and (3) operate the Facility in a sound and economic manner.

(B) During the term of this Lease Agreement, the Company may make such alterations of or additions to the Facility or any part thereof from time to time as the Company in its discretion may determine to be desirable for its uses and purposes, provided that (1) such alterations or additions are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements, (2) such alterations or additions are promptly and fully paid for by the Company in accordance with the terms of the applicable contract(s) therefor, and in a manner such that the Facility shall at all times be free of any mortgage, Lien, encumbrance, security interest or claim, and (3) such alterations or additions do not change the nature of the Facility so that it does not constitute a “project” under the Act and (4) any such alterations or additions which are structural in nature or which exceed an estimated cost of \$500,000 shall be subject to prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed, and any Agency approval may be conditioned on findings that the Project is reasonably expected to provide at least the level of Public Benefits identified in the Resolution and set forth in the Uniform Agency Project Agreement. All alterations of and additions to the Facility shall constitute a part of the Facility subject to this Lease Agreement, and the Company shall deliver to the Agency appropriate documents as may be necessary to subject such Property to the Project Documents.

SECTION 6.2. TAXES, ASSESSMENTS AND UTILITY CHARGES. (A) The Company shall pay or cause to be paid, 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 Facility, (2) all utility and other charges, including “service charges”, incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (3) all assessments and charges of any kind whatsoever lawfully made 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 Agreement.

(B) Notwithstanding the provisions of subsection (A) of this Section 6.2, the Company may in good faith actively contest any such taxes, assessments and other charges, provided that the Company shall have paid such charges.

SECTION 6.3. INSURANCE REQUIRED. (A) At all times during the term of this Lease Agreement, the Company shall maintain insurance with respect to the Facility with one or more Casualty Insurers against the following risks in at least the following amounts:

(1) During and prior to completion of the Project, builder's risk (or equivalent coverage) insurance upon any work done or material furnished in connection with the acquisition, construction, reconstruction, rehabilitation and installation of the Facility, issued to the Company and Agency as insureds, and written in completed value form for the full insurable value of the Facility, and (2) at such time that builder's risk insurance is no longer available by virtue of completion of the acquisition, reconstruction, rehabilitation and installation of the Facility, or by virtue of the nature of the improvements, insurance protecting the interests of the Company and the Agency as insureds, against loss or damage to the Facility by fire, lightning, vandalism, malicious mischief and other perils normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount not less than the actual cash value of the Facility as determined at least once every three (3) years by a recognized appraiser or insurer.

(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 Facility or who are responsible for the construction and/or reconstruction and/or rehabilitation of the Facility or the installation of the Equipment.

(3) A comprehensive general public liability insurance policy or policies protecting the Company and the Agency against all direct or contingent loss or losses from liabilities imposed by law or assumed in any written contract (including without limitation the Project Documents) and arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$2,000,000 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and or on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law. Prior to commencement of any remedial work required pursuant to the Environmental Indemnity Agreement, such additional policy of insurance or endorsement as shall be necessary to insure the Company and the Agency against liability in connection therewith.

(4) If the Facility is located within an area identified by a federal agency as having special flood hazards, insurance against loss by floods in an amount at least equal to the actual cash value of the Facility or the maximum limit of coverage made available, whichever is less.

(5) All contractors and subcontractors, prior to and at all times during the period of performing work at the Facility, shall provide and maintain evidence of insurance of the types and amounts described in subsections (2) and (3) above.

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

(B) ADDITIONAL PROVISIONS RESPECTING INSURANCE. (A) All insurance required by Section 6.3(A) 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 to the Agency, and whose claims-paying ability is rated not less than "A-/IX" by Best's Rating Service or equivalent ("Casualty Insurer"). Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance required by Section 6.3(A)(3) shall name the Company as insured and the Agency as additional insured, as their interests may appear, and all policies evidencing the insurance required by Section 6.3(A) shall 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. The policy evidencing the insurance required by Section 6.3(A)(3) hereof shall name the Agency as an additional insured on a primary and noncontributory basis with any coverage held by the Agency, if any. 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 effective date of this Lease Agreement. 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 November 1 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 thirty (30) days prior to the expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by the Lease Agreement.

(C) All premiums with respect to the insurance required by Section 6.3(A) 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 at a rate of two percent (2%) per month or the highest rate permitted by law, whichever is less, and any such advances and interest shall be deemed additional rent payable hereunder.

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.

(A) If a partial or substantial destruction of the Facility shall occur, and the Company elects to repair or reconstruct the Facility, the Company shall notify the Agency in writing and

shall begin to take all action necessary to repair or reconstruct the Facility within thirty (30) Business Days of the receipt of such insurance proceeds or Condemnation award.

(B) If a partial or substantial destruction of the Facility shall occur, and the Company, subject to the approval of the Lender to the extent required by the terms of any Permitted Mortgage, does not elect to repair or reconstruct the Facility, the Company shall notify the Agency and Lender in writing and the Agency at its option may terminate this Lease Agreement. All Net Proceeds of the insurance required pursuant to Sections 6.3(A)(2) or (3) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid. The Lender or other mortgagee of a Permitted Mortgage providing financing with respect to the Property may be listed as a mortgagee and loss payee on any policy to the extent required by such mortgagee, and as mortgagee shall be entitled to direct the Company's application of such insurance proceeds or Condemnation award to the Facility.

SECTION 6.5. PAYMENTS IN LIEU OF TAXES. (A) It is recognized that under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any of the Property acquired by it or under its jurisdiction, control or supervision or upon its activities. It is not the intention, however, of the parties hereto that the Facility be treated as exempt from real property taxation. Accordingly, the parties acknowledge that the PILOT Agreement has been executed with respect to the Facility. Until the expiration date of the PILOT Agreement, the Agency and the Company hereby agree that the Company (or any subsequent user of the Facility under this Lease Agreement) shall be required to make or cause to be made payments in lieu of real estate taxes in the amounts and in the manner set forth in the PILOT Agreement.

(B) In the event that (1) the Facility would be subject to real property taxation if owned by the Company but shall be deemed exempt from real property taxation due to the involvement of the Agency therewith and (2) the PILOT Agreement shall not have been entered into by the Agency and the Company, or if entered into, shall for any reason no longer be in effect, the Agency and the Company hereby agree that the Company, or any subsequent user of the Facility under this Lease Agreement, shall in such event be required to make or cause to be made payments in lieu of taxes to the school district or school districts, city, town, county, village and other political units wherein the Facility are located having taxing powers (such political units are hereinafter collectively referred to as the "Taxing Jurisdictions") in such amounts as would result from taxes being levied on the Facility by the Taxing Jurisdictions if the Facility were privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, but with appropriate reductions similar to the tax exemptions and credits, if any, which would be afforded to the Company if it were the owner of the Facility and the Agency did not have a leasehold interest therein. It is agreed that the Company, in cooperation with the Agency, (a) shall cause the Facility to be valued for purposes of determining the amounts due hereunder as if owned by the Company as aforesaid and the Agency did not have a leasehold interest therein by the appropriate officer or officers of any of the Taxing Jurisdictions as may from time to time be charged with responsibility for making such valuations, (b) shall cause to be appropriately applied to the valuation or valuations so determined the respective tax rate or rates of the Taxing Jurisdictions that would be applicable to the Facility if so privately owned and the Agency did not have a leasehold interest therein, (c) shall cause the appropriate officer or officers of the Taxing Jurisdictions charged with the duty of levying and collecting such taxes to submit to the Company, when the respective levies are made for purposes of such taxes upon Property privately owned and

the Agency did not have a leasehold interest therein as aforesaid, statements specifying the amounts and due dates of such taxes which the Taxing Jurisdictions would receive if such Property were so privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, and (4) shall file with the appropriate officer or officers any accounts or tax returns furnished to the Agency by the Company for the purpose of such filing.

(C) The Company shall pay or cause to be paid to the Taxing Jurisdictions when due all such payments in lieu of taxes with respect to the Facility required by Section 6.5(B) of this Lease Agreement to be paid to the Taxing Jurisdictions, subject in each case to the Company's right to (1) obtain exemptions and credits, if any, which would be afforded to a private owner of the Facility, including any available exemption under Section 485-b of the New York Real Property Tax Law with respect to the Facility, (2) contest valuations of the Facility made for the purpose of determining such payments therefrom, and (3) seek to obtain a refund of any such payments made. In the event the Company shall fail to make or cause to be made any such payments in lieu of taxes, the amount or amounts so in default shall continue as an obligation of the Company until fully paid, and the Company hereby agrees to pay or cause to be paid the same, together with interest thereon, at the greater of (a) two percent (2%) per month or (b) the same rate per annum as if such amounts were delinquent taxes.

(D) The Agency may require recapture of tax benefits as provided in the Uniform Agency Project Agreement.

SECTION 6.6. SALES AND USE TAXES. (A) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales taxes and use taxes imposed by the State and local governments in the State, and that the project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of New York sales or use taxes. Any exemption from the payment of New York sales or use taxes resulting from the involvement of the Agency with the Project shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as part of the Project prior to the Completion Date, or incorporated within the Facility prior to the Completion Date, and shall be subject to the terms and conditions of the Agent Agreement and the Uniform Agency Project Agreement. No operating expense of the Facility, and no other purchases of services or property shall be subject to an exemption from the payment of New York sales or use tax.

(B) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause any sublessee or other operator of the Facility to file, with the New York State Department of Taxation and Finance, on such form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance, a statement of the value of all sales and use tax exemptions claimed by the Company and all contractors, subcontractors, consultants and other agents of the Company under the authority granted to the Company pursuant to the Agent Agreement and the Uniform Agency Project Agreement. Pursuant to Section 874(8) of the Act, the penalty for failure to file such statement shall be removal of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this section, the Company shall immediately cease to be the agent of the Agency in connection with the Project.

(C) The Company agrees to furnish the Agency a copy of each such annual report concurrently with the filing thereof.

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1. DAMAGE OR DESTRUCTION. (A) If the Facility shall be damaged or destroyed, in whole or in part:

(1) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement;

(2) the Company shall promptly give written notice of such damage or destruction to the Agency and elect to repair, replace or rebuild as provided in Section 7.1(A)(3) or, subject to the consent of the Lender to the extent required by the terms of a Permitted Mortgage, shall notify the Agency of its election not to repair, replace or rebuild within 30 days of receipt of Net Proceeds of Insurance therefor; and

(3) at the Company's election, the Company shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as operating facilities as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company, provided that such changes, alterations or modifications do not so change the nature of the Facility so that it does not constitute a "project," as such quoted term is defined in the Act.

In the event the Net Proceeds of any insurance settlement 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 Net Proceeds.

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

SECTION 7.2. CONDEMNATION. (A) If title to, or the use of, less than substantially all of the Facility shall be taken by Condemnation:

(1) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement;

(2) the Company shall promptly give written notice of such Condemnation to the Agency and elect to repair, replace or rebuild as provided in Section 7.2(A)(3) or shall notify the Agency of its election not to repair, replace or rebuild within 30 days of receipt of the Net Proceeds thereof; and

(3) at the Company's election, the Company shall promptly restore the Facility (excluding any part of the Facility taken by Condemnation) to substantially the same condition and value as operating facilities as existed prior to such Condemnation, with such

changes, alterations and modifications as may be desired by the Company, provided that such changes, alterations or modifications do not so change the nature of the Facility so that it does not constitute a “project,” as such quoted term is defined in the Act.

In the event the Net Proceeds of any Condemnation award are not sufficient to pay in full the costs of such 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 Net Proceeds.

(B) Unless an Event of Default by the Company shall have occurred and be continuing, the Company shall have sole control of any Condemnation proceeding with respect to the Facility or any part thereof and may negotiate the settlement of any such proceeding.

SECTION 7.3. ADDITIONS TO IMPROVEMENTS. All replacements, repairs, rebuilding or restoration made pursuant to Section 7.1 or 7.2, whether or not requiring the expenditure of the Company’s own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

ARTICLE VIII

SPECIAL COVENANTS

SECTION 8.1. NO WARRANTY OF CONDITION OR SUITABILITY BY 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 Facility or any part thereof or as to the suitability of the Facility or any part thereof for the Company’s purposes or needs. The Company shall accept the leasehold interest in the 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.

SECTION 8.2. HOLD HARMLESS PROVISIONS. (A) The Company hereby releases the Agency and the City and their respective members, officers, agents and employees (the “Indemnified Parties”) from, agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend and hold the Indemnified Parties harmless from and against any and all claims, causes of action, judgments, liabilities, damages, penalties, losses, costs and expenses arising as a result of (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 Company’s leasehold interest in the Facility hereunder or arising by reason of or in connection with the occupation or the use thereof by the Company or the presence of any Person or Property on, in or about the Facility, as the employee, agent or invitee of the Company, (2) any failure of the Company to comply with any of the terms of any Project Document, (3) any breach of any representation or warranty of the Company set forth in the Project Documents, (4) any untrue statement of a material fact or omission to state a material fact by the Company contained in any Project Document, (5) based upon, directly or indirectly any Hazardous Materials or violation of Environmental Laws that exists or existed at the Facility prior to, at or after the effective date of this Lease Agreement, (6) any other claim, causes of action, judgments, liabilities,

damages, penalties, losses, costs and expenses relating to the Project, the Facility, the execution of the Project Documents, and (7) 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 any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Indemnified Party are not incurred or do not result from the negligence or willful misconduct of such Indemnified Party, as the case may be.

(B) In the event of any claim against an Indemnified Party by any employee or agent 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.

(C) If any action, suit or proceeding is brought or reasonably threatened against any Indemnified Party for any loss or damage for which the Company is required to provide indemnification under this Section, the party against whom the action, suit or proceeding is brought shall endeavor to promptly notify the Company.

(D) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and 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 officers, members, agents or employees, relating thereto.

SECTION 8.3. RIGHT OF ACCESS TO FACILITY. The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times to enter upon and to examine and inspect the Facility upon reasonable prior notice.

SECTION 8.4. AGREEMENT TO PROVIDE INFORMATION. The Company agrees to provide and certify or cause to be provided and certified such information concerning the Company and the Project as the Agency may from time to time reasonably request for the purpose of determining compliance with the terms of this Lease Agreement and the Uniform Agency Project Agreement and the other Project Documents, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation. Such information shall be delivered by the Company within thirty (30) days of written request.

SECTION 8.5. BOOKS AND RECORDS: COMPLIANCE CERTIFICATES. (A) The Company agrees to maintain proper accounts, books and records in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company. In addition to any specific reports required pursuant to the Uniform Agency Project Agreement, the Agency Agreement or the PILOT Agreement, within thirty (30) days of written request by the Agency, the Company will supply all necessary information to allow the Agency to complete its annual report with the New York State Comptroller's Office and any other reports required by law.

(B) The Company shall deliver to the Agency annually within sixty (60) days of the end of each fiscal year (1) a certificate of an Authorized Representative of the Company as to whether or not, as of the close of such preceding fiscal year of the Company, and at all times during such fiscal year, the Company was in material compliance with all the provisions which relate to the Company in this Lease Agreement and in any other Project Document to which it shall be a party; or, any default exists, disclose the nature of such default and any action proposed to be taken by the Company with respect thereto; and (2) a certificate of an Authorized Representative of the Company that the insurance it maintains complies with the provisions this Lease Agreement, whether such insurance has been in full force and effect at all times during the preceding Fiscal Year of the Company and that such insurance is in full force and effect on the date of delivery of such certificate, and that duplicate copies of all policies and certificates thereof (or self-insurance program documents) have been filed with the Agency and are in full force and effect.

(C) The Company shall promptly notify the Agency of the occurrence of any Event of Default hereunder or any event which with notice or lapse of time or both would constitute an Event of Default hereunder of which it has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Company and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Company shall state this fact on the notice.

SECTION 8.6. COMPLIANCE WITH ORDERS, ORDINANCES, ETC. (A) The Company agrees that during the term of this Lease Agreement it will promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Company or the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(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 requirement of the nature referred to in such subsection (A), provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) is not in default hereunder, and (3) shall have set aside adequate reserves for any such requirement.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.6, if the Agency or any of its members, officers, agents or employees 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 agrees not to create or suffer to be created any Lien, except for Permitted Encumbrances, on the Facility or any part thereof or any funds of the Agency relating to the Facility.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Company may in good faith actively contest any such Lien, provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) is not in default hereunder, and (3) secures such Lien by posting a bond in form and substance satisfactory to the Agency.

SECTION 8.8. PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS. Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, 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 expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so paid by the Agency under the authority hereof and all of their fees, costs and expenses, together with interest thereon at a rate of two percent (2%) per month or the maximum permitted by law, whichever is less, from the date of payment by the Agency.

SECTION 8.9. IDENTIFICATION OF EQUIPMENT. All Equipment which is or may become part of the Facility pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by appropriate records.

SECTION 8.10. COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS; CONDITIONS UNDER WHICH EXCEPTIONS PERMITTED. The Company agrees that, during the term of this Lease Agreement, it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another corporation, or permit one or more corporations to consolidate with or merge into it; provided, however, that, if no Event of Default specified in Section 10.1 hereof shall have occurred and be continuing, the Company may consolidate with or merge into another domestic corporation organized and existing under the laws of one of the states of the United States, or permit one or more such domestic corporations to consolidate with or merge into it, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve, provided (A) that the surviving, resulting or transferee corporation assumes in writing in form and substance reasonably satisfactory to the Agency all of the obligations of and restrictions on the Company under this Lease Agreement and the other Project Documents; (B) the surviving, resulting or transferee corporation is not a Prohibited Person; and (C) that as of the date of such transaction, the Agency shall be furnished with a certificate, dated the effective date of such transaction, signed by an Authorized Representative of the Company and of the surviving, resulting or transferee corporation, as the case may be, or the transferee of its assets to the effect that immediately after the consummation of the transaction and after giving effect thereto, no Event of Default exists under the Agreement or other Project Documents and no event exists which, with notice or lapse of time or both, would become such an Event of Default.

SECTION 8.11. EMPLOYMENT OPPORTUNITIES. (A) Except as may be provided by applicable collective bargaining contracts or agreements (A) new employment opportunities created as a result of the provision of the financial assistance for the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the federal job training partnership act in which the Project is located, and (B) where practicable, the Company shall first consider persons eligible to participate in the federal job training partnership programs who shall be referred by such Community Services Division or administrative entity for such new employment opportunities.

(B) The Company agrees to file with the Agency, on an annual basis, reports regarding the number of people employed at the Facility and certain other matters as required by law.

(C) The Company will comply with the additional employment listing, employment consideration and reporting requirements set forth in the Uniform Agency Project Agreement.

SECTION 8.12. DEPRECIATION DEDUCTIONS AND TAX CREDITS. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility pursuant to Section 167 or Section 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any part of the Facility that constitutes Section 38 Property and any tax credit with respect to the Facility pursuant to the Code.

ARTICLE IX

ASSIGNMENTS; RESTRICTION ON TRANSFER

SECTION 9.1. RESTRICTION ON TRANSFER. Except as otherwise specifically provided in this Article IX hereof and in the other Project Documents, the Company shall not sell, assign or otherwise dispose of any of their rights under the Agreement, without the prior written consent of the Agency.

SECTION 9.2. ASSIGNMENT OF AGREEMENT. The Agreement may be assigned by the Company in whole or in part, but only with the prior written consent of the Agency, which consent shall not be unreasonably withheld, and provided that:

(A) The assignee shall be qualified to transact business in the State of New York and shall assume the obligations of the Company hereunder to the extent of the interest assigned and shall not be a Prohibited Person;

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

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

(D) No assignment, sale or leasing shall relieve the Company from primary liability for any of its obligations hereunder without the prior written consent of the Agency; and

(E) The Company is not then in default under any of the Project Documents.

SECTION 9.3. TRANSFER OF EQUIPMENT AND RELEASE OF LIEN. Notwithstanding anything to the contrary contained herein, in any instance where the Company determines that any item of equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of equipment and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the consent of the Agency, provided that the Company certifies to the Agency that such removal will not materially impair the value of the Facility as collateral. At the request of the Company and at the expense of the Company, the Agency shall execute and deliver all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of equipment free from all Liens under the Project

Documents. The Company shall pay all costs and expenses (including reasonable attorneys' fees) incurred in transferring title to and releasing any lien on any item of equipment removed pursuant to this Section 9.3.

SECTION 9.4. SUBLEASES. (A) The Company may, without the prior written consent of the Agency, lease or license a portion of the Facility (a)(i) in the ordinary course to a Person who is not a Prohibited Person for a term not to exceed five (5) years or for an area not exceeding 5000 square feet, for the purpose of operation of uses described in Section 3.2 hereof, or (ii) to a Related Operator for the sole purpose of operating one or more of the uses authorized by Section 3.2 hereof subject to same conditions as set forth in Section 3.02(E)(3) of the Uniform Agency Project Agreement, provided that (b) (i) a copy of any such instrument shall be provided to the Agency annually or upon written request; (ii) no such instrument shall relieve the Company from primary liability for any of its obligations hereunder, (iii) the instrument shall be authorized by the Company's organizing documents, (iv) the instrument shall not result in a violation of any permit or license governing the Facility; and (v) all such instruments shall be expressly subject and subordinate to this Lease Agreement and the other Project Documents.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1. EVENTS OF DEFAULT DEFINED. (A) The following shall be "Events of Default" by the Company under this Lease Agreement, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Lease Agreement with respect to the Company, any one or more of the following events:

(1) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.3 and the continuance thereof for a period of ten (10) days after written notice is given by the Agency to the Company.

(2) A default in the performance or observance of any other of the covenants, conditions or agreements on the part of the Company in this Lease Agreement and the continuance thereof for a period of thirty (30) days after written notice 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 same with due diligence.

(3) Any warranty, representation or other statement by or on behalf of the Company contained in this Lease Agreement or any other Project Documents that shall prove to have been false or untrue in any material respect on the date when made or on the effective date of this Lease Agreement.

(4) (a) The dissolution or winding up of the Company (except as permitted by Section 8.10 of this Lease Agreement); (b) the filing by the Company of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute; (c) the failure by the Company within ninety (90) days to lift any execution, garnishment or attachment of such consequence as will impair the Company's ability to

carry out its obligations hereunder; (d) 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 statute of a case, action or proceeding against any of the foregoing and continuation of such case, action or proceeding without dismissal for a period of sixty (60) days; (e) the filing, grant or 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; (f) 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 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 ninety (90) days of its issuance; or (g) an assignment for the benefit of creditors by the Company or an admission in writing by the Company of its inability to pay its debts generally as they become due; or

(5) An Event of Default has occurred and is continuing under the Uniform Agency Project Agreement or any other Project Document.

(B) Notwithstanding the provisions of Section 10.1(A), if by reason of force majeure (as hereinafter defined), the Company shall be unable, in whole or in part, to carry out its obligations under this Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the Agency within a reasonable time after the occurrence of the event or cause relied upon, the obligations of the Company under this Lease Agreement, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. 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, provided that notwithstanding anything to the contrary contained 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 by Sections 5.3 and 6.2, to obtain and continue in full force and effect the insurance required by Article VI, to provide the indemnity required by Sections 3.2 and 8.2 and to comply with the provisions of Sections 3.1, 3.2, 8.2, 8.4, 8.5 and 8.6(C). The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of any Governmental Authority or any civil or military authority, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals and partial or entire failure of utilities. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Company, and the Company shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the Agency.

(C) The Agency shall give a copy of any notice of an Event of Default hereunder given to the Company to the Lender, and the Lender shall have the same period as the Company, if any, to cure such Default, provided that nothing in this section shall impose an affirmative obligation on the Lender to effect such a cure. The right of the Lender to any notice and right to cure hereunder shall be solely for the benefit of the Lender.

SECTION 10.2. REMEDIES ON DEFAULT. Whenever any Event of Default described in Section 10.1(A) shall have occurred, the Agency may take any one or more of the following steps:

(A) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, all unpaid installments of rent payable pursuant to this Lease, all unpaid and past due payments in lieu of taxes pursuant to the PILOT Agreement, and all other payments due under this Lease Agreement or any other Project Document, provided that if an Event of default specified in Section 10.1(A)(4) shall have occurred, such installments of rent and other payments shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;

(B) terminate this Lease Agreement and reconvey the Facility to the Company. The Agency shall have the right to execute an appropriate instrument with respect to the Agency's interest in the Facility and to place the same on record in the Columbia County Clerk's office, at the expense of the Company, and in such event the Company waives delivery and acceptance of such instrument and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such instrument;

(C) by any suit, action or proceeding at law or in equity, including injunctive relief, require the Company to perform its obligation and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Agency hereunder, with reasonable attorneys' fees and costs being borne by the Company; or

(D) 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 Agreement.

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

SECTION 10.3. REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. 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 that the Company shall default under any of the provisions of this Lease Agreement, and the Agency shall employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

SECTION 10.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein shall be breached by the Company and thereafter such breach be waived by the Agency, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Lease Agreement shall be established by conduct, custom or course of dealing.

ARTICLE XI

TERMINATION AND OPTION TO REPURCHASE

SECTION 11.1. OPTION TO TERMINATE AND REPURCHASE; OBLIGATION TO RECONVEY. (A) Notwithstanding the occurrence or continuance of an event of default hereunder, the Company shall have the option to terminate this Lease Agreement and repurchase the Facility at any time upon payment of \$1.00 plus all amounts due to the Agency or any other Person under this Lease Agreement or any other Project Document, including without limitation any payment in lieu of taxes required pursuant to the PILOT Agreement, any lease payment, or any recapture amount required pursuant to the Uniform Agency Project Agreement.

(B) Contemporaneously with the termination of this Lease Agreement in accordance with Section 5.2 or 11.1(A) hereof, the Agency shall sell and the Company shall purchase all the Agency's right, title and interest in and to the Facility for the purchase price of \$1.00 plus payment of all amounts due to the Agency or any other Person under this Lease Agreement or any other Project Document, including without limitation any payment in lieu of taxes required pursuant to the PILOT Agreement, any lease payment, or any recapture amount required pursuant to the Uniform Agency Project Agreement.

(C) Upon receipt of such purchase price, the Agency shall deliver or cause to be delivered an Assignment of Company Lease with respect to the Facility and a termination of this Lease Agreement, both in recordable form, and a Bill of Sale to Company, all to be prepared at the expense of the Company and in form reasonably satisfactory to the Agency. Such conveyance shall be without recourse and subject to any Liens to which the property was subject when conveyed to the Agency, to any Permitted Encumbrances, to any Liens created at the request of the Company or suffered by the Company to be created, to any Liens resulting from the failure of the Company to comply with this Lease Agreement, to any Liens for taxes and assessments not then delinquent, and to the rights of any condemning authority. The Company shall pay all expenses and taxes, if any, applicable to or arising from such transfers. This Lease Agreement shall survive the transfer of the Facility to the Company and shall remain in full force and effect to the extent set forth in Section 12.7.

ARTICLE XII

MISCELLANEOUS

SECTION 12.1. NOTICES. All notices, claims, certificates and other communications under this Lease Agreement shall be in writing and shall be deemed to be duly given if hand delivered, sent by overnight delivery by a national courier service, telecopied, or mailed by registered or certified U.S. Mail, return receipt requested, postage prepaid, addressed as follows or at such other address as any party may from time to time furnish to the other party by notice given in accordance with

the provisions of this Section. Notices shall be deemed given t when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy, (3) three (3) business days after mailed, or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

To the Agency:

City of Hudson Industrial Development Agency
520 Warren Street
Hudson, New York 12534
Attn: Chair

With a Copy to:

City Treasurer
City of Hudson
520 Warren Street
Hudson, New York 12534

With a Copy to Agency Counsel:

Rodenhause Chale & Polidoro LLP
55 Chestnut Street
Rhinebeck, New York 12572
Attention: Christine Chale, Esq.

With a Copy to Agency Transaction Counsel:

Barclay Damon LLP
80 State Street
Albany, New York 12207
Attention: Melissa C. Bennett, Esq.

With a Copy to Agency Administrator:

Columbia Economic Development Corporation (CEDC)
One Hudson City Centre, Suite 301
Hudson, New York 12534
Attn: Michael Tucker, Executive Director

To the Company:

Providence and Schuyler Apartments Preservation LLC
c/o K&R Preservation LLC
641 Lexington Avenue, 15th Floor
New York, New York 10022
Attention: Brian Raddock

With a Copy to Company Counsel:

Meghan Altidor, Esq.
Nixon Peabody LLP
55 West 46th Street
New York, New York 10036

If to the Lender:

PNC Bank, National Association
26901 Agoura Road, Suite 200
Calabasas Hills, California 91301
Attention: [_____]

In connection with the execution and delivery of any additional Permitted Mortgage pursuant to the terms and conditions of Section 4.6 hereof, the Company may provide the Agency with notice of an additional address for any copy or copies which shall be provided for any notice required to be given to Lender.

SECTION 12.2. BINDING EFFECT. This Lease Agreement shall inure to the benefit of, and shall be binding upon the Agency, the Company and their respective successors and assigns.

SECTION 12.3. AMENDMENTS, CHANGES AND MODIFICATIONS. This Lease Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the Company and the Agency.

SECTION 12.4. COUNTERPARTS. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 12.5. APPLICABLE LAW. This Lease Agreement shall be governed exclusively by the applicable laws of the State.

SECTION 12.6. RECORDING. This Lease Agreement (or a memorandum thereof) shall be recorded by the Company at its expense in the office of the County Clerk, Columbia County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

SECTION 12.7. SURVIVAL OF OBLIGATIONS. (A) The obligations of the Company to provide the indemnity required by Sections 3.4 and 8.2 and the covenants made pursuant to Section 10.4 shall survive the termination of this Lease Agreement.

(B) The obligations of the Company with respect to the Unassigned Rights shall survive the termination of the Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the 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 or employees, relating thereto.

SECTION 12.8. GOVERNING LAW; JURISDICTION. This Lease Agreement shall be governed by, construed in accordance with an enforceable under the laws of the State of New York, without regard or reference to its conflict of laws and principles. The parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in the City of Hudson, Columbia County, New York.

SECTION 12.9. SEVERABILITY. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 12.10. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

SECTION 12.11. NON-MERGER. During the term of this Lease Agreement, there shall be no merger of this Lease Agreement nor of the leasehold estate created by this Lease Agreement 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 Agreement or the leasehold estate created by this Lease Agreement or any interest in this Lease Agreement or in any such leasehold estate, and (2) the fee interest 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 Agreement or the leasehold estate created by this Lease Agreement, 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.

[The remainder of this page is intentionally left blank]

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

**PROVIDENCE AND SCHUYLER APARTMENTS
PRESERVATION LLC,**
a New York limited liability company

By: _____
Name: Brian Raddock
Title: Authorized Signatory

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

On the ____ day of April in the year 2024, before me, the undersigned, personally appeared Brian Raddock, 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

Execution Page for Lease Agreement
By and Between
City of Hudson Industrial Development Agency
and Providence and Schuyler Apartments Preservation LLC

**CITY OF HUDSON INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Kamal Johnson
Title: Chairman

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

On the ____ day of April in the year 2024, before me, the undersigned, personally appeared Kamal Johnson 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

Execution Page for Lease Agreement
By and Between
City of Hudson Industrial Development Agency
and Providence and Schuyler Apartments Preservation LLC

EXHIBIT "A"
DESCRIPTION OF LAND
SURVEY DESCRIPTION

EXHIBIT “B”

DESCRIPTION OF EQUIPMENT

All articles of personal property and all appurtenances now or hereafter attached to, contained in or used in connection with the Facility or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, lockers, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, ovens, ranges, freezers, refrigerators, dishwashers, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, vaults, security systems; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above; but excluding, however, any and all equipment, furniture and accessories provided and owned by any subtenant or licensee of any portion of the Facility other than the Company under an authorized lease or license giving such subtenant or licensee the right to remove such equipment, furniture and accessories at the end of the lease or license term.

EXHIBIT “C”

C-1 FORM OF ASSIGNMENT OF COMPANY LEASE

THIS ASSIGNMENT OF COMPANY LEASE AGREEMENT, dated as of _____ by the **CITY OF HUDSON INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, having its principal office at City Hall, 520 Warren Street, Hudson, New York 12534 (the “Agency”), to **PROVIDENCE AND SCHUYLER APARTMENTS PRESERVATION LLC**, a limited partnership duly formed and validly existing pursuant to the laws of the State of New York having its principal offices at 641 Lexington Avenue, 15th Floor, New York, New York 10022 (the “Company”):

WHEREAS, the Company and the Agency have previously entered into that certain Company Lease from the Company to the Agency dated as of April [__], 2024, and such lease or a memorandum thereof is to be recorded in the office of the Columbia County Clerk (the “Company Lease”), pursuant to which the Agency leased the Facility as defined in the Company Lease, located on the Land described at Schedule A, to the Agency; and

WHEREAS, in accordance with Section 11.1 of the Lease Agreement dated as of April [__], 2024 by and between the Agency and the Company, the Agency is required to convey its interest in the Facility to the Company pursuant to an Assignment of Company Lease on the date determined pursuant to Section 5.2 of the Lease Agreement; and

WHEREAS, the Agency desires to assign the Company Lease to the Company;

NOW, THEREFORE, in consideration of the sum of \$1.00 paid by each party to the other, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Agency hereby assigns to the Company, its successors and assigns, all of its right, title and interest in and to the Company Lease, without recourse to the Agency.

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chair or Vice Chair, and the Company has caused its corporate name to be subscribed hereto by its Authorized Representative, all being done as of the year and day first above written.

**CITY OF HUDSON INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

**PROVIDENCE AND SCHUYLER APARTMENTS
PRESERVATION LLC,**
a New York limited liability company

By: _____
Name:
Title:

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

On this ___ day of _____, 20 __, 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 whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On this ___ day of _____, 20 __, 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 whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

C-2 Form of Bill of Sale to Company

BILL OF SALE TO COMPANY

CITY OF HUDSON INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with offices at City Hall, 520 Warren Street, Hudson, New York 12534 (the “Grantor”), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration, received by the Grantor from PROVIDENCE AND SCHUYLER APARTMENTS PRESERVATION LLC, a limited liability company duly formed and validly existing pursuant to the laws of the State of New York and having a principal place of business at 641 Lexington Avenue, 15th Floor, New York, New York 10022 (the “Grantee”), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, its successors and assigns, without recourse, all those materials, machinery, equipment, fixtures or furnishings which are described in Schedule B attached hereto (the “Equipment”) now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located at the Facility (as such term is defined in that certain Lease Agreement dated as of April [__], 2024 between the Grantor and the Grantee) on the parcels of land (the “Land”) located at 20 Columbia Street and 119 Columbia Street in the City of Hudson, Columbia County, New York, which Land is more particularly described on Schedule A attached hereto.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE’S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT “AS IS”, WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR 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 GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer described below and dated as of the ___ day of _____, 20__.

CITY OF HUDSON INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Its: Chair

LIST OF ATTACHMENTS:

SCHEDULE "A" TO BILL OF SALE TO COMPANY

THE LAND

SURVEY DESCRIPTION

SCHEDULE "B" TO BILL OF SALE TO COMPANY

DESCRIPTION OF EQUIPMENT

All articles of personal property and all appurtenances and additions thereto and substitutions or replacements thereof, incorporated or installed in and part of and not attached to, contained in, or used in connection with the Facility (as defined in the Lease Agreement dated as of April [], 2024, by and between the City of Hudson Industrial Development Agency and Providence and Schuyler Apartments Preservation LLC), or placed on any part thereof, though not attached thereto, including, but not limited to, all screens, furniture and fixtures, heating, lighting, plumbing, ventilating, air conditioning, sprinkler systems and other fire prevention and extinguishing apparatus and materials, equipment, fittings and fixtures.

EXHIBIT D

MORTGAGE COLLATERAL

The following collateral may be provided to the Lender pursuant to the Permitted Mortgage as security for financing related to the Project and the Facility:

I. See Attached EXHIBIT A;

20 Columbia Street and 119 Columbia Street, Hudson New York 12534
City of Hudson, Columbia County
Tax Map ID Nos. 109.35-2-51 and 109.35-2-1

II. Additional Collateral: [None]

EXHIBIT E

Agency Fees

1. The initial administrative fee shall be \$[_____].
2. The annual administrative fee shall be payable on January 1, 2025 and each January 1 thereafter in an amount equal to one tenth of one percent of the assessed value of the Facility as of the March 1 immediately prior to the due date, without regard to any tax exemption or PILOT Agreement.

EXHIBIT F

Form of Dual Obligee Rider

MULTIPLE OBLIGEE RIDER TO PERFORMANCE BOND

BOND NO. _____

WHEREAS, Heretofore, on or about the _____ DAY OF _____, 202__,
_____ hereinafter referred to as Principal, entered into a written agreement with Providence and Schuyler Apartments Preservation LLC, hereinafter referred to as Original Obligee, for the reconstruction and rehabilitation of a project at 20 Columbia Street and 119 Columbia Street, Hudson, New York 12534, and

WHEREAS, City of Hudson Industrial Development Agency and ___[Lender]_____, hereinafter, referred to as Additional Obligee(s), have requested the Principal and Surety to join with the Original Obligee in the execution and delivery of this Rider, and the Principal and Surety have agreed so to do upon the conditions herein stated.

NOW THEREFORE, in consideration of one dollar and other good and valuable consideration, receipt of which is acknowledged, the undersigned agree that the said Performance Bond shall be, and is, amended as follows:

1. The names of City of Hudson Industrial Development Authority as Additional Obligee, and _____[Lender]_____ as Additional Obligee, shall be added to said bond as named Obligees.
2. The aggregate liability of the Surety under said bond to the Original Obligee and Additional Obligee(s), as their interests may appear, is limited to the penal sum of the said bond.
3. The Surety, as its option, may make any payment under said bond by check issued jointly to the Original Obligee and Additional Obligee(s).
4. The purpose of this Rider is to add Additional Obligee(s) only and is not intended to affect or alter the terms and conditions of this bond.

IN WITNESS WHEREOF, the Principal, the Surety, the Original Obligee and the Additional Obligee(s) have hereunto set their hands and seals, and such of them as are Corporations have caused their Corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

PRINCIPAL / CONTRACTOR – PRINTED

(SEAL)

By: _____

(Acknowledgment of Surety)

STATE OF _____)
)SS.:
COUNTY OF _____)

On this ____ day of _____, 20__, 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 whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

(Corporate seal)

ORIGINAL OBLIGEE – PRINTED

By: _____
SIGNATURE

(Print or Type Name and Title)

(Acknowledgment of Original Obligee)

STATE OF _____)
)SS.:
COUNTY OF _____)

On this ____ day of _____, 20__, 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 whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT G

Required Provisions of Permitted Mortgage

1. Mortgagor is the owner in fee simple of Grid Parcel Nos. 109.35-2-51 and 109.35-2-1 located at 20 Columbia Street and 119 Columbia Street, Hudson, New York 12534, all in Columbia County, State of New York, as more fully described in Schedule A attached hereto (the “**Agency Project Property**”), constituting a portion of the Mortgaged Property under [the Permitted Mortgage].
2. The Company has proposed to undertake a project “the “Project”) consisting of (A) the acquisition by the Agency of title to or a leasehold (or other) interest in an approximately 1.20-acre site with existing improvements at 119 Columbia Street, Hudson, New York, Tax ID 109.35-2-51, and in an approximately 2.50-acre site with existing improvements at 20 Columbia Street, Hudson, New York, Tax ID 109.35-2-1 (collectively, the “Land”); (B) rehabilitation of the existing approximately 152-unit housing complex (the “Improvements”); and (C) the acquisition of and installation in and around the Improvements of certain machinery, equipment and other items of tangible personal property (the “Equipment” and, collectively with the Land and the Improvements, the “Facility”), with an estimated total cost of \$23,089,654; the Agency has authorized the provision of certain “financial assistance” (within the meaning of Section 854(14) of Title 1 of Article 18 A of General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended), including potential exemptions from sales and use taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the “Financial Assistance”); and the lease (with an obligation to purchase) or sale of the Facility to the Company.
3. The Agency is the owner of a leasehold interest in the Agency Project Property pursuant to that certain Company Lease Agreement dated as of April [], 2024 by and between Company, as lessor, and the Agency, as lessee (as the same may from time to time be extended, amended, restated, supplemented or otherwise modified, the “**Company Lease**”);
4. The Company is the owner of a sub-leasehold interest in the Agency Project Property, pursuant to that certain Lease Agreement dated as of April [], 2024 between the Agency, as lessor, and Company, as lessee (as the same may from time to time be extended, amended, restated, supplemented or otherwise modified, the “**Lease Agreement**”);
5. As a condition of making the Loan to the Company with respect to the Project, Lender has required that Company and Agency execute and deliver this Mortgage to Lender. Pursuant to the Lease Agreement, the Agency has agreed to become a party hereto for the sole purpose of subjecting its interest in the Agency Project Property (other than the Unassigned Rights, as defined in the Lease Agreement) to the lien of this Mortgage.
6. Lender represents, warrants and covenants that it is not a Prohibited Person as such term is defined in the Lease Agreement, and is not a Person which directly or indirectly controls, is controlled by, or is under common control with the Company.

7. The Agency hereby GRANTS, BARGAINS, SELLS, ALIENATES, ENFEOFFS, CONVEYS, ASSIGNS, TRANSFERS, RELEASES, PLEDGES, and MORTGAGES to the Lender all of its right, title and interest in, the Agency Project Property, excluding the Unassigned Rights.

8. IDA Joinder:

(A) The City of Hudson Industrial Development Agency (“Agency”) is joining in the execution of this instrument, pursuant to the terms of the Lease Agreement dated as of the date hereof (the “Lease Agreement”) by and between the Agency and Providence and Schuyler Apartments Preservation LLC (“Company”), for the sole purpose of subjecting the Agency Project Property to the lien of this instrument. The Lender will not look to the Agency or any member, officer, agent (except for the Company) or employee of the Agency with respect to any covenant, stipulation, promise, agreement or obligation contained herein.

(B) The obligations and agreements of the Agency contained herein and in the other Project Documents, as such term is defined in the Lease Agreement, 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) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees 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. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State or of the City of Hudson, and neither the State nor the City of Hudson 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 sale or other disposition of the Agency Project Property (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or any other Project Documents shall be sought or enforced against the Agency unless a) 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) 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) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, b) 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 reasonable fees and expenses; and (c) 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) or employees shall be subject to potential liability, the party seeking such order or decree shall) (i) agree to indemnify and hold harmless the issuer and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (ii) if requested by the Agency, furnish to the Agency's satisfactory security to protect the Agency and its officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

(D) The Company hereby releases the Agency and the City and their respective members, officers, agents and employees (the "Indemnified Parties") from, agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify, defend and hold the Indemnified Parties harmless from and against any and all claims, causes of action, judgments, liabilities, damages, penalties, losses, costs and expenses arising as a result of (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 Company's leasehold interest in the Facility hereunder or arising by reason of or in connection with the occupation or the use thereof by the Company or the presence of any person or property on, in or about the Agency Project Property, as the employee, agent or invitee of the Company, (2) any failure of the Company to comply with any of the terms of this instrument or any Project Document, (3) any breach of any representation or warranty of the Company set forth in this instrument or in the Project Documents, (4) any untrue statement of a material fact or omission to state a material fact by the Company contained in this instrument or any Project Document, (5) based upon, directly or indirectly any Hazardous Materials or violation of Environmental Laws that exists or existed at the Agency Project Property prior to, at or after the effective date of this instrument, (6) any other claim, causes of action, judgments, liabilities, damages, penalties, losses, costs and expenses relating to the Project as defined in the Lease Agreement, the Agency Project Property, the execution of the Project Documents, and (7) 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 any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Indemnified Party are not incurred or do not result from the negligence or willful misconduct of such Indemnified Party, as the case may be.

(E) In the event of any claim against an Indemnified Party by any employee or agent 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.

(F) If any action, suit or proceeding is brought or reasonably threatened against any Indemnified Party for any loss or damage for which the Company is required to provide indemnification under this instrument, the party against whom the action, suit or proceeding is brought shall endeavor to promptly notify the Company.

(G) Notwithstanding any other provisions of this instrument, the obligations of the Company pursuant to this indemnity shall remain in full force and effect after the termination of this instrument 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 officers, members, agents or employees, relating thereto.

(H) Notwithstanding anything else in this instrument, this instrument may not be amended or modified except by a writing signed by all of the parties to this instrument including without limitation the Agency.

(I) The Lien of the Lease Agreement and all rights of the Company and the Agency thereunder are and shall be subordinate to the Lien of, and the security interest granted by, the [Permitted Mortgage], and all rights thereunder, on the Facility, subject to the Unassigned Rights as provided therein.