

CLOSING ITEM NO.: A-3

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TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY

AND

THE AYCO COMPANY, L.P.

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LEASE AGREEMENT

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DATED AS OF APRIL 1, 2019

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RESPECTING THE PREMISES LOCATED IN THE TOWN OF  
COLONIE, ALBANY COUNTY, NEW YORK.

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(This Table of Contents is not part of this Lease Agreement and is for convenience of reference only.)

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## LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of April 1, 2019 (the "Lease Agreement") by and between TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 347 Old Niskayuna Road, Latham, New York 12110 (the "Agency"), and THE AYCO COMPANY, L.P., a limited partnership organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 25 British American Boulevard, Latham, New York 12110 (the "Company");

### WITNESSETH:

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

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities; whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 232 of the Laws of 1977, as amended by Chapter 594 of the Laws of 1980 of the State, as amended (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Agency received an application (the "Application") from the Company to consider undertaking a project (the "Project") on behalf of the Company consisting of the following: (A)(1) the construction of tenant buildout and fit-up improvements (the "Tenant Improvements") in an approximately 149,005 square foot building (the "Facility") being constructed by Starlite Associates, LLC on certain real property located at 629 Columbia Street Extension in the Town of Colonie, Albany County, New York (the "Land"), and (2) the acquisition and installation therein and thereon of various machinery and equipment (the "Equipment") (the Land and the Facility being collectively referred to as the "Project Facility" and the Tenant Improvements and the Equipment

being collectively referred to as the “Tenant Project Facility”), such Project Facility and Tenant Project Facility to constitute a new office complex and corporate headquarters for the Company; (B) 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 (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Tenant Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, on October 16, 2017, the members of the Agency duly adopted a resolution (the “Public Hearing Resolution”) authorizing the Executive Director of the Agency, after consultation with the members of the Agency and the Agency’s Counsel, to (A) establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project (the “Public Hearing”); (B) cause the Public Hearing to be held in a city, town or village where the Project Facility is located, and cause notice of such Public Hearing to be given to the public by publishing a notice or notices of such Public Hearing in a newspaper of general circulation available to the residents of the governmental units where the Project Facility is located, such notice or notices to comply with the requirements of Section 859-a of the Act; (C) cause notice of the Public Hearing to be given to the chief executive officers of Albany County (the “County”), the Town of Colonie (the “Town”) and the North Colonie Central School District (the “School District”), in which the Tenant Project Facility is located, such notice or notices to comply with the requirements of Section 859-a of the Act; and (D) conduct such Public Hearing; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Agency (A) caused notice of the Public Hearing pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on April 2, 2018 to the chief executive officers of the County, the Town and the School District; (B) caused notice of the Public Hearing to be published on April 4, 2018 in the Times Union, a newspaper of general circulation available to the residents of the Town of Colonie, Albany County, New York; and (C) conducted the Public Hearing on April 23, 2018 at 6:00 p.m. at the Town of Colonie Public Operations Center, 347 Old Niskayuna Road, Latham, New York; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), the Project had been subject to an environmental review pursuant to the requirements of the State Environmental Quality Review Act and the regulations thereunder, resulting in the issuance of a Negative Declaration by the Town of Colonie Planning Board by resolution adopted on April 24, 2018; and

WHEREAS, pursuant to a resolution duly adopted by the members of the Agency on July 11, 2018 (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into this Lease Agreement and certain other documents related to the Financial Assistance (collectively with this Lease Agreement, the “Basic Documents”); and

WHEREAS, the Agency holds a leasehold interest in the Project Facility pursuant to a certain underlying lease by and between Starlite Associates, LLC (the "Landowner") and the Agency dated as of September 1, 2018; and

WHEREAS, the Company holds an interest in the Project Facility pursuant to a certain Lease dated October 10, 2017, as amended by the First Amendment to Lease dated as of December 31, 2017, by and between the Landowner and The Goldman Sachs Group, Inc. solely as agent for the Company; and

WHEREAS, the Agency now proposes to acquire the leasehold interest created pursuant to the Underlying Lease (as defined below) from the Company, to undertake the Project, to appoint the Company as agent of the Agency to undertake the acquisition, construction and installation of the Tenant Project Facility, and to lease the Tenant Project Facility to the Company, and the Company desires to act as agent of the Agency to undertake the acquisition, construction and installation of the Tenant Project Facility and to lease the Tenant Project Facility from the Agency, all pursuant terms and conditions hereinafter set forth in this Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of this Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency a certain lease to agency dated as of April 1, 2019 (the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency the Tenant Project Facility for a lease term ending on the Completion Date, (B) the Company will execute and deliver to the Agency a bill of sale dated as of April 1, 2019 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (C) the Agency and the Company will execute and deliver a project agreement dated as of April 1, 2019 (the "Project Agreement"), which sets forth the terms and conditions under which the Financial Assistance shall be provided to the Company, and (D) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be file pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, the providing of the Tenant Project Facility and the lease of the Tenant Project Facility to the Company pursuant to this Lease Agreement is for a proper purpose, to wit, to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State, pursuant to the provisions of the Act; 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 by the Agency and the Company;

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

## ARTICLE I

### DEFINITIONS

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

“Act” means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 232 of the Laws of 1977, as amended by Chapter 594 of the 1980 Laws of the State, as amended, constituting Section 911-d of the General Municipal Law of the State, as amended from time to time.

“Affiliate” means with respect to any Person, (a) each Person that controls, is controlled by or is under common control with any such Person or any Affiliate of such Person, and (b) each of such Person’s officers, directors, partners and members. For purpose of this definition “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of such Person’s management or policies, whether through the ownership of voting interests, by contract or otherwise. The Goldman Sachs Group, Inc. specifically is recognized as an Affiliate of the Company.

“Agency” means (A) Town of Colonie 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 Town of Colonie Industrial Development Agency or its successors or assigns may be a party.

“Applicable Laws” means 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 or affect the Tenant Project Facility or any part thereof or the conduct of work on the Tenant Project Facility or any part thereof or to the operation, use, manner of use or condition of the Tenant Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Agency were the owner of the Tenant Project Facility and as if the Company and not the Agency were the owner of the Tenant Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Tenant Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

“Approving Resolution” means the resolution duly adopted by the Agency on July 11, 2018 authorizing and directing the undertaking and completion of the Project and the execution and delivery of the Basic Documents to which the Agency is a party.

“Assignment to Company” means the assignment from the Agency to the Company, substantially in the form attached as Exhibit C to this Lease Agreement, which assignment is intended to convey to the Company, upon certain termination of this Lease Agreement, all right, title and interest of the Agency in and to the Tenant Project Facility, including the leasehold interest created pursuant to the Underlying Lease.

“Authorized Representative” means the person or persons at the time designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Agency or the Company, as the case may be, containing the specimen signature of each such person and signed on behalf of (A) the Agency by its Chairman or Vice-Chairman or such other person as may be authorized by resolution of the members of the Agency to act on behalf of the Agency, and (B) the Company by such person as may be authorized in writing by the Company to act on behalf of the Company.

“Basic Documents” means the Underlying Lease, the Bill of Sale to Agency, this Lease Agreement, the Project Agreement and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

“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.

“Bill of Sale to Company” means the bill of sale from the Agency to the Company conveying all of the Agency’s interest in the Equipment to the Company, substantially in the form attached as Exhibit D to this Lease Agreement.

“Business Day” means a day on which banks located in the Town of Colonie, New York are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

“Closing” means the closing at which the Basic Documents are executed and delivered by the Company and the Agency.

“Closing Date” means the date of the Closing.

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

“Company” means The Ayco Company, L.P., a limited partnership duly organized and existing under the laws of the State of Delaware and qualified and authorized to do business in the State, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of this Lease Agreement.

“Completion Date” means the earliest to occur of (A) December 31, 2021 or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to

Section 4.2 of this Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

“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.

“Default Interest Rate” means a per annum rate of interest equal to ten percent (10%) per annum, or the maximum rate of interest permitted by law, whichever is less.

“Equipment” means all equipment, fixtures, machines, building materials and items of personal property and all appurtenances intended to be acquired in connection with the completion of the Project, and such substitutions and replacements therefor as may be made from time to time pursuant to this Lease Agreement, including without limitation, all the Property described in Exhibit B attached to this Lease Agreement.

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

“Facility” means the approximately 149,005 square foot building, to be constructed on the Land.

“Financial Assistance” shall have the meaning assigned to such term in the fifth recital clause to this Lease Agreement.

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

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

“Hazardous Materials” shall mean all hazardous materials including, without limitation, any flammable explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), Articles 15 or 27 of the State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule or regulation.

“Indebtedness” means (1) the monetary obligations of the Company to the Agency and its members, officers, agents, servants and employees under this Lease Agreement and the other Basic Documents, and (2) all interest accrued on any of the foregoing.

“Independent Counsel” means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state and not a full-time employee of the Company or the Agency.

“Land” means the real property located at 629 Columbia Street Extension in the Town of Colonie, Albany County, New York, as more particularly described on Exhibit A attached to this Lease Agreement.

“Lease Agreement” means this lease agreement dated as of April 1, 2019 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased its interest in the Tenant Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

“Lien” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or a judgment against the Company. The term “Lien” includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes of the Basic Documents, 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.

“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 exist on the Closing Date and 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 8.8 of this Lease Agreement, (C) Liens for taxes, assessments and utility charges, to the extent permitted by Section 6.2(B) of this Lease Agreement, (D) any Lien on the Tenant Project Facility obtained through any Basic Document, and (E) any Lien requested by the Company in writing and consented to by the Agency, which consent of the Agency shall not be unreasonably withheld or delayed.

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



“Premises” means the Property leased to the Agency pursuant to the Underlying Lease.

“Project” means the project undertaken by the Agency on behalf of the Company consisting of: (A)(1) the construction of tenant buildout and fit-up improvements (the “Tenant Improvements”) in an approximately 149,005 square foot building (the “Facility”) being constructed by Starlite Associates, LLC on certain real property located at 629 Columbia Street Extension in the Town of Colonie, Albany County, New York (the “Land”), and (2) the acquisition and installation therein and thereon of various machinery and equipment (the “Equipment”) (the Land and the Facility being collectively referred to as the “Project Facility” and the Tenant Improvements and the Equipment being collectively referred to as the “Tenant Project Facility”), such Project Facility and Tenant Project Facility to constitute a new office complex and corporate headquarters for the Company; (B) 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 (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Tenant Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

“Project Agreement” means the project agreement, dated as of April 1, 2019, by and between the Company and the Agency, as amended from time to time.

“Project Facility” means the Land and the Facility.

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

“Public Hearing Resolution” means the resolution adopted by the members of the Agency on October 16, 2017 authorizing a public hearing in accordance with Section 859-a of the Act in connection with the Project.

“SEQR Resolution” means the resolution duly adopted by the Town of Colonie Planning Board on April 24, 2018 pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, determining that the Project had been subject to an environmental review pursuant to the requirements of the State Environmental Quality Review Act and the regulations thereunder, and resulting in the issuance of a Negative Declaration.

“SEQRA” means Article Eight of the Environmental Conservation Law of the State and the statewide regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York.

“State” means the State of New York.

“Tenant Improvements” means the tenant buildout and fit-up improvements.



“Tenant Project Facility” means the Tenant Improvements and the Equipment.

“Term” means the term of the Underlying Lease.

“Town” means the Town of Colonie, New York.

“Termination of Lease Agreement” means a termination of lease agreement by and between the Company, as tenant, and the Agency, as landlord, intended to evidence the termination of this Lease Agreement, substantially in the form attached as Exhibit E to this Lease Agreement.

“Unassigned Rights” means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.2, 3.3, 4.1, 5.2(A), 5.3(B), 5.4(B), 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.12, 9.1, 9.2, 9.3, 11.1, 12.4, 12.9 and 12.11 of this Lease Agreement, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents and employees of the Agency for their own account pursuant to Sections 2.2(G), 3.3, 5.3, 6.4(B), 8.2, 10.2 and 10.4 of this Lease Agreement, and (C) the right to enforce the foregoing pursuant to Article X of this Lease Agreement.

“Underlying Lease” means the underlying lease to Agency dated as of April 1, 2019 by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company has conveyed a leasehold interest in the Premises to the Agency, as said lease to agency may be amended or supplemented from time to time, the form of which is attached to this Lease Agreement.

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

(A) the terms “hereby”, “hereof”, “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;

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

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

(D) 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.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

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

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

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

(C) Pursuant to the Underlying Lease, the Agency will acquire a leasehold interest in the Premises from the Company, and pursuant to this Lease Agreement, the Agency will cause the Tenant Project Facility to be acquired, constructed and installed and will lease the Tenant Project Facility to the Company, all for the purpose of advancing the job opportunities, health, general prosperity and economic welfare of the people of the State and improving their standard of living.

(D) Except as provided in Article IX and Article X hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Tenant Project Facility or any part thereof and shall maintain the Tenant Project Facility, free and clear of all Liens or encumbrances, except as contemplated or allowed by the terms of this Lease Agreement and the other Basic Documents.

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

(A) The Company is a limited partnership duly organized and validly existing under the laws of the State of Delaware, is qualified and authorized to do business in the State of New York and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into this Lease Agreement and the other Basic Documents to which the Company is a

party and to carry out its obligations hereunder and thereunder. By proper action of its general partner, the Company has been duly authorized to execute, deliver and perform this Lease Agreement and the other Basic Documents to which the Company is a party.

(B) Neither the execution and delivery of this Lease Agreement or the other Basic Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions of this Lease Agreement or the other Basic Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Company's certificate of limited partnership or limited partnership agreement or any other restriction, order, judgment, agreement or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any Property of the Company under the terms of any such instrument or agreement, other than the Permitted Encumbrances, (2) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (3) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

(C) Although the completion of the Tenant Project Facility will result in the removal of a plant or facility of the Company from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company located in the State, the Project and the Financial Assistance are reasonably necessary to discourage the Company from removing a facility or plant of the Company located within the State to a location outside of the State, and are reasonably necessary to preserve the competitive position of the Company in its respective industry.

(D) The Tenant Project Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project.

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

(F) The Tenant Project Facility is, and so long as this Lease Agreement shall remain in effect, the Tenant Project Facility will continue to be a "project", as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action required by the Basic Documents or which the Agency advises 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 Tenant Project Facility not to constitute a "project", as such quoted term is defined in the Act, or (2) cause the Financial Assistance to be applied in a manner contrary to that provided in the Basic Documents.

(G) The Tenant Project Facility and the operation thereof will comply with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith. The Company shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith.

(H) The Project will not have a "significant effect on the environment" (within the meaning of such term as used in SEQRA) and the Company hereby covenants to comply with all mitigating measures, requirements and conditions, if any, enumerated in the SEQR Resolution under SEQRA applicable to the acquisition, construction and installation of the Tenant Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project. No material changes with respect to any aspect of the Tenant Project Facility have arisen from the date of the issuance of such negative declaration which would cause the determination contained therein to be untrue.

(I) The Company acknowledges receipt of notice of Section 874(8) of the Act, which requires that the Company, as agent of the Agency, annually file a statement with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Company and any authorized agents under the authority granted by the Agency.

(J) The Company acknowledges receipt of notice of Section 858-b of the Act which requires that the Company list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300), as superseded by Workforce Innovation and Opportunity Act (P.L. No. 113-128), in which the Tenant Project Facility is located. The Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(K) The Company acknowledges receipt of notice of Section 874(9) of the Act, which requires that the Agency file within thirty (30) days of the date the Company is appointed the agent of the Agency a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales and use taxes as a result of such appointment as agent, indicating an estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(L) The Company shall provide to the Agency any and all documentation or information requested by the Agency so that the Agency can comply with all of its reporting requirements under the Act.

(M) The Company covenants that all Financial Assistance granted to the Company by the Agency shall inure solely to the benefit of the Company.

## ARTICLE III

### CONVEYANCE AND USE OF TENANT PROJECT FACILITY

SECTION 3.1. CONVEYANCE TO THE AGENCY. Pursuant to the Underlying Lease the Company has conveyed or will convey, or will cause to be conveyed, to the Agency a leasehold interest in the Tenant Improvements. Pursuant to the Bill of Sale to Agency the Company has conveyed or will convey, or will cause to be conveyed, to the Agency title to the Equipment. The Company hereby represents and warrants that it has a valid leasehold interest in the Land and has a leasehold interest or title, as applicable to the portions of the Tenant Project Facility that exist on the Closing Date, free and clear from all Liens except for Permitted Encumbrances, and agrees that the Company will defend, indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest a leasehold interest in the Agency and shall take all action necessary or appropriate to protect such leasehold interest against claims of any third Persons. 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 Tenant Project Facility, except for Permitted Encumbrances.

SECTION 3.2. USE OF TENANT PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Tenant Project Facility in any manner not otherwise prohibited by the Basic Documents or the Act, provided such use causes the Tenant Project Facility to qualify or continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Tenant Project Facility into disrepute as a public project.

SECTION 3.3. HAZARDOUS MATERIALS. (A) The Company represents, warrants and covenants that the Company has not used Hazardous Materials on, from or affecting the Project Facility and the Tenant Project Facility in any manner which violates any Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and, to the best of the Company's knowledge, no prior owner of the Project Facility or the Tenant Project Facility or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from or affecting the Project Facility and the Tenant Project Facility in any manner which violates any Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(B) The Company shall keep or cause the Project Facility and the Tenant Project Facility to be kept free of all Hazardous Materials, except as permitted in accordance with Applicable Laws. Without limiting the foregoing, the Company shall not cause or permit the Project Facility and the Tenant Project Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Applicable Laws, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any tenant or subtenant of the Company, an unlawful release

of Hazardous Materials onto the Project Facility and the Tenant Project Facility or onto any other property.

(C) The Company shall comply and ensure compliance by all tenants and subtenants of the Company with, all Applicable Laws regarding Hazardous Materials whenever and by whomever triggered, and shall obtain and comply and ensure that all tenants and subtenants of the Company obtain and comply with, any and all approvals, registrations or permits required thereunder.

(D) To the extent required by any State or federal environmental regulator, the Company shall (1) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Material on, from or affecting the Project Facility and the Tenant Project Facility (a) in accordance with all Applicable Laws, (b) to the satisfaction of the Agency, and (c) in accordance with the orders and directives of all federal, state and local governmental authorities and (2) defend, indemnify, and hold harmless the Agency and its employees, agents, officers and members from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release or threatened release of any Hazardous Materials used, transported, stored, manufactured, refined, handled, produced or disposed of on or in the Project Facility and the Tenant Project Facility which are on, from or affecting soil, water, vegetation, buildings, personal property, persons, animals or otherwise, (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (c) any lawsuit brought or threatened, settlement reached, or any, government order relating to such Hazardous Materials, and/or (d) any violations of Applicable Laws which are based upon or in any way related to such Hazardous Materials, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. Costs under this subsection (D) will be repaid immediately after written demand therefor with interest at the Default Interest Rate or the maximum permitted by law, whichever is less.

(E) Reserved.

(F) The Company agrees that the Agency and its officers, agents or representatives, may with reasonable notice, at any reasonable time and at the Company's expense, inspect the Company's books and records and inspect and conduct any tests on the Project Facility and the Tenant Project Facility, including taking soil samples, in order to determine that the Company is in compliance with all Applicable Laws affecting the Tenant Project Facility. The Agency may not exercise this right more than once a year.

SECTION 3.4. 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 or leasehold interest 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 estate or leasehold interest in the Premises or any part thereof or any interest in such fee estate or leasehold interest, 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 or leasehold interest in the Premises or any part thereof or any interest in such fee estate or leasehold interest, shall join in a written instrument effecting such merger.

SECTION 3.5. COMPLIANCE WITH UNDERLYING LEASE. (A) Notwithstanding the granting of the leasehold interest created by the Underlying Lease in the Premises to the Agency pursuant to the Underlying Lease, the Company agrees, in consideration of the undertakings of the Agency set forth herein, that the Company will be and remain solely liable under the Underlying Lease for the performance of all covenants, agreements, obligations and duties of the Agency as tenant under the Underlying Lease, including, but not limited to, the making of all rental and other payments thereunder, and the Company will perform all of the covenants, agreements and obligations of the Agency as tenant under the Underlying Lease, at no expense to the Agency, in consideration of the execution and delivery by the Agency of the Basic Documents.

(B) The Company shall, on behalf of the Agency, (1) pay all rents, additional rents and other sums required to be paid by the Agency as tenant under and pursuant to the provisions of the Underlying Lease and (2) diligently perform and observe all of the terms, covenants and conditions of the Underlying Lease on the part, of the Agency, as tenant thereunder, to be performed and observed, unless such performance or observance shall be waived or not required in writing by the landlord under the Underlying Lease, to the end that all things shall be done which are necessary to keep unimpaired the rights of the Agency, as tenant, under the Underlying Lease.

SECTION 3.6. PUBLIC AUTHORITIES LAW REPRESENTATIONS. The parties hereto hereby acknowledge and agree that the Tenant Project Facility and the interest therein to be conveyed by this Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Tenant Project Facility and the interests therein are securing the financial obligations of the Company. The Tenant Project Facility and the interests therein secure the obligations of the Company to the Agency under this Lease Agreement, including the Company's obligation to acquire, construct, equip and maintain the Tenant Project Facility on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency.



## ARTICLE IV

### UNDERTAKING AND COMPLETION OF THE PROJECT

SECTION 4.1. ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE TENANT PROJECT FACILITY. (A) The Company shall, on behalf of the Agency, promptly acquire, construct, and install the Tenant Project Facility, or cause the acquisition, construction and installation of the Tenant Project Facility, all in accordance with the Project description.

(B) No material change in the Project description shall be made unless the Agency shall have consented thereto in writing (which consent of the Agency shall not be unreasonably withheld or delayed).

(C) Title to the Equipment shall vest in the Agency immediately upon execution of the Bill of Sale to Agency. Title to all Equipment acquired subsequent to the Closing Date and intended to be incorporated or installed in and to become part of the Tenant Project Facility shall vest in the Agency immediately upon deposit on the Land or incorporation or installation in the Tenant Project Facility, whichever shall first occur. The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest title to the above in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(D) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1; provided, however, that the liability of the Agency thereunder shall be limited to the moneys of the Company available therefor.

(E) The Agency hereby appoints the Company as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Basic Documents, and the Company hereby accepts such appointment: (1) to acquire, construct, install and complete the Tenant Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may, be requisite and proper, all for the acquisition, construction, installation and completion of the Tenant Project Facility, with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefore by the Company and advanced for such purposes by the Company pursuant to this Lease Agreement, (3) to pay all fees, costs and expenses incurred in the acquisition, construction, installation and completion of the Tenant Project Facility from funds made available therefor in accordance with this Lease Agreement, and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the acquisition, construction, installation and completion of the Tenant Project Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same.

(F) 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 Applicable Laws applying to or affecting the conduct of work on the Tenant Project Facility, and the Company will defend, indemnify and save the Agency and its 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 Tenant Project Facility shall be procured promptly by the Company.

(G) To the extent required by Applicable Law, the Company, as agent of the Agency will cause (1) compliance with the requirements of Article 8 of the New York Labor Law, and (2) any contractor, subcontractor and other person involved in the acquisition, construction and installation of the Tenant Project Facility to comply with Article 8 of the State Labor Law. The covenant in this subsection is not intended as a representation that Article 8 of the State Labor Law applies to the Project.

(H) The Company agrees, for the benefit of the Agency, to undertake and complete the Project and to pay all such sums as may be required in connection therewith. A leasehold interest in portions of the Tenant Project Facility acquired, constructed and installed at the Company's cost shall immediately upon such acquisition, construction 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 interest to such portions of the Tenant Project Facility.

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

**SECTION 4.2. COMPLETION OF THE TENANT PROJECT FACILITY.** The Company will proceed with due diligence to commence and complete the acquisition, construction and installation of the Tenant Project Facility. 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 acquisition, construction and installation of the Tenant Project Facility has 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 fee or leasehold interest in all Property constituting any portion of the Tenant Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances, and (E) that the Tenant Project Facility is 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 certificate of occupancy, or a letter from the local Governmental Authority stating that 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 Tenant Project Facility for its intended purposes have been issued. The Company agrees to use commercially reasonable efforts to

cause the completion of the acquisition, construction and installation of the Tenant Project Facility on or before the Completion Date unless such date is extended by the Agency in its sole discretion.

**SECTION 4.3. REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.** In the event of a default by any contractor, subcontractor or materialman under a contract made by it in connection with the acquisition, construction and installation of the Tenant Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and the Agency against the contractor, subcontractor or materialmen 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 in writing of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Company as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Tenant Project Facility, and thereafter be paid to the Company for its own use.

## ARTICLE V

### DEMISE OF TENANT PROJECT FACILITY; RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE

SECTION 5.1. LEASE OF THE TENANT PROJECT FACILITY. In consideration of the Company's covenant herein to make rental payments hereunder, and in consideration of the other covenants of the Company contained herein, including the covenant to make additional and other payments required hereby, the Agency hereby agrees to demise and lease to the Company, and the Company hereby agrees to rent and lease from the Agency, the Agency's interest in the Tenant Project Facility, subject only to Permitted Encumbrances. The obligation of the Agency under this Section 5.1 to lease the Tenant Project Facility to the Company shall be subject to there being no Event of Default existing hereunder, or any other event which would, but for the passage of time, be such an Event of Default.

SECTION 5.2. DURATION OF THE LEASE TERM; QUIET ENJOYMENT. (A) The Agency shall deliver to the Company possession of the Tenant Project Facility, and the leasehold estate created hereby shall commence, on the Closing Date, and the Company shall accept possession of the Tenant Project Facility on the Closing Date.

(B) Except as otherwise provided in Article X hereof, the leasehold estate created hereby shall terminate on the earlier to occur of (1) the Completion Date or (2) the date that this Lease Agreement shall terminate pursuant to Article X or Article XI hereof.

(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 Tenant Project Facility during the term of this Lease Agreement and will, at the written 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 Tenant Project Facility.

SECTION 5.3. RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE. (A) The Company shall pay basic rental payments for the Tenant Project Facility as follows: On the date of execution and delivery of this Lease Agreement, the Company shall pay, as the basic lease payments due hereunder, (1) a single lump sum basic rental payment, equal to the Agency's administrative fee relating to the Project; and (2) the reasonable fees and expenses of counsel to the Agency relating to the Project.

(B) Within fifteen (15) days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the reasonable expenses (including reasonable attorney fees) of the Agency and the officers, members, agents and employees thereof incurred by reason of the Agency's ownership, leasing or sale of the Tenant Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease Agreement or any of the other Basic Documents, and any other fee or expense of the Agency with respect to the Tenant Project Facility, the leasing or sale of the Tenant Project Facility to the Company, or any of the other Basic Documents, the payment of which is not otherwise provided for under this Lease Agreement.

(C) The Company agrees to make the above-mentioned payments, without any further notice, by check or wire transfer, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.3 within ten (10) days of the date such payment is due, the Company shall pay the same, together with interest thereon at the Default Interest Rate or the maximum rate 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. NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER. (A) The obligations of the Company to make the 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 general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any right of set-off, recoupment, counterclaim or abatement that the Company may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, this Lease Agreement, or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project, any defect in the title, design, operation, merchantability, fitness or condition of the Tenant Project Facility or any part thereof or in the suitability of the Tenant Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for destruction of or damage to, Condemnation of title to or the use of all or any part of the Tenant Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease Agreement.

(B) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease Agreement, and, in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 12.11 hereof); provided, however, that the Company shall look solely to the Agency's estate and interest in the Tenant Project Facility for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Company) or employees of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Lease Agreement, the relationship of the Agency and the Company hereunder or the Company's use and occupancy of or purchase of or title to the Tenant Project Facility, or any other liability of the Agency to the Company.

## ARTICLE VI

### MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1. MAINTENANCE AND MODIFICATIONS OF THE TENANT PROJECT FACILITY. (A) During the term of this Lease Agreement, the Company shall (1) keep the Tenant Project 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 Tenant Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), and (3) operate the Tenant Project Facility in a sound and economic manner.

(B) The Company shall not make any structural additions, modifications or improvements to the Tenant Project Facility or any part thereof unless:

(1) the Company shall (a) give or cause to be given all notices and comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on such addition, modification or improvement to the Tenant Project Facility, or a part thereof, (b) defend and save the Agency and its officers, members, agents (other than the Company) and employees harmless from all fines and penalties due to failure to comply therewith, (c) promptly procure all permits and licenses necessary for the prosecution of any work described in this Section 6.1(B), and (d) pay all taxes assessed upon the Tenant Project Facility and make all payments in lieu of taxes required by any payment in lieu of tax agreement executed in connection with all or any portion of the Tenant Project Facility;

(2) the addition, modification or improvement to the Tenant Project Facility shall not constitute a default under any of the Basic Documents; and

(3) the Company shall furnish to the Agency, at least thirty (30) days prior to commencing such addition, modification or improvement to the Tenant Project Facility plans and specifications therefor in detail similar to the detail provided in the Company's Application; provided, further, however, that such plans need not be furnished to the Agency for nonstructural additions, modifications or improvements to the Tenant Project Facility which do not exceed, at any one time, \$250,000 in value.

SECTION 6.2. TAXES, ASSESSMENTS AND UTILITY CHARGES. (A) The Company agrees to pay or cause to be paid, as the same respectively become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (1) all taxes, payments in lieu of taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Tenant Project Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Tenant Project Facility or any part or component thereof, or the rental or sale of the Tenant Project Facility or any part thereof, and any taxes levied upon or with

respect to the income or revenues of the Agency from the Tenant Project Facility, (2) all utility and other charges including "service charges", incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Tenant Project Facility, and (3) all assessments and charges of any kind whatsoever lawfully made against the Tenant Project Facility by any Governmental Authority for public improvements.

(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 (1) first shall have notified the Agency in writing of such contest and (2) is not in default under any of the Basic Documents. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

**SECTION 6.3. INSURANCE REQUIRED.** During the term of this Lease Agreement, the Company shall maintain insurance with respect to the Project Facility and the Tenant Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

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

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

(C) Insurance protecting the Company and the Agency against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.2 of this Lease Agreement) and arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$500,000 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate umbrella liability policy protecting the Company and the Agency with a limit of not less than \$4,000,000.

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



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

ii. Comprehensive general liability providing coverage for:

Premises and Operations  
Products and Completed Operations  
Owners Protective  
Contractors Protective  
Contractual Liability  
Personal Injury Liability  
Broad Form Property Damage (including completed operations)  
Explosion Hazard Collapse Hazard  
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

iii. Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

iv. Excess "umbrella" liability providing liability insurance in excess of the coverages in (ii) and (iii) above with a limit of not less than \$4,000,000.

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

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

SECTION 6.4. ADDITIONAL PROVISIONS RESPECTING INSURANCE. (A) All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and satisfactory and having a Best rating satisfactory to the Agency. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall name the Company as insured and the Agency as additional insured, as their interests may appear, and provide for at least thirty (30) days' written notice to the Company and the Agency prior to cancellation, lapse, reduction in



policy limits or material change in coverage thereof. The policy evidencing the insurance required by Sections 6.3(A) and 6.3(C) hereof shall name the Agency as an additional insured on a primary and noncontributory basis with any coverage held by the Agency, if any. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4 hereof. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced, or is no longer required by this Lease Agreement.

(B) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate or the maximum rate permitted by law, whichever is less.

SECTION 6.5. 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) the Net Proceeds of the insurance required by Section 6.3(C) hereof shall be applied as provided in Section 7.1 hereof, and (B) the Net Proceeds of the insurance required by Section 6.3(B) and 6.3(C) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

SECTION 6.6. RESERVED.

## ARTICLE VII

### DAMAGE, DESTRUCTION AND CONDEMNATION

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

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

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

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

(4) except as otherwise provided in subsection (B) of this Section 7.1, (a) the Company shall promptly replace, repair, rebuild or restore the Tenant Project Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Tenant Project Facility that it does not constitute a "project", as such quoted term is defined in the Act, or change the use of the Tenant Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b)(1) the Agency shall make available to the Company (from the Net Proceeds of any insurance settlement relating to the Tenant Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Tenant Project Facility, and in the event that the funds from the Net Proceeds of any insurance settlement provided by the Agency to the Company are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any insurance settlement relating to the Tenant Project Facility, if any, remaining on deposit with the Agency after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be paid to the Company for its own purposes.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, the Company shall not be obligated to replace, repair, rebuild or restore the Tenant Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to purchase the Agency's leasehold interest in the Tenant Project Facility. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Tenant Project Facility, or (2) the amount necessary to prepay the

Indebtedness in full shall be applied to the prepayment of the Indebtedness in full. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to prepay Indebtedness in full, the Company shall pay to the Agency the difference between the Net Proceeds of such insurance and the amount necessary to prepay the Indebtedness in full.

(C) If all Indebtedness has been paid in full, all such Net Proceeds (or the balance thereof) shall be paid to the Company for its purpose.

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

SECTION 7.2. CONDEMNATION. (A) To the knowledge of the Company, no condemnation or eminent domain proceeding has been commenced or threatened against any part of the Tenant Project Facility. The Company shall notify the Agency of the institution of any condemnation proceedings and, within seven days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

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

- (1) the Agency shall have no obligation to restore the Tenant Project Facility;
- (2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Tenant Project Facility is restored);
- (3) the Company shall promptly give notice thereof to the Agency; and

(4) except as otherwise provided in subsection (C) of this Section 7.2, (a) the Company shall promptly restore the Tenant Project Facility (excluding any part of the Land or the Facility taken by Condemnation) as a complete architectural unit of substantially the same usefulness, design and construction as existed immediately prior to such Condemnation, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Tenant Project Facility that it does not constitute a "project" as such quoted term is defined in the Act, or change the use of the Tenant Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b)(1) the Agency shall make available to the Company (from the Net Proceeds of any Condemnation award relating to the Tenant Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the restoration of the Tenant Project Facility, and in the event that the funds from the Net Proceeds of any Condemnation award on deposit with the Agency provided by the Agency to the Company are not sufficient to pay in full the costs of such restoration, the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof

in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any Condemnation award, if any, remaining on deposit with the Agency after payment of all of the costs of such restoration shall be paid to the Company for its own purposes.

(C) Notwithstanding anything to the contrary contained in subsection (B) of this Section 7.2, the Company shall not be obligated to restore the Tenant Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (B) of this Section 7.2, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to purchase the Agency's interest in the Tenant Project Facility. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to prepay all of the Indebtedness in full shall be applied to the prepayment of the Indebtedness in full. If the Net Proceeds collected under any and all Condemnation awards are less than the amount necessary to prepay the Indebtedness in full, the Company shall pay to the Agency the difference between such amounts and the Net Proceeds of such Condemnation awards so that the Indebtedness shall be prepaid in full.

(D) If all of the Indebtedness has been paid in full, all such Net Proceeds (or the balance thereof) shall be paid to the Company for its purposes.

(E) Unless an Event of Default under any of the Basic Documents shall have occurred and be continuing, the Company shall have sole control of any Condemnation proceeding with respect to the Tenant Project Facility or any part thereof and may negotiate the settlement of any such proceeding. The Company shall notify the Agency of the institution of any condemnation proceedings and, within seven days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(F) The Agency shall, at the expense of the Company, cooperate fully with the Company in the handling and conduct of any such Condemnation proceeding. In no event shall the Agency voluntarily settle, or consent to the settlement of, any such Condemnation proceeding without the written consent of the Company.

**SECTION 7.3. ADDITIONS TO THE TENANT PROJECT FACILITY.** All replacements, repairs, rebuilding or restoration made pursuant to Sections 7.1 or 7.2, whether or not requiring the expenditure of the Company's own money, shall automatically become part of the Tenant Project Facility as if the same were specifically described herein.

## ARTICLE VIII

### SPECIAL COVENANTS

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

SECTION 8.2. HOLD HARMLESS PROVISIONS. (A) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Tenant Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Tenant Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Tenant Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Tenant Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Lease Agreement or any of the other Basic Documents or the enforcement of or defense of validity of any provision of any of the Basic Documents, (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) hereof, and (4) all causes of action and reasonable 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 Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

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

(C) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3(C) of this Lease Agreement, its liabilities assumed pursuant to this Section 8.2.

(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 (other than the Company) or employees, relating thereto.

(E) Notwithstanding anything contained in this Lease Agreement to the contrary, whenever the Company is obligated under this Lease Agreement to indemnify and hold harmless the Agency, its directors, members, officers, agents (except the Company), or employees, the Company shall be given prompt notice of any matter that arises requiring indemnification, but failure to give such notice shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section provided that such failure does not materially prejudice the Company in its ability to defend the Agency or materially impair the Company defense. The Company shall have the right to defend the Agency its directors, members, officers, agents (except the Company), and employees, and provided the Company promptly and continuously thereafter defends the Agency, its directors, members, officers, agents (except the Company), and employees, no other attorney's fees of the Agency its directors, members, officers, agents (except the Company), and employees shall be payable by the Company.

(F) Notwithstanding the provisions of subsection (E) hereof, the Agency retains the right to defend itself in any action or actions covered by the indemnities in this Lease Agreement, which in the reasonable opinion of the Agency, its directors, members, officers, agents (except the Company), or employees, independent counsel is necessary to protect the interests of the Agency due to the failure or inability of the Company to defend the Agency consistent with contemporary legal standards. In any such defense of itself, the Agency shall select its own counsel, and any and all reasonable out-of-pocket costs of such defense, including, without limitation, reasonable attorney and disbursement fees, court costs, and litigation expenses shall be paid by the Company.

**SECTION 8.3. RIGHT OF ACCESS TO THE TENANT PROJECT FACILITY.** The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times following reasonable notice to enter upon and to examine and inspect the Tenant Project Facility,

provided the Agency and its agents shall comply at all times with the Company's safety and security procedures and policies. The Company further agrees that the Agency shall have such rights of access to the Tenant Project Facility as may be reasonably necessary to cause the proper maintenance of the Tenant Project Facility in the event of failure by the Company to perform its obligations hereunder, provided the Agency and its agents shall comply at all times with the Company's safety and security procedures and policies.

**SECTION 8.4. COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS.** The Company agrees that, during the term of this Lease Agreement, it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or, merge into another entity, or permit one or more entities to consolidate with or merge into it without obtaining the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Company may merge into or with an Affiliate of the Company upon notice to the Agency.

**SECTION 8.5. AGREEMENT TO PROVIDE INFORMATION.** The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation. Without limiting the foregoing, the Company further agrees whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, as amended from time to time, or any other reports required by the New York State Authorities Budget Office or the Office of the State Comptroller or any of the Basic Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

**SECTION 8.6. BOOKS OF RECORD AND ACCOUNT; COMPLIANCE CERTIFICATES. (A)** The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company.

(B) As soon as possible after the end of each fiscal year of the Company, but in any event within thirty (30) days after such date, the Company shall furnish to the Agency a certificate of an Authorized Representative of the Company stating that no Event of Default hereunder has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto.

**SECTION 8.7. COMPLIANCE WITH APPLICABLE LAWS. (A)** The Company agrees, for the benefit of the Agency, that it will, during the term of this Lease Agreement, promptly comply with all Applicable Laws.



(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Company may in good faith actively contest the validity or the applicability of any Applicable Law, provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) is not in default under any of the Basic Documents, (3) shall have set aside adequate reserves for any such requirement, and (4) demonstrates to the reasonable satisfaction of the Agency that noncompliance with such Applicable Law will not subject the Tenant Project Facility or any part thereof to loss or forfeiture. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.7, if the Agency or any of its members, officers, agents, servants 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 8.8. DISCHARGE OF LIENS AND ENCUMBRANCES. The Company hereby agrees not to create or suffer to be created any Lien on any Properties of the Agency (other than Permitted Encumbrances) or on any funds of the Agency applicable to the Tenant Project Facility.

SECTION 8.9. PERFORMANCE OF THE COMPANY'S OBLIGATIONS. Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but 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 fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Agency in connection therewith, and the Company shall pay immediately upon demand all sums so incurred or expended by the Agency under the authority hereof, together with interest thereon at the Default Interest Rate or the maximum rate permitted by law, whichever is less.

SECTION 8.10. DEPRECIATION DEDUCTIONS AND TAX CREDITS. The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Tenant Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Tenant Project Facility which constitutes "Section 38 Property" and to all other State and/or federal income tax deductions and credits which may be available with respect to the Tenant Project Facility.

SECTION 8.11. EMPLOYMENT OPPORTUNITIES. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Tenant Project Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300), as superseded by Workforce Innovation and Opportunity Act (P.L. No. 113-128) in which the Tenant Project Facility is located (collectively, the "Referral Agencies"). Such job opportunities required to be listed with the Agency shall include internships. The Company also



agrees, that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies. The Company also covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will list all available job openings and internships on the Agency's website for the duration of the term of this Lease Agreement.

**SECTION 8.12. IDENTIFICATION OF THE EQUIPMENT.** All Equipment which is or may become part of the Tenant Project Facility pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency, such approval not to be unreasonably withheld.

## ARTICLE IX

### ASSIGNMENTS; MERGER OF THE AGENCY

SECTION 9.1. ASSIGNMENT OF THIS LEASE AGREEMENT. Except as otherwise provided in Section 8.4 hereof, this Lease Agreement may not be assigned by the Company, in whole or in part, without the prior written consent of the Agency, not to be unreasonably withheld.

SECTION 9.2. MERGER OF THE AGENCY. (A) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other public benefit corporation of the State or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests under this Lease Agreement shall be assigned.

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

SECTION 9.3. SALE OR LEASE OF THE TENANT PROJECT FACILITY. (A) The Company may not sell, lease, transfer, convey or otherwise dispose of the Tenant Project Facility or any part thereof without the prior written consent of the Agency.

(B) Notwithstanding anything to the contrary contained in this Lease Agreement, in any instance after the Completion Date where the Company determines that any portion of the Tenant Project Facility has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such portion of the Tenant Project Facility and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Agency, provided that such removal will not materially impair the value of the Tenant Project Facility as collateral and provided the same is forthwith replaced with similar items. At the request of the Company, the Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Property free from the Liens of the Basic Documents. The Company shall pay all costs and expenses (including attorney fees) incurred in transferring title to and releasing from the Liens of the Basic Documents any item of Property removed pursuant to this Section 9.3.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1. EVENTS OF DEFAULT DEFINED. (A) The following shall be "Events of Default" under this Lease Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Lease Agreement, 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 subsection (B) of Section 5.3 hereof.

(2) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.3 (other than subsection (B)) hereof, and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company.

(3) 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 thereof is given by the Agency to the Company, provided that, if such default 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.

(4) The occurrence of an "Event of Default" under any other Basic Document.

(5) Reserved.

(6) Reserved.

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

(8) The Company shall conceal, remove or permit to be concealed or removed any of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof.

(9) (a) The filing by the Company (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute, (b) the failure by the Company within sixty (60) days to lift any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its

obligations hereunder, (c) the commencement of a case under Title 11 of the United States Code against the Company as the debtor or commencement under any other federal or state bankruptcy statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of sixty (60) days, (d) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company, or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver 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 sixty (60) days of such appointment.

(10) The imposition of a Lien on the Tenant Project Facility other than a Permitted Encumbrance.

(11) The removal of the Tenant Project Facility, or any portion thereof, outside the Town of Colonie, New York, without the prior written consent of the Agency, other than in connection with a removal under Section 9.3(B) hereof.

(B) Notwithstanding the provisions of Section 10.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Agency within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, 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. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Sections 4.1(H), 5.3, and 6.2 hereof, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 3.3 and 8.2 hereof and to comply with the provisions of Sections 2.2(G), 8.2, 8.4, 8.5 and 8.7(C) hereof. The term "force majeure" as used herein shall include acts outside of the control of the Agency and the Company, including but not limited to acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of any Governmental Authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

SECTION 10.2. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 hereof, and (b) all other payments due under this Lease Agreement or any of the other Basic Documents;

(2) reserved;

(3) terminate the Underlying Lease and this Lease Agreement and convey to the Company all the Agency's right, title and interest in and to the Tenant Project Facility (the conveyance of the Agency's right, title and interest in and to the Tenant Project Facility shall be effected by the delivery by the Agency of the Assignment to Company and the Bill of Sale to Company; the Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or

(4) 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.

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

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

SECTION 10.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreement 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 should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE XI

### OPTIONS AND OBLIGATION TO PURCHASE

SECTION 11.1. EARLY TERMINATION OF THIS LEASE AGREEMENT. The Company shall have the option to terminate this Lease Agreement prior to the termination date specified in Section 5.2 hereof by filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1 and the payment of all amounts due pursuant to the terms of this Lease Agreement.

SECTION 11.2. OBLIGATION TO SELL AND PURCHASE THE TENANT PROJECT FACILITY. Contemporaneously with the termination of this Lease Agreement in accordance with Section 5.2 or Section 11.1 hereof, the Agency shall sell and the Company shall purchase all the Agency's right, title and interest in and to the Tenant Project Facility for a purchase price equal to the sum of One Dollar (\$1.00), plus payment of all sums due and payable to the Agency and Agency Counsel pursuant to this Lease Agreement and the other Basic Documents. The obligation of the Agency under this Section 11.2 to convey the Tenant Project Facility to the Company will be subject to there being no Event of Default existing hereunder or under any other Basic Document, or any other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default.

SECTION 11.3. CONVEYANCE ON PURCHASE OF THE TENANT PROJECT FACILITY. (A) At the closing of any purchase of the Agency's interest in the Tenant Project Facility pursuant to Section 11.2 hereof, the Agency shall, upon the satisfaction of the conditions set forth in Section 11.1 and Section 11.2 hereof, as appropriate, deliver to the Company all necessary documents (1) to convey to the Company all the Agency's right, title and interest in and to the Property being purchased, as such property then exists, subject only to the following: (a) any Liens or title defects to which title to such Property was subject when conveyed to the Agency, (b) any Liens created by or at the request of the Company or to the creation of which the Company consented, (c) any Permitted Encumbrances, and (d) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default; and (2) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance settlements or Condemnation awards with respect to the Tenant Project Facility (but not including amounts relating to the Unassigned Rights).

(B) The sale and conveyance of the Agency's right, title and interest in and to the Tenant Project Facility shall be effected by the execution and delivery by the Agency to the Company of the Assignment to Company (an unexecuted copy of which is attached hereto as Exhibit C and by this reference made a part hereof). The sale and conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery by the Agency to the Company of the Bill of Sale to Company (an unexecuted copy of which is attached hereto as Exhibit D and by this reference made a part hereof). The termination of this Lease Agreement shall be effected by the execution and delivery of the Company and the Agency of the Termination of Lease Agreement (an unexecuted copy of which is attached hereto as Exhibit E and by this reference made a part hereof). The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such



transfers of leasehold interest or title. In the event of a termination of the Underlying Lease and this Lease Agreement resulting from the exercise by the Agency of its remedies under Section 10.2 hereof, the Agency shall have the right to execute an appropriate Assignment to Company, Bill of Sale to Company and Termination of Lease Agreement (collectively, the "Termination Documents") with respect to the Tenant Project Facility, at the sole cost and expense of the Company and in such event the Company waives delivery and acceptance of the Termination Documents and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution to execute such Termination Documents.

(C) The Company agrees to prepare the Assignment to Company and/or the Bill of Sale to Company and/or the Termination of Lease Agreement and all schedules thereto, together with all equalization and assessment forms and other necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that the Agency's interest in the Tenant Project Facility or any portion thereof is to be conveyed to the Company.

(D) The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from the transfers contemplated by this Section 11.3.

(E) This Lease Agreement shall survive the transfer of the Tenant Project Facility to the Company pursuant to this Section 11.3 and shall remain in full force and effect until all of the Indebtedness shall have been paid in full, and thereafter the obligations of the Company shall survive as set forth in Section 12.9 hereof.

(F) Upon the payment in full of all Indebtedness under or secured by this Lease Agreement, and notwithstanding the survival of certain obligations of the Company as described in Section 12.9 hereof, the Agency shall upon the request of the Company execute and deliver to the Company such documents as the Company may reasonably request to evidence the termination and release of all Liens granted to the Agency hereunder.

## ARTICLE XII

### MISCELLANEOUS

SECTION 12.1. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

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

IF TO THE COMPANY:

The Ayco Company, L.P.  
25 British American Boulevard  
Latham, New York 12110  
Attention: Kathryn L. Matthews

WITH A COPY TO:

The Ayco Company, L.P.  
321 Broadway  
Saratoga Springs, New York 12866  
Attention: Ayco Legal

AND TO:

The Goldman Sachs Group, Inc.  
c/o Goldman, Sachs & Co., LLC  
30 Hudson Street, 40<sup>th</sup> Floor  
Jersey City, New Jersey 07302-4699  
Attention: Corporate Services, Anthony Cammarata

IF TO THE AGENCY:

Town of Colonie Industrial Development Agency  
347 Old Niskayuna Road  
Latham, New York 12110  
Attention: Chairman

WITH A COPY TO:

Barclay Damon LLP  
80 State Street  
Albany, New York 12207  
Attention: M. Cornelia Cahill, Esq.

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

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

SECTION 12.3. SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be 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.

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

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

SECTION 12.6. APPLICABLE LAW. This Lease Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State.

SECTION 12.7. LIST OF ADDITIONAL EQUIPMENT; FURTHER ASSURANCES. Upon the Completion Date with respect to the Equipment and the installation of all of the Equipment in the Tenant Project Facility, the Company shall prepare and deliver to the Agency a schedule listing all of the Equipment not previously described in this Lease Agreement. If requested by the Agency, the Company shall thereafter furnish to the Agency, within sixty (60) days after the end of each calendar year, a schedule listing all of the Equipment not theretofore previously described herein or in the aforesaid schedule.

SECTION 12.8. RESERVED.

SECTION 12.9. SURVIVAL OF OBLIGATIONS. (A) The obligations of the Company to make the payments required by Sections 5.3 hereof and to provide the indemnity required by Sections 3.3 and 8.2 hereof and to provide information pursuant to Section 2.2(L) shall survive the termination of this Lease Agreement, and all such payments after such termination shall be made upon demand of the party to payment is due.

(B) The obligations of the Company to the Agency with respect to the Unassigned Rights shall survive 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 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 12.10. 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. NO RECOURSE; SPECIAL OBLIGATION. (A) The obligations and agreements of the Agency contained herein and in the other Basic Documents and any other instrument or document executed in connection herewith or therewith, and any other instrument 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 shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

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


(C) No order or decree of specific performance with respect, to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) 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 days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an

amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend 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 (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

[REMAINDER OF PAGE 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 duly authorized representatives, all as of the day and year first above written.

TOWN OF COLONIE INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
John Kearney  
Chairman

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

On the 10<sup>th</sup> day of December in the year 2018 before me, the undersigned, a notary public in and for the State of New York, personally appeared John Kearney, 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

MELISSA C BENNETT  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02BE6266734  
QUALIFIED IN ALBANY COUNTY  
COMMISSION EXPIRES 8/06/2020

*Saratoga*

THE AYCO COMPANY, L.P.

By: M. Sch  
Authorized Representative

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

On the <sup>2<sup>nd</sup></sup> day of April in the year 2019 before me, the undersigned, a notary public in and for the State of New York, personally appeared Mae A - Cawli, 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.

Lynn Shyptycki  
Notary Public

Lynn Shyptycki  
Notary Public - NYS  
Saratoga Co. #01SH4675911  
Commission Expires 5/31/22

Signature Page to Lease Agreement  
Page 2 of 2



## EXHIBIT A

### DESCRIPTION OF THE LAND

ALL that certain parcel of land situate in the Town of Colonie, County of Albany and State of New York being more particularly bounded and described as follows:

Beginning at a point on the northerly bounds of Columbia Street at its intersection with the division line between the lands now or formerly of William F. Pompa as described in R2017-23086 to the east and the Lands now or formerly of Starlite Associates LLC as described in Book 3036 of Deeds at Page 162 to the west; Thence along the northerly bounds of Columbia Street the following two (2) courses and distances:

1. South 75° 23' 00" West for a distance of 11.23 feet to a point;
2. South 58° 23' 00" West for a distance of 230.12 feet to a point;

Thence along the division line between the lands now or formerly of 621 Columbia St LLC as described in Book 2729 of Deeds at Page 392 and R2018-18771 to the west and south and the lands now or formerly of Starlite Associates LLC as described in Book 3036 of Deeds at Page 162 to the east and north the following five (5) courses and distances:

1. North 04° 00' 20" West for a distance of 320.17 feet to a point;
2. South 58° 15' 10" West for a distance of 333.12 feet to a point;
3. South 61° 45' 20" West for a distance of 276.57 feet to a point;
4. South 00° 06' 50" East for a distance of 39.77 feet to a point;
5. South 56° 31' 17" West for a distance of 95.89 feet to a point on a Proposed Town Road; Thence along the easterly bounds of a Proposed Town Road the following nine (9) courses and distances:

1. North 47° 15' 09" West for a distance of 211.73 feet to the beginning of a curve;
2. Along said curve turning to the right with a central angle of 28° 04' 27", having a radius of 290.00 feet, an arc length of 142.10 feet and whose chord bears North 33° 12' 56" West for a distance of 140.68 feet to point of compound curvature;
3. Along said curve turning to the right with a central angle of 27° 02' 36", having a radius of 341.00 feet, an arc length of 160.95 feet and whose chord bears North 05° 39' 24" West for a distance of 159.46 feet to a point of tangency;
4. North 07° 51' 53" East for a distance of 131.07 feet to the beginning of a curve;
5. Along said curve turning to the left with a central angle of 10° 45' 20", having a radius of 401.00 feet, an arc length of 75.28 feet and whose chord bears North 02° 29' 13" East for a distance of 75.17 feet to a point of tangency;
6. North 02° 53' 27" West for a distance of 151.16 feet to a point;
7. North 39° 16' 33" West for a distance of 102.36 feet to a point;
8. North 17° 14' 03" West for a distance of 73.31 feet to a point;
9. North 47° 58' 38" West for a distance of 4.34 feet to a point; Thence through the lands now or formerly of Starlite Associates LLC for the following five (5) courses and distances:

1. North  $43^{\circ} 25' 04''$  East for a distance of 81.08 feet to a point;
2. North  $57^{\circ} 51' 34''$  East for a distance of 482.96 feet to a point;
3. South  $68^{\circ} 38' 07''$  East for a distance of 348.87 feet to a point;
4. South  $07^{\circ} 28' 06''$  West for a distance of 363.04 feet to a point;
5. South  $70^{\circ} 17' 16''$  East for a distance of 408.15 feet to a point; Thence South  $04^{\circ} 38' 50''$  East along the westerly line of said lands now or formerly of William F. Pompa as described in R2017-23086 a distance of 417.72 feet to the Point of Beginning.

CONTAINING 863,135 Square Feet or 19.81 Acres of Land more or less .

## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All articles of personal property and all appurtenances of The Ayco Company, L.P. now or hereafter attached to, contained in or used in connection with the Tenant Project Facility or placed on any part thereof, though not attached thereto, including, but not limited to, all equipment, machinery, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, drapes, blinds and accessories, call systems, stoves, ranges, refrigerators, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, sprinkler systems and other fire prevention and extinguishing apparatus and materials and furniture; 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.

EXHIBIT C

FORM OF ASSIGNMENT TO COMPANY

THIS ASSIGNMENT TO COMPANY (the "Assignment to Company") dated as of \_\_\_\_\_, \_\_\_\_\_ by and between TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 347 Old Niskayuna Road, Latham, New York 12110 (the "Agency") and THE AYCO COMPANY, L.P., a limited partnership organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 25 British American Boulevard, Latham, New York 12110 (the "Company").

In consideration of the sum of Ten Dollars (\$10.00), receipt and sufficiency of which is acknowledged, the Agency hereby sells, assigns and conveys to the Company all of the Agency's right, title and interest in and to a certain underlying lease to agency dated as of April 1, 2019 (the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant, whereby the Company granted to the Agency a leasehold interest in certain improvements on the parcel of the land more particularly described in Exhibit A attached thereto (the "Land"), affixed or attached to the Land now or in the future.

The Company hereby agrees to indemnify the Agency as to any claims that have arisen heretofore or shall arise hereafter under the Underlying Lease and this Assignment to Company.

IN WITNESS WHEREOF, the Agency and the Company, for the purposes above set forth, have caused this Assignment to Company to be executed and delivered by their duly authorized representatives, all as of the day and year first above written.

TOWN OF COLONIE INDUSTRIAL  
DEVELOPMENT AGENCY

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

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a notary public in and for the State of New York, 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

THE AYCO COMPANY, L.P.

By: \_\_\_\_\_  
Authorized Representative

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a notary public in and for the State of New York, personally appeared \_\_\_\_\_, 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 A

### DESCRIPTION OF THE LAND

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Beginning at a point on the northerly bounds of Columbia Street at its intersection with the division line between the lands now or formerly of William F. Pompa as described in R2017-23086 to the east and the Lands now or formerly of Starlite Associates LLC as described in Book 3036 of Deeds at Page 162 to the west; Thence along the northerly bounds of Columbia Street the following two (2) courses and distances:

1. South  $75^{\circ} 23' 00''$  West for a distance of 11.23 feet to a point;
2. South  $58^{\circ} 23' 00''$  West for a distance of 230.12 feet to a point;

Thence along the division line between the lands now or formerly of 621 Columbia St LLC as described in Book 2729 of Deeds at Page 392 and R2018-18771 to the west and south and the lands now or formerly of Starlite Associates LLC as described in Book 3036 of Deeds at Page 162 to the east and north the following five (5) courses and distances:

1. North  $04^{\circ} 00' 20''$  West for a distance of 320.17 feet to a point;
2. South  $58^{\circ} 15' 10''$  West for a distance of 333.12 feet to a point;
3. South  $61^{\circ} 45' 20''$  West for a distance of 276.57 feet to a point;
4. South  $00^{\circ} 06' 50''$  East for a distance of 39.77 feet to a point;
5. South  $56^{\circ} 31' 17''$  West for a distance of 95.89 feet to a point on a Proposed Town Road; Thence along the easterly bounds of a Proposed Town Road the following nine (9) courses and distances:

1. North  $47^{\circ} 15' 09''$  West for a distance of 211.73 feet to the beginning of a curve;
2. Along said curve turning to the right with a central angle of  $28^{\circ} 04' 27''$ , having a radius of 290.00 feet, an arc length of 142.10 feet and whose chord bears North  $33^{\circ} 12' 56''$  West for a distance of 140.68 feet to point of compound curvature;
3. Along said curve turning to the right with a central angle of  $27^{\circ} 02' 36''$ , having a radius of 341.00 feet, an arc length of 160.95 feet and whose chord bears North  $05^{\circ} 39' 24''$  West for a distance of 159.46 feet to a point of tangency;
4. North  $07^{\circ} 51' 53''$  East for a distance of 131.07 feet to the beginning of a curve;
5. Along said curve turning to the left with a central angle of  $10^{\circ} 45' 20''$ , having a radius of 401.00 feet, an arc length of 75.28 feet and whose chord bears North  $02^{\circ} 29' 13''$  East for a distance of 75.17 feet to a point of tangency;
6. North  $02^{\circ} 53' 27''$  West for a distance of 151.16 feet to a point;
7. North  $39^{\circ} 16' 33''$  West for a distance of 102.36 feet to a point;
8. North  $17^{\circ} 14' 03''$  West for a distance of 73.31 feet to a point;
9. North  $47^{\circ} 58' 38''$  West for a distance of 4.34 feet to a point; Thence through the lands now or formerly of Starlite Associates LLC for the following five (5) courses and distances:

1. North  $43^{\circ} 25' 04''$  East for a distance of 81.08 feet to a point;
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4. South  $07^{\circ} 28' 06''$  West for a distance of 363.04 feet to a point;
5. South  $70^{\circ} 17' 16''$  East for a distance of 408.15 feet to a point; Thence South  $04^{\circ} 38' 50''$  East along the westerly line of said lands now or formerly of William F. Pompa as described in R2017-23086 a distance of 417.72 feet to the Point of Beginning.

CONTAINING 863,135 Square Feet or 19.81 Acres of Land more or less



## EXHIBIT D

### FORM OF BILL OF SALE TO COMPANY

TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 347 Old Niskayuna Road, Latham, New York 12110 (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 THE AYCO COMPANY, L.P., a limited partnership organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 25 British American Boulevard, Latham, New York 12110 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all those materials, machinery, equipment, fixtures or furnishings that are described in Exhibit B attached hereto (the "Equipment") now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located in or on an approximately 149,005 square foot building being constructed by Starlite Associates, LLC on certain real estate located at 629 Columbia Street Extension in the Town of Colonie, Albany County, New York (the "Land"), which Land is more particularly described on Exhibit 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 the officer described below and dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

TOWN OF COLONIE INDUSTRIAL  
DEVELOPMENT AGENCY

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

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a notary public in and for the State of New York, 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 A

### DESCRIPTION OF THE LAND

ALL that certain parcel of land situate in the Town of Colonie, County of Albany and State of New York being more particularly bounded and described as follows:

Beginning at a point on the northerly bounds of Columbia Street at its intersection with the division line between the lands now or formerly of William F. Pompa as described in R2017-23086 to the east and the Lands now or formerly of Starlite Associates LLC as described in Book 3036 of Deeds at Page 162 to the west; Thence along the northerly bounds of Columbia Street the following two (2) courses and distances:

1. South  $75^{\circ} 23' 00''$  West for a distance of 11.23 feet to a point;
2. South  $58^{\circ} 23' 00''$  West for a distance of 230.12 feet to a point;

Thence along the division line between the lands now or formerly of 621 Columbia St LLC as described in Book 2729 of Deeds at Page 392 and R2018-18771 to the west and south and the lands now or formerly of Starlite Associates LLC as described in Book 3036 of Deeds at Page 162 to the east and north the following five (5) courses and distances:

1. North  $04^{\circ} 00' 20''$  West for a distance of 320.17 feet to a point;
2. South  $58^{\circ} 15' 10''$  West for a distance of 333.12 feet to a point;
3. South  $61^{\circ} 45' 20''$  West for a distance of 276.57 feet to a point;
4. South  $00^{\circ} 06' 50''$  East for a distance of 39.77 feet to a point;
5. South  $56^{\circ} 31' 17''$  West for a distance of 95.89 feet to a point on a Proposed Town Road; Thence along the easterly bounds of a Proposed Town Road the following nine (9) courses and distances:

1. North  $47^{\circ} 15' 09''$  West for a distance of 211.73 feet to the beginning of a curve;
2. Along said curve turning to the right with a central angle of  $28^{\circ} 04' 27''$ , having a radius of 290.00 feet, an arc length of 142.10 feet and whose chord bears North  $33^{\circ} 12' 56''$  West for a distance of 140.68 feet to point of compound curvature;
3. Along said curve turning to the right with a central angle of  $27^{\circ} 02' 36''$ , having a radius of 341.00 feet, an arc length of 160.95 feet and whose chord bears North  $05^{\circ} 39' 24''$  West for a distance of 159.46 feet to a point of tangency;
4. North  $07^{\circ} 51' 53''$  East for a distance of 131.07 feet to the beginning of a curve;
5. Along said curve turning to the left with a central angle of  $10^{\circ} 45' 20''$ , having a radius of 401.00 feet, an arc length of 75.28 feet and whose chord bears North  $02^{\circ} 29' 13''$  East for a distance of 75.17 feet to a point of tangency;
6. North  $02^{\circ} 53' 27''$  West for a distance of 151.16 feet to a point;
7. North  $39^{\circ} 16' 33''$  West for a distance of 102.36 feet to a point;
8. North  $17^{\circ} 14' 03''$  West for a distance of 73.31 feet to a point;
9. North  $47^{\circ} 58' 38''$  West for a distance of 4.34 feet to a point; Thence through the lands now or formerly of Starlite Associates LLC for the following five (5) courses and distances:

1. North  $43^{\circ} 25' 04''$  East for a distance of 81.08 feet to a point;
2. North  $57^{\circ} 51' 34''$  East for a distance of 482.96 feet to a point;
3. South  $68^{\circ} 38' 07''$  East for a distance of 348.87 feet to a point;
4. South  $07^{\circ} 28' 06''$  West for a distance of 363.04 feet to a point;
5. South  $70^{\circ} 17' 16''$  East for a distance of 408.15 feet to a point; Thence South  $04^{\circ} 38' 50''$  East along the westerly line of said lands now or formerly of William F. Pompa as described in R2017-23086 a distance of 417.72 feet to the Point of Beginning.

CONTAINING 863,135 Square Feet or 19.81 Acres of Land more or less

## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All articles of personal property and all appurtenances now or hereafter attached to, contained in or used in connection with the construction and operation of the Tenant Project Facility or placed on any part hereof, though not attached thereto, including, but not limited to, all equipment, machinery, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, drapes, blinds and accessories, moveable partitions, call systems, refrigerators, rugs, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, sprinkler systems and other fire prevention and extinguishing apparatus and materials and furniture; 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.

EXHIBIT E

FORM OF TERMINATION OF LEASE AGREEMENT

WHEREAS, The Ayco Company, L.P. (the "Company"), as tenant, and Town of Colonie Industrial Development Agency (the "Agency"), as landlord, entered into a lease agreement dated as of April 1, 2019 (the "Lease Agreement") pursuant to which, among other things, the Agency leased the Project (as defined in this Lease Agreement) to the Company; and

WHEREAS, pursuant to this Lease Agreement, the Company and the Agency agreed that this Lease Agreement would terminate on the earlier to occur of (1) the Completion Date, or (2) the date of this Lease Agreement shall be terminated pursuant to Article X or Article XI of this Lease Agreement; and

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

NOW, THEREFORE, it is hereby agreed that this Lease Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 12.9 of this Lease Agreement, certain obligations of the Company shall survive the termination of this Lease Agreement, and the execution of this termination of lease agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions of Section 12.9 of this Lease Agreement.

IN WITNESS WHEREOF, the Company and the Agency have signed this termination of lease agreement and caused to be dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

THE AYCO COMPANY, L.P.

By: \_\_\_\_\_  
Authorized Representative

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a notary public in and for the State of New York, 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 signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

TOWN OF COLONIE INDUSTRIAL  
DEVELOPMENT AGENCY

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

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ before me, the undersigned, a notary public in and for the State of New York, 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