

CLOSING ITEM NO.: A-4

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

QUANTUM COOL, LLC

LEASE AGREEMENT

DATED AS OF SEPTEMBER 1, 2019

RESPECTING THE PREMISES LOCATED IN THE TOWN OF
DEWITT, ONONDAGA COUNTY, NEW YORK.

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LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of September 1, 2019 (the "Lease Agreement") by and between ONONDAGA COUNTY 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 333 West Washington Street, Suite 130, Syracuse, New York 13202 (the "Agency"), and QUANTUM COOL, LLC, a limited liability company organized and existing under the laws of the State of New York, having an office for the transaction of business located at One Websters Landing, Syracuse, New York 13202 (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 435 of the Laws of 1970 of the State and Chapter 676 of the Laws of 1975 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 determined to accept an application (the "Application") from the Company, on behalf of itself and/or entities formed on behalf of the foregoing, and on behalf of Cryomech, Inc. (the "Sublessee"), and the Agency further agreed, subject to numerous conditions, to undertake a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 14-acre portion of land located at 6682 Moore Road (tax map no. 022.-05-03.1) in the Town of DeWitt, Onondaga County, New York (the "Land"); (2) the construction on the Land of an approximately 76,000 square foot building (collectively, the "Facility"); (3) the acquisition and

installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Facility Equipment”) (the Land, the Facility and the Facility Equipment being collectively referred to as the “Company Project Facility”); and (4) the acquisition and installation of certain equipment and personal property (the “Equipment”, and together with the Company Project Facility, the “Project Facility”) by the Sublessee, such Project Facility to be used by the Sublessee as a manufacturing plant for high-performance cryogenic equipment and related office space; (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 certain sales and use taxes, real property taxes and transfer and mortgage recording taxes (subject to certain statutory limitations) (collectively, the “Financial Assistance”); and (C) (1) the lease (with an obligation to purchase) or sale of the Company Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and (2) and the lease (with an obligation to purchase) or sale of the Equipment to the Sublessee or such other person as may be designated by the Sublessee and agreed upon by the Agency; and

WHEREAS, on May 14, 2019, 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 Company 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 Company 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 officer of the County of Onondaga (the “County”) and of each city, town, village and school district in which the Company 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 Executive Director of the Agency (A) caused notice of public hearing of the Agency (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 May 15, 2019 to the chief executive officers of the County, the town, and the school district in which the Company Project Facility is, or is to be, located, (B) caused notice of the Public Hearing to be published on May 16, 2018 in The Post Standard, a newspaper of general circulation available to the residents of the Town of DeWitt, Onondaga County, New York, and (C) conducted the Public Hearing on May 28, 2019 at 3:00 p.m., local time, at the Town Hall Town of DeWitt located at 5400 Butternut Drive, East Syracuse in the Town of DeWitt, Onondaga County, New York; and

WHEREAS, the requirements of 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 being 6 NYCRR Part 617, as amended (the “Regulations collectively with the SEQR Act, “SEQRA”) applicable to the Project have been complied with; and

WHEREAS, the Agency adopted a Uniform Tax Exemption Policy (the “Policy”) to provide guidelines for the claiming of real property, sales and use tax and mortgage recording tax abatements (except to the extent limited by section 874 of the Act; and

WHEREAS, the payment in lieu of tax agreement to be entered into by the Agency and the Company on the date hereof deviates from the Policy; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Executive Director of the Agency (A) caused notice in a letter dated May 29, 2019 of a meeting of the Agency to discuss a deviation from the Policy with respect to the payment in lieu of tax agreement (the “PILOT Agreement”) to be mailed to the chief executive officer of the County and of each city, town, village and school district in which the Project Facility is to be located, and (B) conducted such meeting on June 11, 2019 at 8:00 o’clock a.m., local time at the Onondaga County Office of Economic Development located at 333 West Washington Street, Suite 130, Syracuse, New York; and

WHEREAS, the Agency caused to be mailed on May 29, 2019 a letter to the County of Onondaga and the Town of DeWitt (the “Current Municipalities”) notifying the Current Municipalities that the Sublessee currently leases a building located on Falso Drive in the Town of DeWitt, New York (the “Current Facility”) and that the Sublessee has informed the Agency that the Sublessee will “abandon” (as such term is used in Section 859-a(5)(d)) the Current Facility upon completion of the Project; and

WHEREAS, pursuant to a resolution duly adopted by the members of the Agency on June 19, 2019 (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 to the Project (collectively with this Lease Agreement, the “Basic Documents”); and

WHEREAS, the Agency now proposes to acquire the leasehold interest created pursuant to the Underlying Lease (as defined below) from the Company, to acquire an interest in the Facility Equipment pursuant to the Bill of Sale to Agency (as defined herein), to acquire an interest in the Equipment created pursuant to the Equipment Bill of Sale to Agency (as defined herein), to undertake the Project, to appoint the Company as agent of the Agency to undertake the acquisition, construction and installation of the Company Project Facility, and to lease the Company Project Facility to the Company, and to appoint the Sublessee as agent of the Agency to undertake the acquisition and installation of the Equipment, and the Company and the Sublessee desire to act as agents of the Agency to undertake the acquisition, construction and installation of the Company Project Facility, the Company desires to lease the Company Project Facility from the Agency, all pursuant to the terms and conditions hereinafter set forth in this Lease Agreement and the Sublessee desires to lease the Equipment from the Agency, all pursuant to the terms and conditions set forth in the Equipment Lease Agreement (as defined herein); 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 September 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 Land and all improvements now or hereafter located on the Land (collectively, the "Premises") for a lease term ending on the date of termination of the Payment in Lieu of Tax Agreement, (B) the Company will execute and deliver to the Agency a bill of sale dated as of September 1, 2019 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Facility Equipment, (C) the Sublessee will execute and deliver to the Agency a bill of sale dated as of September 1, 2019 (the "Equipment Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Sublessee in the Equipment, (D) the Agency and the Sublessee will execute and deliver an equipment lease agreement dated as of September 1, 2019 (the "Equipment Lease Agreement") pursuant to which the Agency will lease the Equipment to the Sublessee, (E) the Agency and the Company will execute and deliver a company project agreement dated as of September 1, 2019 (the "Company Project Agreement"), which sets forth the terms and conditions under which the Financial Assistance shall be provided to the Company, (F) the Agency and the Sublessee will execute and deliver a project agreement dated as of September 1, 2019 (the "Sublessee Project Agreement"), which sets forth the terms and conditions under which the Financial Assistance shall be provided to the Sublessee, (G) 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 filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") for each of the Company and the Sublessee, (H) the Company and the Agency will execute and deliver a payment in lieu of tax agreement dated as of September 1, 2019 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Company Project Facility, and (I) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Company Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Company Project Facility and the Payment in Lieu of Tax Agreement; and

WHEREAS, the Company proposes to sub-lease the Company Project Facility to the Sublessee and the Sublessee desires to rent the Company Project Facility from the Company (the "Project Facility"), upon the terms and conditions set forth in a certain lease, dated July 12, 2019 (the "Sublease Agreement"), by and between the Company and the Sublessee; and

WHEREAS, the providing of the Company Project Facility and the lease of the Company 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 435 of the 1970 Laws of the State and Chapter 676 of the 1980 Laws of the State, as amended, constituting Section 895 of the General Municipal Law of the State, as amended from time to time.

“Agency” means (A) Onondaga County 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 Onondaga County 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 Company Project Facility or any part thereof or the conduct of work on the Company Project Facility or any part thereof or to the operation, use, manner of use or condition of the Company 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 Company Project Facility and as if the Company and not the Agency were the owner of the Company 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 Company 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 June 19, 2019 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” means any assignment of leases, rents and from the Agency and the Company to a Lender, pursuant to which the Company and the Agency assign to a Lender, as security for a Mortgage Loan, all of the interest in, to and under all leases affecting the Project Facility (other than this Lease Agreement and the Underlying Lease) and the rents and other amounts payable thereunder.

“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 title and interest of the Agency in the Company 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 any member or such other person as may be authorized in writing by any member of 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 Payment in Lieu of Tax Agreement, the Equipment Bill of Sale to Agency, the Equipment Lease Agreement, the Company Project Agreement, the Sublessee Project Agreement, the Lender Documents 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 Facility 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 Facility 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 County of Onondaga, 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 Quantum Cool, LLC, a limited liability duly organized and existing under the laws of the State, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of this Lease Agreement.

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

“Company Project Facility” means the Land, the Facility and the Facility Equipment.

“Completion Date” means the earliest to occur of (A) January 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 acquired in connection with the completion of the Project by the Sublessee, as agent of the Agency, or by subagents, including without limitation, all the Property described in Exhibit A attached to the Equipment Lease Agreement.

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

“Equipment Lease Agreement” means the equipment lease agreement by and between the Agency and the Sublessee, dated as of September 1, 2019.

“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 an approximately 76,000 square foot building on the Land for use as a manufacturing plant for high-performance cryogenic equipment and related office space.

“Facility Equipment” means all equipment, fixtures, machines, building materials and items of personal property and all appurtenances intended to be acquired by the Company as agent of the Agency, or by any subagents, in connection with the completion of the Project by the Company, including without limitation, all the Property described in Exhibit B attached to this Lease Agreement.

“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 approximately 14 acres of land located at 6682 Moore Road (tax map no. 022.-05-03.1) in the Town of DeWitt, Onondaga County, New York, as more particularly described on Exhibit A attached to this Lease Agreement.

“Lease Agreement” means this lease agreement dated as of September 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 Company Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

“Lender” means any lender providing a Mortgage Loan to the Company to finance in whole or in part the Project, or to refinance any such Mortgage Loan.

“Lender Documents” means, collectively, an Assignment, a Mortgage and such other documents as may be requested by a Lender in connection with a Mortgage Loan.

“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.

“Mortgage” means any mortgage from the Agency and the Company to a Lender to secure the Company’s obligations to a Lender with respect to a Mortgage Loan, to be recorded in the Onondaga County Clerk’s office contemporaneously with, or subsequent to, the filing and recording of a memorandum of the Agency Lease, securing construction or permanent financing for the Project Facility, executed in accordance with Section 8.14 of this Lease Agreement.

“Mortgage Loan” means a loan from a Lender to the Company.

“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.

“Payment in Lieu of Tax Agreement” means the payment in lieu of tax agreement dated as of September 1, 2019 by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Company Project Facility, as such agreement may be amended or supplemented from time to time.

“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 Company 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 consisting of: (A) (1) the acquisition of an interest in an approximately 14-acre portion of land located at 6682 Moore Road (tax map no. 022.-05-03.1) in the Town of DeWitt, Onondaga County, New York (the “Land”); (2) the construction on the Land of an approximately 76,000 square foot building (collectively, the “Facility”); (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Facility Equipment”) (the Land, the Facility and the Facility Equipment being collectively referred to as the “Company Project Facility”); and (4) the acquisition and installation of certain equipment and personal property (the “Equipment”) acquired by the Sublessee, and together with the Company Project Facility, the “Project Facility”), such Project Facility to be used by the Sublessee as a manufacturing plant for

high-performance cryogenic equipment and related office space (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 certain sales and use taxes, real property taxes and transfer and mortgage recording taxes (subject to certain statutory limitations) (collectively, the “Financial Assistance”); and (C) (1) the lease (with an obligation to purchase) or sale of the Company Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and (2) and the lease (with an obligation to purchase) or sale of the Equipment to the Sublessee or such other person as may be designated by the Sublessee and agreed upon by the Agency.

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

“Project Facility” means the Land, the Facility, the Facility Equipment and the Equipment.

“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 May 14, 2019 authorizing a public hearing in accordance with Section 859-a of the Act in connection with the Project.

“Real Property Tax Exemption Form” means a New York State Board of Real Property Services Form RP-412-a relating to the Company Project Facility.

“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.

“Sublease Agreement” means a certain lease, dated July 12, 2019, by and between the Company, as sublessor, and the Sublessee, as sublessee, as amended from time to time.

“Sublessee” means Cryomech, Inc., a corporation duly organized and existing under the laws of the State, and its successors and assigns, to the extent permitted pursuant to the Equipment Lease Agreement.

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

“State” means the State of New York.

“Term” means the term of the Underlying Lease.

“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, 6.6, 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, (C) the moneys due as payments in lieu of taxes pursuant to Section 6.6 of this Lease Agreement and the Payment in Lieu of Tax Agreement, and (D) the right to enforce the foregoing pursuant to Article X of this Lease Agreement.

“Underlying Lease” means the lease to Agency dated as of September 1, 2019 by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company have 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 Company 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 Company Project Facility to be acquired, constructed and installed and will lease the Company 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 Company Project Facility or any part thereof and shall maintain the Company 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 liability company duly organized and validly existing under the laws of the State, is qualified and authorized to do business in the State 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 sole member, 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 articles of organization or operating 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 Facility will result in the removal of a plant or facility of the Sublessee from one area of the State to another area of the State or in the abandonment of a plant or facility of the Sublessee located in the State, the Project and the related financial assistance is reasonably necessary to discourage the Sublessee from removing a facility or plant of the Sublessee to a location outside of the State or is reasonably necessary to preserve the competitive position of the Sublessee in its industry.

(D) The Company 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 Company Project Facility is, and so long as this Lease Agreement shall remain in effect, the Company 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 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 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) Based on the classification as a Type 1 Action under SEQRA by the Town of DeWitt Planning Board, 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 any approvals issued by any Governmental Authority with respect to the Project. No material changes with respect to any aspect of the Company 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 must 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 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 (PL. 113-128), in which the 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 the Company, as agent of the Agency, to file within thirty (30) days of the date the Company is appointed the agent of the Company, 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 pursuant to the Payment in Lieu of Tax Agreement shall inure solely to the benefit of the Company and the Sublessee.

ARTICLE III

CONVEYANCE AND USE OF COMPANY 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 Land and all improvements located or to be located thereon. 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 Facility Equipment. The Company hereby represents and warrants that it has a valid fee interest in the Land and has title to the portions of the Company 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 Company Project Facility, except for Permitted Encumbrances.

SECTION 3.2. USE OF COMPANY PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Company Project Facility in any manner not otherwise prohibited by the Basic Documents or the Act, provided such use causes the Company 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 Company 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 Company 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 Company Project Facility or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from or affecting the Company 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 Company 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 Company 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 Company Project Facility or onto any other property.

(C) The Company shall comply with, 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 with, 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 Company Project Facility (a) in accordance with all Applicable Laws, (b) to the reasonable 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 Company 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, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses. Costs under this subsection (D) will be repaid immediately with interest at the Default Interest Rate or the maximum permitted by law, whichever is less.

(E) 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 Company Project Facility, including taking soil samples if the Agency reasonably believes there is a violation of Applicable Laws relating to Hazardous Materials, in order to determine that the Company is in compliance with all Applicable Laws. 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 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 in the Premises or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all corporations, firms and other entities including any mortgagee having any interest in (x) this Lease Agreement or the leasehold estate created by this Lease Agreement and (y) the fee estate in the Premises or any part thereof or any

interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

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 Company 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 Company Project Facility and the interests therein are securing the financial obligations of the Company. The Company Project Facility and the interests therein secure the obligations of the Company to the Agency under the Payment in Lieu of Tax Agreement and this Lease Agreement, including the Company's obligation to acquire, construct, equip and maintain the Company Project Facility on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency.

SECTION 3.7. SUBORDINATION OF LEASE AGREEMENT. This Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate (except with respect to the Unassigned Rights) to any mortgage or mortgages which may be granted by the Agency and the Company on the Company Project Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

ARTICLE IV

UNDERTAKING AND COMPLETION OF THE PROJECT

SECTION 4.1. ACQUISITION, CONSTRUCTION AND INSTALLATION OF THE COMPANY PROJECT FACILITY. (A) The Company shall, on behalf of the Agency, promptly acquire, construct, and install the Company Project Facility, or cause the acquisition, construction and installation of the Company 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 all materials, equipment, machinery and other items of Property presently incorporated or installed in and which are a part of the Company Project Facility acquired by the Company as agent of the Agency, or any subagents, shall vest in the Agency immediately upon execution of the Bill of Sale to Agency. Title to all materials, equipment, machinery and other items of Property acquired by the Company as agent of the Agency or by any subagents, subsequent to the Closing Date and intended to be incorporated or installed in and to become part of the Company Project Facility shall vest in the Agency immediately upon deposit on the Land or incorporation or installation in the Company 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 and install the Company 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 and installation of the Company 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 and installation of the Company 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 and

installation of the Company 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 Company 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 Company 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 Company Project Facility to comply with Article 8 of the New York Labor Law. The covenant in this subsection is not intended as a representation that Article 8 of the New York Labor Law applies to the Project. The Company also agrees to comply with the Agency's "Local Access Policy", a copy of which is attached hereto as Exhibit F and made a part hereof.

(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 Company 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 Company 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 COMPANY PROJECT FACILITY. The Company will proceed with due diligence to commence and complete the acquisition, construction and installation of the Company 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 Company 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 leasehold interest in all Property constituting a portion of the Company Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances, and (E) that the Company 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 Company 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 Company Project Facility on or before January 31, 2021 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 Company 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 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 Company Project Facility, and thereafter be paid to the Company for its own use.

ARTICLE V

DEMISE OF COMPANY PROJECT FACILITY; RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE

SECTION 5.1. LEASE OF THE COMPANY 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 Company Project Facility, subject only to Permitted Encumbrances. The obligation of the Agency under this Section 5.1 to lease the Company 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 Company Project Facility, and the leasehold estate created hereby shall commence, on the Closing Date, and the Company shall accept possession of the Company 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) February 28, 2032 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 Company 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 Company Project Facility.

SECTION 5.3. RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE. (A) The Company shall pay basic rental payments for the Company Project Facility as follows: (i) 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 fees and expenses of counsel to the Agency relating to the Project.

(B) The Company shall pay an amount sufficient to pay the sums due under the Company Project Agreement at the times and in the manner provided for therein.

(C) 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 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 Company 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 Company Project

Facility, the leasing or sale of the Company 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.

(D) 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 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 Company Project Facility or any part thereof or in the suitability of the Company 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 Company 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 Company 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 Company Project Facility, or any other liability of the Agency to the Company, other than claims arising out of the gross negligence or intentional wrongdoing of the Agency, its members, officers agents (other than the Company) or employees.

ARTICLE VI

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

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

(B) The Company shall not make any structural additions, modifications or improvements to the Company 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 Company 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 Company 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 Company Project Facility, including those required by Section 2.02(D) thereof;

(2) the addition, modification or improvement to the Company 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 Company Project Facility, written notice of the Company's plan to undertake such addition, modification or improvement, including a detailed description thereof; provided, further, however, that such plans need not be furnished to the Agency for nonstructural additions, modifications or improvements to the Company 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 Company 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 Company Project Facility or any part or component thereof, or the rental or sale of the Company Project Facility or any part thereof, and any taxes levied upon or with respect to the income or revenues of the Agency from the Company 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 Company Project Facility, (3) all assessments and charges of any kind whatsoever lawfully made against the Company Project Facility by any Governmental Authority for public improvements, and (4) all payments required under Section 6.6 hereof and the Payment in Lieu of Tax Agreement, provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated hereunder to pay only such installments as are required to be paid during the term of this Lease Agreement.

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

SECTION 6.3. INSURANCE REQUIRED. During the term of this Lease Agreement, the Company shall maintain, or cause the Sublessee to maintain, insurance with respect to the Company 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 Company 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 Company Project Facility or who are responsible for the acquisition, construction or installation of the Company 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 Company 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. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates and policies 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(A) 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. PAYMENTS IN LIEU OF REAL ESTATE TAXES. (A) It is recognized that under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any of the Property acquired by it or under its jurisdiction, control or supervision or upon its activities. It is not the intention, however, of the parties hereto that the Company Project Facility be treated as exempt from real property taxation. Accordingly, the parties hereto acknowledge that a Payment in Lieu of Tax Agreement will be executed with respect to the Company Project Facility, and a Real Property Tax Exemption Form will be filed by the Agency with respect to the Company Project Facility. Until the expiration date of any such Payment in Lieu of Tax Agreement, the Agency and the Company hereby agree that the Company (or any subsequent user of the Company Project Facility pursuant to this Lease Agreement) shall be required to make or cause to be made payments in lieu of real estate taxes in the amounts and in the manner set forth in such Payment in Lieu of Tax Agreement.

(B) In the event that (1) the Company Project Facility would be subject to real property taxation if the Agency did not have a leasehold interest therein but shall be deemed exempt from real property taxation due to the involvement of the Agency therewith, and (2) the Payment in Lieu of

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

(C) The Company shall pay or cause to be paid to the Taxing Entities when due all such payments in lieu of taxes with respect to the Company Project Facility required by Section 6.6(B) of this Lease Agreement to be paid to the Taxing Entities, subject in each case to the Company's right to (1) obtain exemptions and credits, if any, which would be afforded to a private owner of the Company Project Facility, including any available exemption under Section 485-b of the New York Real Property Tax Law with respect to the Company Project Facility, (2) contest valuations of the Company Project Facility made for the purpose of determining such payments therefrom, and (3) seek to obtain a refund of any such payments made.

(D) Pursuant to Section 874(5) of the Act, if the Company shall fail to make or cause to be made any payments in lieu of taxes required under this Section 6.6 and the Payment in Lieu of Tax Agreement, the amount or amounts so in default shall continue as an obligation of the Company until fully paid, and the Company hereby agrees to pay or cause to be paid the same, together with a late payment penalty equal to five percent (5%) of the amount due. If the Company shall fail to make any payment required by this Section 6.6 and the Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity

until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) the Default Interest Rate, or (b) the same rate per annum which would be payable if such amounts were delinquent taxes, until so paid in full.

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1. DAMAGE OR DESTRUCTION. (A) If the Company 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 Company 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 Company 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 Company 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, which consent shall not be unreasonably withheld or delayed, provided that such changes, alterations or modifications do not so change the nature of the Company Project Facility that it does not constitute a "project", as such quoted term is defined in the Act, or change the use of the Company 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 Company 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 Company 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 Company 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 Company 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 Company 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 Company 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 Company 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 Company Project Facility shall be taken by Condemnation:

- (1) the Agency shall have no obligation to restore the Company 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 Company 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 Company 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, which consent shall not be unreasonably withheld or delayed, provided that such changes, alterations or modifications do not so change the nature of the Company Project Facility that it does not constitute a "project" as such quoted term is defined in the Act, or change the use of the Company 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 Company Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the restoration of the Company 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 Company 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 Company 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 Company 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 COMPANY 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 Company 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 COMPANY PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE COMPANY PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT TITLE TO THE COMPANY 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 Company 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 Company Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Company 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 Company 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 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 gross negligence or 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, other than gross negligence or intentional wrongdoing, 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 COMPANY PROJECT FACILITY. The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times to enter upon and to examine and inspect the Company Project Facility, subject to Sublessee's

reasonable security provisions including, but not limited to, Sublessee's policy to screen non-U.S. persons against U.S. denial lists in compliance with U.S. Government export control restrictions.

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; provided however, the Company may sell the Company Project Facility to the Sublessee.

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 Company 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 the Company Project Facility) or on any funds of the Agency applicable to the Company 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 Company 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 Company 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 Company 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 the Company, is a party, cause any new employment opportunities created in connection with the 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 pursuant to the Job Training Partnership Act (PL 97-300) in which the 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 the Company 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.

SECTION 8.12. IDENTIFICATION OF THE FACILITY EQUIPMENT. All Facility Equipment which is or may become part of the Company 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.

SECTION 8.13. MORTGAGES. The Agency and the Company agree to grant a mortgage in the Company Project Facility to a Lender to the extent financed with the proceeds of a loan to the lender of such loan (in which event the Lien thereby created shall be deemed a Permitted Encumbrance), if the mortgage is in a standard form and substance acceptable to the Agency in its sole and absolute discretion and pre-approved by the Agency (and the Agency agrees to not unreasonably withhold or delay its approval of such standard form mortgage) and if the mortgage contains the following provisions:

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

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 and the Sublessee) 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 the Sublessee) 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 the Sublessee) and employees against all liability expected to be incurred as a result of compliance with such request.

Section _____. Hold Harmless Provisions. (a) The Company agrees that the Agency, its directors, members, officers, agents (other than the Company and the Sublessee) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (other than the Company and the Sublessee) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the use thereof or under this mortgage or any of the loan documentation, or (ii) liability arising from or expense incurred by the Agency's acquisition, installation, owning, leasing or financing of the Project Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein or under any of the loan documentation and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the mortgage (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (other than the Company and the Sublessee) or employees. The foregoing indemnities shall apply irrespective of the breach of a statutory obligation on the part of the Agency, or any of its members, directors, officers, agents, or employees or the application of any rule of comparative or apportioned

liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

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

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

(d) Notwithstanding anything contained in this mortgage to the contrary, whenever the Company is obligated under this mortgage 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's defense. The Company shall have the right to defend the Agency, its directors, members, officers, agents (other than the Company), and employees, and provided the Company promptly and continuously thereafter defends the Agency, its directors, members, officers, agents (other than the Company and the Sublessee), and employees, no other attorneys' fees of the Agency, its directors, members, officers, agents (other than the Company and the Sublessee), and employees shall be payable by the Company.

(e) Notwithstanding the provisions of subsection (d) hereof, the Agency retains the right to defend itself in any action or actions covered by the indemnities in this mortgage, which in the reasonable opinion of the Agency, its directors, members, officers, agents (other than the Company and the Sublessee), 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, attorney and disbursement fees, court costs, and litigation expenses shall be paid by the Company.

Section _____. Recordation of Mortgage. The Agency covenants that it will record or cause this mortgage to be duly recorded in all offices where recordation thereof is necessary.

SECTION 8.14. FINANCING AND REFINANCING OF THE COMPANY PROJECT FACILITY.

Over the term of this Lease Agreement, the Agency agrees to reasonably cooperate with the Company in connection with any financing or refinancing of the indebtedness encumbering the Company Project Facility. In connection with any financing or refinancing by the Company of such indebtedness, the Agency will execute and deliver all such documents and/or instruments reasonably required by the Lender in connection with such financing or refinancing, provided that such documents or instruments are those to which the Agency is typically a party; and further provided, that such documents or instruments include the Agency's standard non-recourse/special obligation language that is contained in Section 8.13, and further subject to the approval of the Agency and the Agency's legal counsel as to form and content of the document. In all cases the Company shall pay any reasonable out-of-pocket expenses and fees of the Agency in connection with any financing or refinancing of the indebtedness encumbering the Company Project Facility including, without limitation, any Agency administrative fee and any reasonable attorney's fees.

SECTION 8.15. PAYMENT OF COSTS. The Agency agrees to accept payment by the Sublessee of any costs, expenses and charges of any kind required under this Lease Agreement as a credit against any costs, expenses and charges of any kind due and payable by the Company hereunder.

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, which consent shall not be unreasonably withheld or delayed.

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 COMPANY PROJECT FACILITY. (A) The Company may not sell, lease, transfer, convey or otherwise dispose of the Company Project Facility or any part thereof without the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed; provided, however, notwithstanding the foregoing, (1) the Company may sublease the Company Project Facility to the Sublessee pursuant to the Sublease Agreement, without any further Agency approval, and (2) the Company may sell, transfer or convey the Company Project Facility to the Sublessee and assign the Company's rights and obligations under the Basic Documents to the Sublessee subject to the following conditions:

(a) the Company shall provide the Agency no less than thirty (30) days' prior written notice of the transfer;

(b) no Event of Default has occurred and is continuing; and

(c) the Sublessee assumes, in writing, all of the Company's obligations under the Basic Documents and provides to the Agency an opinion of counsel as to its authority to do so in a form reasonably satisfactory to the Agency and its counsel.

(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 Company

Project Facility has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such portion of the Company 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. 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 subsections (B) and (C) 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) and (C)) or Section 6.6 hereof, and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency 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 to which the Company is a party.

(5) The failure by the Company to pay or cause to be paid, on the dates due, the amounts specified to be paid pursuant to the Payment in Lieu of Tax Agreement and the Company Project Agreement, which is not cured within thirty (30) days after written notice.

(6) The invalidity, illegality or unenforceability of the Payment in Lieu of Tax Agreement, or the failure due to an action or inaction on the part of the Company to observe and perform any material covenant contained in the Payment in Lieu of Tax Agreement and such failure to observe and perform any material covenant shall continue for a period of ten (10) days after receipt by the Company of notice of default.

(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 Company Project Facility other than a Permitted Encumbrance.

(11) The removal of the Company Project Facility, or any portion thereof, outside the County of Onondaga, 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, 6.2 and 6.6 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), 6.6, 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) terminate this Lease Agreement and convey to the Company all the Agency's title and interest in and to the Company Project Facility (The conveyance of the Agency's title and interest in and to the Company Project Facility shall be effected by the execution and 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

(3) 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 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 and the Payment in Lieu of Tax Agreement.

SECTION 11.2. OBLIGATION TO SELL AND PURCHASE THE COMPANY 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 Company 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 Company Project Facility to the Company will be subject to there being no Event of Default existing hereunder or under the Payment in Lieu of Tax Agreement 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 COMPANY PROJECT FACILITY. (A) At the closing of any purchase of the Agency's interest in the Company 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) 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 Company 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 Company 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 Facility 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 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 Company Project Facility and to place the same on record in the Onondaga County Clerk's office, 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, together with all affidavits, questionnaires and other documentation necessary to effectuate the recording of 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 Company 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 Company 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, in recordable form if so requested, 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:

Quantum Cool, LLC
One Websters Landing
Syracuse, New York 13202
Attention: David C. Nutting

WITH A COPY TO:

Bond, Schoeneck & King, PLLC
One Lincoln Center
Syracuse, New York 13202
Attention: Paul W. Reichel, Esq.

IF TO THE AGENCY:

Onondaga County Industrial Development Agency
333 West Washington Street, Suite 130
Syracuse, New York 13202
Attention: Executive Director

WITH A COPY TO:

Barclay Damon LLP
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202
Attention: Anthony P. Rivizzigno, 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 FACILITY EQUIPMENT; FURTHER ASSURANCES. Upon the Completion Date with respect to the Facility Equipment and the installation of all of the Facility Equipment in the Company Project Facility, the Company shall prepare and deliver to the Agency a schedule listing all of the Facility 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 Facility Equipment not theretofore previously described herein or in the aforesaid schedule.

SECTION 12.8. RECORDING AND FILING. The Underlying Lease (or a memorandum thereof), this Lease Agreement (or a memorandum hereof) and the Lender Documents shall be recorded by the Agency in the office of the County Clerk of Onondaga County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof. The Company shall pay all costs of recording pursuant to this Section 12.8.

SECTION 12.9. SURVIVAL OF OBLIGATIONS. (A) The obligations of the Company to make the payments required by Sections 5.3 and 6.6 hereof and to provide the indemnity required by Section 8.2 hereof 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.

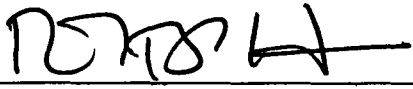
(B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or the County of Onondaga, New York, and neither the State of New York nor the County of Onondaga, New York shall be liable hereon or thereon, and, 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 Company 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.

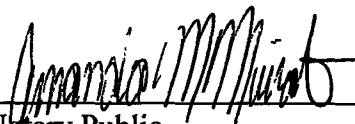
IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their respective duty authorized officers, all as of the day and year first above written.

ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Robert M. Petrovich
Executive Director

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

On the 26th day of September in the year 2019 before me, the undersigned, a notary public in and for the State of New York, personally appeared Robert M. Petrovich, 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.

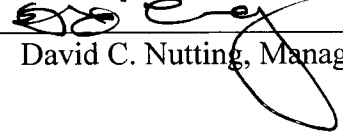

Notary Public

AMANDA M. MIRABITO
Notary Public, State of New York
No: 02MI6300592
Qualified in Broome County
Commission Expires April 7, 2022

QUANTUM COOL, LLC


By: 6628 Moore Manager, LLC

Its: Manager

By: 
David C. Nutting, Manager

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

On the 26th day of September in the year 2019 before me, the undersigned, a notary public in and for the State of New York, personally appeared David C. Nutting, 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
PAUL W. REICHEL
Notary Public, State of New York
Qualified in Onon. Co., No. 02RE5036410
Commission Expires November 28, 2022

EXHIBIT A

DESCRIPTION OF THE LAND

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Dewitt, County of Onondaga and State of New York, being part of Lot 20 in said Town and being more particularly described as follows:

Beginning at a point in the amended easterly line of Moore Road as proposed to be dedicated and recorded by the Town of Dewitt in the Onondaga County Clerk's Office, which point is the most westerly northwest corner of Lot 2 Brooklawn Subdivision, filed in the Onondaga County Clerk's Office as Map № 12448, said point further being North 86°-44'-00" East a distance of 23.81 feet from Moore Road as it presently exists at the southwesterly corner of Lot 3 Cardinal Syracuse Amended Subdivision, filed in the Onondaga County Clerk's Office as Map № 11383,

running thence North 86°-44'-00" East along a northerly line of said Lot 2 Brooklawn Subdivision, being the southerly line of said Lot 3 Cardinal Syracuse Amended Subdivision, a distance of 1235.00 feet to a point,

thence South 03°-16'-00" East a distance of 383.35 feet to a point,

thence South 39°-11'-00" West a distance of 212.19 feet to a point, said point to be known as "Point A" for future reference,

thence South 86°-44'-00" West a distance of 438.00 feet to a point,

thence North 81°-25'-40" West a distance of 662.70 feet to a point in the amended easterly line of Moore Road as proposed to be dedicated and recorded by the Town of Dewitt in the Onondaga County Clerk's Office,

thence North 04°-00'-00" West a distance of 404.00 feet along said amended easterly line of Moore Road to the point of beginning.

Containing 14.00± acres of land.

Together with a 20 feet wide drainage easement described as follows:

Beginning at a point in the southeasterly line of the above described parcel, which point is North 39°-11'-00" East a distance of 75.00 feet from the corner previously identified as "Point A",

running thence North 39°-11'-00" East a distance of 20.00 feet along said southeasterly line to a point,

thence South 50°-49'-00" East a distance of approximately 406 feet to a point in the northwesterly line of Lot 1 Brooklawn Subdivision, filed in the Onondaga County Clerk's Office as Map № 12448,

thence South $47^{\circ}50'54''$ West a distance of approximately 20 feet along said northwesterly line of Lot 1 Brooklawn Subdivision to a point which is South $50^{\circ}49'00''$ East from the point of beginning,

thence North $50^{\circ}49'00''$ West a distance of approximately 403 feet to the point of beginning.

Together with a 10 feet wide access easement to the "Conservation and Recreational Easement" as delineated on the map of Brooklawn Subdivision № 12448, the northerly line of said access easement being described as follows:

Beginning at the northeasterly corner of the above described parcel, which corner lies in the southerly line of said Lot 3 Cardinal Syracuse Amended Subdivision, being a northerly line of said Lot 2 Brooklawn Subdivision,

running thence North $86^{\circ}44'00''$ East along said southerly line of Lot 3 Cardinal Syracuse Amended Subdivision and its prolongation easterly a distance of approximately 900 feet to the northwesterly Floodway boundary for Ley Creek, being the northwesterly boundary of the "Conservation and Recreational Easement".

EXHIBIT B

DESCRIPTION OF THE FACILITY EQUIPMENT

All articles of personal property and all appurtenances acquired by Quantum Cool, LLC (the “Company”) as agent of the Agency, or by any subagents, pursuant to this Lease Agreement dated as of September 1, 2019 (the “Lease Agreement”) by and between Onondaga County Industrial Development Agency (the “Agency”) and the Company and now or hereafter attached to, contained in or used in connection with the Land (as defined in this Lease Agreement) or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery.

EXHIBIT C

FORM OF ASSIGNMENT TO COMPANY

THIS ASSIGNMENT TO COMPANY (the "Assignment to Company") dated as of _____, _____ by and between ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 333 West Washington Street, Syracuse, New York 13202 (the "Agency") and QUANTUM COOL, LLC, a limited liability company organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at One Websters Landing, Syracuse, New York 13202 (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 lease to agency dated as of September 1, 2019 (the "Underlying Lease") by and among the Company, as landlord, and the Agency, as tenant, whereby the Company granted to the Agency a leasehold interest in the parcel of the land more particularly described in Exhibit A attached thereto (the "Land") and in and to all those buildings, improvements, structures and other related facilities 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 officers, all as of the day and year first above written.

ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Executive Director

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

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 the which the individual acted, executed the instrument.

Notary Public

QUANTUM COOL, LLC

By: 6628 Moore Manager, LLC

Its: Manager

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 the which the individual acted, executed the instrument.

Notary Public

EXHIBIT A
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running thence North 86°-44'-00" East along a northerly line of said Lot 2 Brooklawn Subdivision, being the southerly line of said Lot 3 Cardinal Syracuse Amended Subdivision, a distance of 1235.00 feet to a point,

thence South 03°-16'-00" East a distance of 383.35 feet to a point,

thence South 39°-11'-00" West a distance of 212.19 feet to a point, said point to be known as "Point A" for future reference,

thence South 86°-44'-00" West a distance of 438.00 feet to a point,

thence North 81°-25'-40" West a distance of 662.70 feet to a point in the amended easterly line of Moore Road as proposed to be dedicated and recorded by the Town of Dewitt in the Onondaga County Clerk's Office,

thence North 04°-00'-00" West a distance of 404.00 feet along said amended easterly line of Moore Road to the point of beginning.

Containing 14.00± acres of land.

Together with a 20 feet wide drainage easement described as follows:

Beginning at a point in the southeasterly line of the above described parcel, which point is North 39°-11'-00" East a distance of 75.00 feet from the corner previously identified as "Point A",

running thence North 39°-11'-00" East a distance of 20.00 feet along said southeasterly line to a point,

thence South 50°-49'-00" East a distance of approximately 406 feet to a point in the northwesterly line of Lot 1 Brooklawn Subdivision, filed in the Onondaga County Clerk's Office as Map № 12448,

thence South 47°-50'-54" West a distance of approximately 20 feet along said northwesterly line of Lot 1 Brooklawn Subdivision to a point which is South 50°-49'-00" East from the point of beginning,

thence North 50°-49'-00" West a distance of approximately 403 feet to the point of beginning.

Together with a 10 feet wide access easement to the "Conservation and Recreational Easement" as delineated on the map of Brooklawn Subdivision № 12448, the northerly line of said access easement being described as follows:

Beginning at the northeasterly corner of the above described parcel, which corner lies in the southerly line of said Lot 3 Cardinal Syracuse Amended Subdivision, being a northerly line of said Lot 2 Brooklawn Subdivision,

running thence North 86°-44'-00" East along said southerly line of Lot 3 Cardinal Syracuse Amended Subdivision and its prolongation easterly a distance of approximately 900 feet to the northwesterly Floodway boundary for Ley Creek, being the northwesterly boundary of the "Conservation and Recreational Easement".

EXHIBIT D

FORM OF BILL OF SALE TO COMPANY

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located 333 West Washington Street, Syracuse, New York 13202 (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 QUANTUM COOL, LLC, a limited liability company organized and existing under the laws of the State of New York, having an office at One Websters Landing, Syracuse, New York 13202 (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 which are described in Exhibit B attached hereto (the "Facility Equipment") now owned or hereafter acquired by the Grantor, which Facility Equipment is located or intended to be located on the parcel of real estate located at 6682 Moore Road (tax map no. 022.-05-03.1) in the Town of DeWitt, Onondaga 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 FACILITY EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE FACILITY EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE FACILITY 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 _____, ____.

ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Executive Director

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

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

EXHIBIT A
DESCRIPTION OF THE LAND

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Dewitt, County of Onondaga and State of New York, being part of Lot 20 in said Town and being more particularly described as follows:

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running thence North 86°-44'-00" East along a northerly line of said Lot 2 Brooklawn Subdivision, being the southerly line of said Lot 3 Cardinal Syracuse Amended Subdivision, a distance of 1235.00 feet to a point,

thence South 03°-16'-00" East a distance of 383.35 feet to a point,

thence South 39°-11'-00" West a distance of 212.19 feet to a point, said point to be known as "Point A" for future reference,

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thence North 81°-25'-40" West a distance of 662.70 feet to a point in the amended easterly line of Moore Road as proposed to be dedicated and recorded by the Town of Dewitt in the Onondaga County Clerk's Office,

thence North 04°-00'-00" West a distance of 404.00 feet along said amended easterly line of Moore Road to the point of beginning.

Containing 14.00± acres of land.

Together with a 20 feet wide drainage easement described as follows:

Beginning at a point in the southeasterly line of the above described parcel, which point is North 39°-11'-00" East a distance of 75.00 feet from the corner previously identified as "Point A",

running thence North 39°-11'-00" East a distance of 20.00 feet along said southeasterly line to a point,

thence South 50°-49'-00" East a distance of approximately 406 feet to a point in the northwesterly line of Lot 1 Brooklawn Subdivision, filed in the Onondaga County Clerk's Office as Map № 12448,

thence South 47°-50'-54" West a distance of approximately 20 feet along said northwesterly line of Lot 1 Brooklawn Subdivision to a point which is South 50°-49'-00" East from the point of beginning, thence North 50°-49'-00" West a distance of approximately 403 feet to the point of beginning.

Together with a 10 feet wide access easement to the "Conservation and Recreational Easement" as delineated on the map of Brooklawn Subdivision № 12448, the northerly line of said access easement being described as follows:

Beginning at the northeasterly corner of the above described parcel, which corner lies in the southerly line of said Lot 3 Cardinal Syracuse Amended Subdivision, being a northerly line of said Lot 2 Brooklawn Subdivision,

running thence North 86°-44'-00" East along said southerly line of Lot 3 Cardinal Syracuse Amended Subdivision and its prolongation easterly a distance of approximately 900 feet to the northwesterly Floodway boundary for Ley Creek, being the northwesterly boundary of the "Conservation and Recreational Easement".

EXHIBIT B

DESCRIPTION OF THE FACILITY EQUIPMENT

All articles of personal property and all appurtenances acquired by Grantee, as agent of Grantor, or by any subagents, now or hereafter attached to, contained in or used in connection with the construction and operation of the 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, cleaning equipment, maintenance equipment, shelving, signs, waste containers, sprinkler systems and other fire prevention and extinguishing apparatus and materials and furniture acquired by Grantee, as agent of the Grantor, or by any subagents.

EXHIBIT E

FORM OF TERMINATION OF LEASE AGREEMENT

WHEREAS, Quantum Cool, LLC (the “Company”), as tenant, and Onondaga County Industrial Development Agency (the “Agency”), as landlord, entered into a lease agreement dated as of September 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) February 28, 2031 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 desires 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 _____, ____.

QUANTUM COOL, LLC

By: 6628 Moore Manager, LLC
Its: Manager

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

ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Executive Director

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

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

EXHIBIT F

LOCAL ACCESS POLICY

In absence of a waiver permitting otherwise, every project seeking the assistance of the Onondaga County Industrial Development Agency (Agency) must use local general contractors, sub-contractors and labor for one-hundred percent (100%) of the construction of new, expanded, or renovated facilities. The project's construction or project manager need not be a local company.

All projects of the Agency will be subject to monitoring by the Agency. Noncompliance may result in the revoking and/or recapture of all benefits extended to the project by the Agency.

Definitions

Local Labor is defined as laborers permanently residing in the State of New York counties of Cayuga, Cortland, Herkimer, Jefferson, Madison, Oneida, Onondaga, Oswego, Tompkins and Wayne.

Local (Sub) Contractor is defined as a contractor operating a permanent office in the State of New York counties of Cayuga, Cortland, Herkimer, Jefferson, Madison, Oneida, Onondaga, Oswego, Tompkins and Wayne.

Waivers

The Agency may determine on a case-by-case basis to waive the local access policy for a project or for a portion of a project where consideration of warranty issues, necessity of specialized skills, significant cost differentials between local and non-local services or other compelling circumstances exist. Should a company require a waiver of the local access policy, the Board would ask that the company make good faith efforts to use New York based companies prior to reaching outside the state for services.

Waiver Process

The project Applicant will submit in writing a request for a waiver to the Executive Director of the Agency. Said request will clearly and comprehensively explain and reliably verify the need for the waiver. The company shall then provide proof to the Executive Director of diligent efforts to secure labor within the local labor area. The company must provide proof directly from local companies that the labor is not available in the 10 County area. The Executive Director will submit the verified waiver request to the Board Chair and the agency attorney for review and shall approve or disapprove waivers.

Noncompliance

If a project is found to be noncompliant, the Executive Director will issue a written warning. If within thirty (30) days of issuance of the warning the project remains noncompliant, the Executive Director will submit to the Board a resolution to revoke and/or recapture the project benefits.