
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

ADDCOM ELECTRONICS

LEASE AND LEASEBACK AGREEMENT

DATED AS OF APRIL 10, 2018

**RESPECTING PREMISES LOCATED AT STEWART PARK, HANCOCK AIRPARK
IN THE TOWN OF CICERO,
COUNTY OF ONONDAGA, NEW YORK**

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THIS LEASE AND LEASEBACK AGREEMENT is dated as of April 10, 2018 (the “Lease Agreement”) by and between the **ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation having its office at 333 West Washington Street, Syracuse, New York 13202 (the “Agency”) and **ADDCOM ELECTRONICS**, a sole proprietorship, having its offices at 7268 Caswell Avenue, North Syracuse, New York (the “Company”).

W I T N E S S E T H:

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 and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvements, 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 of New York and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its properties, to mortgage and pledge any or all of its properties, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 564 of the Laws of 1970 of the State of New York and Chapter 420 of the 1987 Laws of New York, as amended (collectively with the Enabling Act, the “Act”), and is empowered under the Act to undertake the Project Facility(as hereinafter defined); and

WHEREAS, on April 10, 2018 the members of the Agency adopted a resolution (the “Inducement Resolution”) whereby the Agency agreed, subject to numerous conditions, to undertake a project (the “Project”) consisting of the following: construction of a 4,800 square foot building (the “Facility”) located on .75 acres at Stewart Drive, Hancock Airpark, in the Town of Cicero, County of Onondaga (the “Land” and, together with the Facility the “Project Facility”); (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 taxes, real property taxes (subject to entry into a Payment in Lieu of Taxes (PILOT) Agreement) transfer and mortgage recording taxes (the “Financial Assistance”); (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company; and (D) assisting the Company in the financing of the Project Facility; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”), and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation

of the State of New York (collectively, “SEQRA”), the Agency adopted a resolution (the “Environmental Resolution”) on April 10, 2018, by which the Agency determined that the Project Facility will not have a significant impact on the environment, and therefore that an environmental impact statement is not required to be prepared with respect to the Project Facility; and

WHEREAS, by resolution adopted by the members of the Agency on April 10, 2018 (the “Closing Resolution”), the Agency determined to grant the Financial Assistance and to enter into this Lease Agreement and certain other documents related thereto and to the Project Facility (collectively with the Lease Agreement, the “Basic Documents”); and

WHEREAS, prior to the Closing Date (as defined below), the Agency executed and delivered to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; and

WHEREAS, pursuant to the terms of this Lease Agreement, (A) the Company will agree (1) to cause the Project Facility to be undertaken and completed, (2) as agent of the Agency, to undertake and complete the Project Facility, (3) to lease the Project Facility from the Agency, and (4) to make certain payments to the Agency as rent for the Project Facility and (B) the Agency will agree to (1) undertake the Project Facility, (2) appoint the Company as agent of the Agency to undertake and complete the Project Facility, and (3) lease and sell the Agency’s interest in the Project Facility to the Company; 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 AGREE AS FOLLOWS:

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 of New York, as amended from time to time, together with Chapter 564 of the 1970 Laws of the State of New York, constituting Section 895 of the General Municipal Law of the State of New York, 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 political subdivision 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 Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of 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 Project Facility and as if the Company and not the Agency were the owner of the Project Facility), including but not limited to (A) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (B) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (C) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

“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, 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) by the Company by its Officers or such other person as may be authorized in writing by the Officers to act on behalf of the Company.

“Bank” means _____, its successors and assigns.

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

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

“Business Day” means a day on which the banks located in the Town of Cicero, Onondaga County, 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.

“Closing Resolution” means the resolution duly adopted by the Agency on April 10, 2018, authorizing and directing the undertaking and completion of the Project Facility, and the execution and delivery of the Basic Documents to which the Agency is a party.

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

“Company” means Addcom Electronics, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of this Lease Agreement.

“Completion Date” means the earlier to occur of (A) such date as shall be certified by the Company to the Agency as the date of completion of the Project Facility pursuant to Section 4.2 of this Lease Agreement, or (B) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project Facility.

“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 eighteen percent (18%) per annum, or the maximum rate of interest permitted by law, whichever is less.

“Equipment” means all equipment, fixtures, building materials and items of personal property and all appurtenances intended to be acquired by the Company as agent of the Agency in connection with the completion of the Project Facility prior to the Completion Date with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of this Lease Agreement, and such substitutions and replacements therefor as may be made from time to time pursuant to this Lease Agreement.

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

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

“Governmental Authority” means the United States of America, the State of New York, 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” means without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulations, polychlorinated biphenyls, petroleum and 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.), the New York State Environmental Conservation Law or in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule or regulation.

“Indebtedness” means (a) 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 (b) 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.

“Inducement Resolution” means the resolution adopted by the Agency on April 10, 2018, to undertake the Project Facility.

“Land” shall have the meaning ascribed to such term in the fifth recital clause to this Lease Agreement and more particularly described on Exhibit A attached.

“Lease Agreement” means this Lease and Leaseback Agreement dated as of April 10, 2018, by and between the Agency and the Company, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said Lease and Leaseback Agreement may be amended or supplemented from time to time.

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

“Mortgage” means any mortgage from the Company and the Agency granted to secure one or more loans to the Company.

“Net Proceeds” means so much of the gross proceeds with respect to which that the term is used as remain after payment of all expenses, costs and taxes (including attorneys’ fees) incurred in obtaining such gross proceeds.

“Payment in Lieu of Tax Agreement” means a Payment in Lieu of Tax Agreement, if any, entered into between the Company and the Agency, as said 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 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 Project Facility obtained through any Basic Document, and (E) any Lien approved by the Company.

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

“Plans and Specifications” means the description of the Project Facility appearing in the fifth recital clause to this Lease Agreement.

“Premises” means the property leased to the Agency pursuant to this Lease Agreement.

“Project Facility” shall have the meaning ascribed to such term in the fifth recital clause to this Lease Agreement.

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

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

“Sales Tax Exemption Letter” shall have the meaning assigned to such term in Section 8.13 of this Lease Agreement.

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

“Tenant” means Addcom Electronics and its permitted successors and/or assigns.

“Term” means the term of this Lease Agreement.

“Termination of Lease and Leaseback Agreement” means a termination of Lease and Leaseback Agreement by and between the Company and the Agency, intended to evidence the termination of this Lease Agreement, substantially in the form attached as Exhibit C 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(B), 4.1(D), 4.1(E)(2), 4.1(G), 5.2(A), 5.3(B), 5.4(B), 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.12, 8.13, 9.1, 9.3, 12.4, 12.8 and 12.10 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(F), 3.3, 4.1, 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.

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.

(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 it 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 Project Facility, the Project Facility 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 transaction 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 bylaws of the Agency or any order, judgment, restriction, agreement or instrument to which the Agency is a party or by which it is bound, or will constitute a default by the Agency under any of the foregoing.

(C) Pursuant to this Lease Agreement, the Agency will cause the Project Facility to be acquired, constructed, equipped and installed and will lease the Project Facility to the Company pursuant to this Lease Agreement, all for the purpose of advancing the job opportunities, health, general prosperity and economic welfare of the people of the State of New York 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 Project Facility or any part thereof.

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 sole proprietorship, is duly authorized to do business in the State of New York, has the power and authority 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, and has been duly authorized to execute this Lease Agreement and the other Basic Documents.

(B) Neither this Lease Agreement or the other Basic Documents to which the Company 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 Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the articles of organization and/or operating agreement, certificate of incorporation and/or bylaws of the Company or any other restriction or any order, judgment, agreement or instrument to which the Company is a party or by which the Company can be bound, or constitute a default under any of the foregoing, or (2) or result in the creation of any Lien of any nature upon the property of the Company other than the Permitted Encumbrances, or (3) require consent under (which has not been heretofore received) any restriction or any order, judgment, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent under (which has not been heretofore received), 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) The completion of the Project Facility will not result in the removal of a plant or facility of the occupant of the Project Facility from one area of the State of New York to another area of the State of New York or in the abandonment of one or more plants or facilities of the occupant of the Project Facility located in the State of New York.

(D) 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.

(E) The Project Facility is, and so long as this Lease Agreement shall remain in effect, the Project Facility will continue to be, a “project”, as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action 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 cause the Project Facility not to constitute a “project”, as such quoted term is defined in the Act.

(F) The Company shall cause all notices as required by all Applicable Law 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.

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

(H) The Project Facility and the operation thereof will comply with all Applicable Laws.

(I) The Company acknowledges receipt of notice of Section 874(8) of the Act, which provides that, if the Company claims any sales tax exemption by virtue of the Agency’s involvement in the Project Facility, 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 a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales 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 Facility with the following entities (hereinafter, the “JTPA Referral 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) 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.

ARTICLE III

CONVEYANCE AND USE OF THE PROJECT FACILITY

SECTION 3.1. LEASE TO AGENCY. The Company hereby leases to the Agency the Land and the Project Facility to construct the Project Facility and acquire and install the Equipment for the term of this Lease Agreement. The Company hereby conveys unto the Agency and its successors and assigns, all of the Company's right, title and interest in and to all Equipment acquired with payment by the Company pursuant to this Lease Agreement and any replacements, additions, accessions or substitutions as may exist from time to time in accordance with the provisions of this Lease Agreement.

SECTION 3.2. USE OF THE PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Basic Documents provided such use causes the 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 Project Facility into disrepute as a public project.

SECTION 3.3. HAZARDOUS MATERIALS.

(A) The Company represents, warrants and covenants that the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Applicable Laws, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to its knowledge, no prior owner of the Project Facility or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from or affecting the 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) Without limiting the foregoing, the Company shall not cause or permit the Project Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Applicable Laws, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company, or any tenant or subtenant of the Company, an unlawful release of Hazardous Materials onto the Project Facility 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) The Company shall (1) conduct and complete all investigations, studies, sampling and testing and all remedial, removal and other actions necessary to clean up, remove or contain all Hazardous Material on, from or affecting the Project Facility (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, its employees, agents, officers, directors 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, out of, or in any way related to, (a) the presence, disposal, release or threatened release of any Hazardous Materials used, transported, stored, manufactured, refined, handled, produced, or disposed of on or in the Project Facility 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 Hazardous Materials, and/or (d) any violations of Applicable Laws which are based upon or in any way related to 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.

SECTION 3.4. MERGER. During the term of this Lease Agreement, there shall be no merger of this Lease Agreement nor of the interest 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 interest created by this Lease Agreement or any interest created in this Lease Agreement or in any such interest 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 this Lease Agreement or the interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

ARTICLE IV UNDERTAKING AND COMPLETION OF THE PROJECT FACILITY

SECTION 4.1. ACQUISITION, CONSTRUCTION AND INSTALLATION OF PROJECT FACILITY.

(A) The Company shall, on behalf of the Agency, promptly acquire, construct and install the Project Facility, or cause the acquisition, construction and installation of the Project Facility, all in accordance with the Plans and Specifications.

(B) No material change in the Plans and Specifications shall be made unless the Agency shall have consented thereto in writing which such consent shall not be unreasonably withheld, conditioned or delayed.

(C) Title to all materials, equipment, machinery and other items of Property acquired by or on behalf of the Company as agent of the Agency and intended to be Equipment hereunder shall vest in the Agency immediately upon incorporation or installation in or delivery to the Project Facility, whichever shall first occur. The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest title in the Agency and shall take all action necessary or appropriate to protect the 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 made available therefore by the Company and advanced for such purposes by the Company pursuant to this Lease Agreement and as limited in the manner set forth in Section 4.1(H) hereof.

(E) The Agency hereby reaffirms its appointment of 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 reaffirms that it accepts such appointment (1) to acquire, construct, and install the 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 or proper, all for the acquisition, construction and installation of the Project Facility, with the same powers and with the same validity as the Agency could do if acting on its own behalf, provided, however, that the liability of the Agency thereunder shall be limited to the moneys made available therefor by the Company and advanced for such purposes by the Company pursuant to this Lease Agreement and as limited in the manner set forth in Section 12.10 hereof (3) to pay or cause to be paid all fees, costs and expenses incurred in connection with acquisition, construction, and equipping of the Project Facility, and (4) to ask, demand, sue for, levy, recover and receive all sums or 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 Project Facility, and enforce the provisions of any contract, agreement, obligation, bond or other performance security relative thereto.

(F) The Company has given or will give or cause to be given all notices and has complied with or will comply with all Applicable Laws applying to or affecting the conduct of work on the Project Facility, and the Company will defend, indemnify and save the Agency and its officers, members, directors, agents and employees harmless from all fines and penalties due to the failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(G) Intentionally Omitted.

(H) The Company agrees, for the benefit of the Agency, to undertake and complete the Project Facility and to pay all such sums as may be required in connection therewith. Title to portions of the Project Facility acquired, constructed and installed at the Company's cost shall immediately upon such acquisition, construction and installation vest in the Agency. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's title to such portions of the Project Facility.

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

SECTION 4.2. COMPLETION OF THE PROJECT FACILITY. The Company shall proceed with due diligence to commence and complete the acquisition, construction and installation of the 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 Project Facility has been completed with the exception of ordinary punch list items and work awaiting seasonal opportunity, (D) that the Company or the Agency has good and insurable title to all Property constituting any portion of the Project Facility, free and clear of all liens except Permitted Encumbrances, and (E) that the 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 permanent unconditional certificate of occupancy, or a letter from the Local Authority stating no certificate of occupancy is required, and any and all permissions, licenses or consents required of Governmental Authorities for the occupancy, operation and use of the Project Facility for its intended purposes.

SECTION 4.3. REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES. In the event of a default by any contractors, subcontractors or materialmen under any contract made by them in connection with the acquisition, construction or installation of the Project Facility, or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Company may, in its own name or, with the prior written consent of the Agency, in the name of the Agency, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety which the Company deems reasonably necessary, and in such event the Agency agrees, at the Company's sole expense, to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Company shall advise the Agency of any actions or proceedings taken hereunder.

SECTION 4.4. MORTGAGE ON PROJECT FACILITY. The Agency will grant the Bank a mortgage lien and a security interest on the Agency's interest in the Project Facility pursuant to the Mortgage, provided, however, the Agency's liability under the Mortgage shall be limited to its interest in the Project Facility and shall otherwise be non-recourse against the Agency.

ARTICLE V

DEMISE OF PROJECT FACILITY; RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE

SECTION 5.1. LEASE OF THE 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 Project Facility, subject only to Permitted Encumbrances. The obligation of the Agency under

this Section 5.1 to lease the Project Facility to the Company shall be subject to there being no Event of Default existing hereunder or any other event which, but for the passage of time or notice or both, would be 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 Project Facility, and the leasehold estate created hereby shall commence on the Closing Date and the Company shall accept possession of the Project Facility on the Closing Date.

(B) INTENTIONALLY OMITTED.

(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 peaceful possession and enjoyment of the Project Facility during the term of this Lease Agreement and will, at the request of the Company and at the Company's expense, cooperate with the Company in order that the Company may have quiet and peaceful possession and enjoyment of the Project Facility.

(D) The Company hereby irrevocably appoints and designates the Agency as its attorney-in-fact for the purpose of executing and delivery and recording any necessary terminations of lease together with any documents required in connection therewith and to take such other and further actions in accordance with this Agreement as shall be reasonably necessary to terminate the Agency's leasehold interest in the Project Facility upon the expiration or termination hereof.

SECTION 5.3. RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.

(A) The Company shall pay basic rental payments for the Project Facility as follows; on the Closing Date, the Company shall pay (1) the Agency's administrative fee relating to the Project Facility; and (2) the fees and expenses of general counsel to the Agency relating to the Project Facility.

(B) Within ten (10) Business Days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the reasonable expenses of the Agency and the officers, members, agents and employees thereof incurred by reason of the Agency's ownership, leasing, financing or sale of the Project Facility of 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 Project Facility, the sale of the Project Facility to the Company or any of the other Basic Documents, the payment of which is not otherwise provided for under this Lease Agreement.

(C) The Company agrees to make the above-mentioned payments, without any further notice, 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 such payment required by this Section 5.3 for a period of more than ten (10) days from the date such payment is due, the Company shall pay the same, together with interest thereon, at the Default Interest Rate, 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 covenants or agreements contained in this Lease Agreement, or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the acquisition, construction or installation of the Project Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of title to or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or 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 12.10 hereof); provided, however, that the Company shall look solely to the Agency's estate and interest in the Project Facility for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Company) 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 purchase of and title to the Project Facility, or any other liability of the Agency to the Company.

**ARTICLE VI
MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE**

**SECTION 6.1. MAINTENANCE AND MODIFICATIONS OF PROJECT
FACILITY BY COMPANY.**

(A) During the term of this Lease Agreement, the Company shall (i) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (ii) make all necessary repairs and replacements to the Project Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (iii) operate the Project Facility in a sound and economic manner.

(B) The Company shall not make any structural additions, modifications or improvements to the 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 Project Facility, or a part thereof (b) defend and save the Agency and its officers, members, directors, 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) make all payments in lieu of taxes required by Section 6.6 hereof; and

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

SECTION 6.2. TAXES, ASSESSMENTS, AND UTILITY CHARGES.

(A) The Company shall pay or cause to be paid, as the same respectively become due, (1) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility, (2) all utility and other charges, including "service charges," incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, and (3) all assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated hereunder to pay only such installments as are required to be paid during the term of this Lease Agreement.

(B) Notwithstanding the provisions of subsection (A) of this Section 6.2, the Company may in good faith actively contest any such taxes, assessments and other charges, provided that the Company (1) shall have first notified the Agency in writing of such contest, (2) is not in default under any of the Basic Documents, and (3) demonstrates to the reasonable satisfaction of the Agency that the withholding of such payment will not subject the 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.

SECTION 6.3. INSURANCE REQUIRED. During the term of this Lease Agreement, the Company shall maintain insurance with respect to the 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 and the Agency as insureds as their interest may appear, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount acceptable to the Company and the Agency.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility or who are responsible for the acquisition, reconstruction or installation of the 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 Sections 8.2 of this Lease Agreement) and arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000.00 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and \$500,000.00 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate umbrella liability policy with a limit of not less than \$3,000,000.00.

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

SECTION 6.4. ADDITIONAL PROVISIONS RESPECTING INSURANCE.

(A) All insurance required by Section 6.3 hereof shall be procured and maintained in insurance companies selected by the Company and reasonably acceptable to the Agency and authorized to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance other than workers' compensation insurance and statutory disability insurance shall name the Company and the Agency as insureds, as their interest 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 reasonably satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate reciting that there is in full force and effect, with a term covering at least the next succeeding twelve month period, insurance in the amounts and of the types required by Sections 6.3 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 for a period not to exceed twelve (12) months and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at the Default Interest Rate or the highest 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 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 and subject to filing a Real Property Tax Exemption Form on form RP-412-a, the Agency is required to pay no taxes or assessments upon any of the Property acquired by it or under its jurisdiction or control or supervision or upon its activities. It is not the intention, however, of the parties hereto that the Project Facility be treated as exempt from real property taxation by reason of the Agency's involvement with the Project. Accordingly, the parties hereto acknowledge that the Payment in Lieu of Tax Agreement is intended to be executed with respect to the Project Facility and a Real Property Tax Exemption Form will be filed by the Agency with respect to the Project Facility. After the execution of and until the expiration of the Payment in Lieu of Tax Agreement, the Agency and the Company agree that the Company shall be required to make or cause to be made, payments in lieu of real property taxes in the amounts and in the manner set forth in the Payment in Lieu of Tax Agreement.

(B) In the event that (1) the Project Facility would be subject to real property taxation if owned by the Company, but shall be deemed exempt from real property taxation due to the involvement of the Agency therewith, and (2) the 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 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, city, town, county, village and other political units wherein the Project Facility is located having taxing powers (such political units are hereinafter collectively referred to as "Taxing Entities") in such amounts as would result from real property taxes levied on the Project Facility by the Taxing Entities if the Project Facility were privately owned by the Company and not deemed owned by or under the jurisdiction or 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 Project Facility to be valued for purposes of determining the amounts due thereunder as if owned by the Company 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, (2) shall cause to be appropriately applied to the valuation or valuations so determined the respective real property tax rate or rates of such Taxing Entities that would be applicable to the Project Facility if so privately owned, (3) shall cause the appropriate officer or officers of such Taxing Entities charged with the duty of levying and collecting such real property taxes to submit to the Company, when the respective levies are made for purposes of such real property taxes upon property privately owned as aforesaid, a statement specifying the amount and due date or dates of such real property taxes which the Taxing Entities would receive if such Property were so privately owned by the Company and not deemed owned by or under the jurisdiction or control

or supervision of the Agency, and (4) shall file with the appropriate officer or officers any account 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 real property taxes with respect to the 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 Project Facility, including any available exemption under Section 485-b of the New York Real Property Tax Law with respect to the Project Facility, (2) contest valuations of the 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 any payment required under this Section 6.6, the Company shall pay 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 under this Section 6.6 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) one percent (1%) per month, or (B) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

SECTION 6.7. RECAPTURE. In the event that (a) the Project Facility is sold or closed or (b) the number of jobs at the Project Facility is reduced below 75% of the number employed at the time of application or below 75% of the employment projections provided by the Company to the Agency, in the reasonable opinion of the Agency, and no substantial future economic benefit is likely to accrue to the community, (each, a "Recapture Event"), the Company shall pay to the Agency, based on the formula set forth below, a portion of the Aggregate Tax Savings(as defined below) which the Company realized as a result of the Agency undertaking the Project. For purposes of this Section, "Aggregate Tax Savings" shall mean the amount by which the real property taxes which the Company would have paid if the Facility Premises were owned by the Company and not deemed owned by or under the jurisdiction or control or supervision of the Agency exceeds the payments in lieu of taxes actually paid by the Company. Notwithstanding anything to the contrary contained herein, the term Recapture Event shall not include reductions in employment that are the result of condemnation, damage or destruction to the Project Facility that the Company elects to not repair and replace in accordance with Section 7.1(B) or 7.2(B) hereof.

<u>Date of Recapture Event</u>	<u>Percentage of Aggregate Tax Savings Recaptured</u>
Year 1	75%
Year 2	60%
Year 3	40%
Year 4	20%

**ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION**

SECTION 7.1. DAMAGE OR DESTRUCTION.

(A) If the Project Facility shall be damaged or destroyed in whole or in part:

- (1) the Agency shall have no obligation to replace, repair, or restore the 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 Project Facility is replaced, repaired, or restored);
- (3) the Company shall promptly give notice thereof to the Agency; and
- (4) except as otherwise provided in subsection (B) of this Section 7.1,
 - (a) the Company shall promptly replace, repair, rebuild or restore the Project Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a “project,” as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency; and
 - (b) the Agency shall make available to the Company (from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Project Facility. In the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. Any balance of such Net Proceeds of any insurance settlement relating to the Project Facility, if any, on deposit with the Agency, after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be paid to the Company for its own purposes.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, the Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Company shall notify the Agency that it elects pursuant

to Section 11.1 hereof to terminate this Lease Agreement. In such event, or if an Event of Default involving the payment of money to the Agency 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 Project Facility, or (2) the amount owed to the Agency shall be paid to the Agency. If the Net Proceeds collected under any and all policies of insurance are less than the amount owed to the Agency, the Company shall pay to the Agency the difference between the Net Proceeds of such insurance and the amount owed to the Agency.

(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 purposes.

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

- (1) the Agency shall have no obligation to restore the Project Facility;
- (2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Project Facility is restored);
- (3) the Company shall promptly give notice thereof to the Agency;
- (4) except as otherwise provided in subsection (B) of this Section 7.2,
 - (a) the Company shall promptly restore the Project Facility (excluding any part of the Land or the Facility taken by Condemnation) to substantially the same condition and value as an operating entity as existed prior to such Condemnation, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project," as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency; and
 - (b) the Agency shall make available to the Company (from the Net Proceeds of any Condemnation award relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the restoration of the Project Facility. In the event such Net Proceeds are not sufficient to pay in full the costs of such restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. Any balance of such Net Proceeds of any Condemnation award

relating to the Project Facility, if any, 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.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.2, the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (A) of this Section 7.2, if the Company shall notify the Agency that it elects pursuant to Section 11.1 hereof to terminate this Lease Agreement. In such event, or if an Event of Default involving the payment of money to the Agency shall have occurred and be continuing, the lesser of (1) the total amount of the Net Proceeds of any Condemnation award, or (2) the amount owed to the Agency shall be paid to the Agency. If the Net Proceeds of any Condemnation award are less than the amount owed to the Agency, the Company shall pay to the Agency the difference between the Net Proceeds of such Condemnation award and the amount owed to the Agency.

(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 purposes.

(D) 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 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 ten (10) Business days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

SECTION 7.3. ADDITIONS TO 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 moneys, shall automatically become part of the Project Facility as if the same were specifically described herein.

ARTICLE VIII SPECIAL COVENANTS

SECTION 8.1. NO WARRANTY OF CONDITION OR SUITABILITY; ACCEPTANCE "AS IS". THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT TITLE TO THE PROJECT FACILITY "AS IS," WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL NOT HAVE ANY 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 Facility, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project 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 Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, constructing, reconstructing, equipping, installing, owning or selling of the 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 Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Lease Agreement or any other Basic Document or the enforcement of or defense of the validity of any provision of any Basic Document, (3) all claims, arising from the exercise by the Company of the authority conferred upon it by 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 intentional wrongdoing or negligence of the Agency or any of its members, officers, agents (other than the Company) or employees. Except as set forth herein, the foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency or any of its officers, members, agents (other than the Company), servants or employees, and irrespective of any breach of 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 any one 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 and charges incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

SECTION 8.3. RIGHT TO ACCESS TO PROJECT FACILITY. The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to enter upon and to examine and inspect the Project Facility. The Company further agrees that the Agency shall have such rights of access to the Project Facility as may be reasonably necessary to cause the proper maintenance of the Project Facility in the event of the failure by the Company to perform its obligations hereunder.

SECTION 8.4. COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS; CONDITIONS UNDER WHICH EXCEPTIONS ARE PERMITTED. Except as permitted under Article IX hereof, the Company agrees that, during the term of this Lease Agreement, it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another corporation, or permit one or more corporations to consolidate with or merge into it; provided, however, that, if no Event of Default specified in Section 10.1 hereof shall have occurred and be continuing, the Company may consolidate with or merge into another domestic corporation organized and existing under the laws of one of the states of the United States, or permit one or more such domestic corporations to consolidate with or merge into it, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve, provided (A) that the Agency gives its prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, (B) that the surviving, resulting or transferee corporation assumes in writing all of the obligations of and restrictions on the Company under this Lease Agreement and the other Basic Documents, and (C) that as of the date of such transaction, the Agency shall be furnished with (1) an opinion of counsel to the Company as to compliance with item (B) of this Section 8.4, and (2) a certificate, dated the effective date of such transaction, signed by an Authorized Representative of the Company and of the surviving, resulting or transferee corporation, or the transferee of its assets, as the case may be, to the effect that immediately after the consummation of the transaction and after giving effect thereto, no Event of Default exists under this Lease Agreement and no event exists which, with notice or lapse of time or both, would become such an Event of Default.

SECTION 8.5. AGREEMENT TO PROVIDE INFORMATION. The Company agrees, whenever requested by the Agency, to provide and certify or cause to be 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.

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 one hundred and twenty (120) 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 requirement of the nature referred to in such subsection (A), provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) is not in default 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 requirement will not subject the 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.

SECTION 8.8. DISCHARGE OF LIENS AND ENCUMBRANCES.

(A) The Company hereby agrees not to create or suffer to be created any Lien, except for Permitted Encumbrances, upon the Project Facility.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.8, the Company may in good faith actively contest any such Lien, provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) is not in default under any of the Basic Documents, and (3) such Lien shall be removed promptly by the Company or secured by the Company's posting a bond in form and substance reasonably satisfactory to the Agency.

SECTION 8.9. PERFORMANCE BY THE AGENCY 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 limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Agency, and paying all expenses, including, without limitation, reasonable attorneys' fees, 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 highest rate permitted by law, whichever is lower.

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 the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

SECTION 8.11. IDENTIFICATION OF EQUIPMENT. All Equipment which is or may become part of the 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 8.12. EMPLOYMENT OPPORTUNITIES.

(A) The Company shall insure that all employees and applicants for employment with regard to the Project Facility are afforded equal employment opportunities without discrimination.

(B) Pursuant to Section 858-b of the Act, except as otherwise provided by collective bargaining contracts or agreements, the Company agrees (1) to list all new employment opportunities created as a result of the Project Facility with the New York State Department of Labor, Community Services Division (“NYSDOL”) and with the administrative entity (collectively with NYSDOL, the “JTPA Referral Entities”) of the service delivery area created by the federal Job Training Partnership Act (P.L. No. 97-300) (“JTPA”) in which the Project Facility is located and (2), where practicable, to first consider for such new employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.

(C) The Company agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the Project Facility and certain other matters, the initial said report to be in substantially the form annexed hereto as Exhibit D.

(D) The Company agrees that, to the extent practicable, local labor will be used for the construction of the Project Facility and local contractors shall have the opportunity to bid on contracts relating to the Project Facility.

SECTION 8.13. SALES AND USE TAX EXEMPTION.

(A) Pursuant to Section 854(14) of the Act, the parties understand that the Agency is exempt from certain sales taxes and use taxes imposed by the State of New York and local governments in the State of New York, and that the Project Facility may be exempted from those taxes due to the involvement of the Agency in the Project Facility. The Agency makes no representations or warranties that any property or services is exempt from the payment of New York sales or use taxes. Any exemption from the payment of New York sales or use taxes resulting from the involvement of the Agency with the Project Facility shall be limited to purchases of services and tangible personal property leased or otherwise conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases or services or property shall be subject to an exemption from the payment of New York sales or use taxes.

(B) Pursuant to Section 874(8) of the Act, if the Company claims any sales tax exemption by virtue of the Agency’s involvement in the Project Facility, the Company agrees to annually file and cause any sublessee or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, on a form (the “Annual Sales Tax

Report”) and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance, a statement of the value of all sales and use tax exemptions claimed by the Company and all contractors, subcontractors, consultants and other agents of the Company under the authority granted to the Company by the Agency. Pursuant to Section 874(8) of the Act, the penalty for failure to file such statement shall be the removal of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this Section 8.13(A), the Company shall immediately cease to be the agent of the Agency in connection with the Project Facility. A current sample form of the Annual Sales Tax Report required to be completed by the Company by this Section 8.13(B) and Section 874(8) of the Act is attached hereto as Exhibit E. The Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of the Annual Sales Tax Report.

(C) The Company agrees to furnish to the Agency a copy of each such Annual Sales Tax Report submitted to the New York State Department of Taxation and Finance by the Company pursuant to Section 874(8) of the Act.

ARTICLE IX ASSIGNMENTS; SALE OR LEASE OF PROJECT FACILITY

SECTION 9.1. ASSIGNMENT OF THE LEASE AGREEMENT. The Company may not assign its right, title, interest and obligations in, to and under this Lease Agreement without the prior written consent of the Agency, and any such assignment without such prior written consent shall be deemed null and void; provided, however, that the foregoing restriction shall not prohibit: (a) a collateral assignment (a "Collateral Assignment") by the Company of its right, title and interest in and to this Lease Agreement to any Lender of the Company; (ii) an assignment of any right, title and interest in, to and under this Lease Agreement to a Qualified Transferee (as defined below); or (iii) the commencement of any Enforcement Action by a Lender. For purposes of this paragraph, the terms "Lender", "Qualified Transferee" and "Enforcement Action" shall have the meanings ascribed to such terms in the Payment in Lieu of Tax Agreement, as amended.

SECTION 9.2. SALE OR LEASE OF THE PROJECT FACILITY.

(A) Except as permitted under Section 9.1 above, the Company may not sell, lease, transfer, convey or otherwise dispose of the Project Facility or any part thereof or allow the Project Facility to be used by any person or entity other than the Company without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed. The Agency hereby consents to the lease of the Project Facility to the tenant.

(B) Notwithstanding anything to the contrary contained herein, in any instance after the Completion Date where the Company reasonably determines that any portion of the Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such portion of the Equipment and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Agency, provided that such removal will not materially impair the value of the Project Facility as collateral and provided, further, that same is forthwith replaced with similar items of Equipment having a similar value. 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 portion of the Equipment. The Company shall pay all costs and expenses (including reasonable counsel fees) incurred in transferring title to any portion of the Equipment removed pursuant to this Section 9.2.

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 Section 5.3 or Section 6.6 hereof and the continuance thereof for a period of ten (10) days after written notice thereof is given by the Agency to the Company.

(2) A default in the performance or observance of any other covenants, conditions or agreements on the part of the Company contained in this Lease Agreement and the continuance thereof for a period of thirty (30) days after written notice is given by the Agency to the Company, or, if such covenant, condition or agreement is capable of cure but cannot reasonably 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 and cure the same within ninety (90) days.

(3) The occurrence of an Event of Default under any of the other Basic Documents.

(4) Any material representation or warranty made by the Company herein or in any Basic Document proves to have been false at the time it was made.

(5) 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.

(6) Any sale, conveyance, lease agreement or any other change of ownership of the Project Facility, whether occurring voluntarily or involuntarily, or by operation of law or otherwise, by the Company (except pursuant to this Lease Agreement) of its interest in the Project Facility or any part thereof, or the granting of any easements or restrictions or the permitting of any encroachments on the Project Facility, except as permitted in this Lease Agreement.

(7) (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.

(8) The Company shall conceal, remove or permit to be concealed or removed any part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or restraint which is not vacated within sixty (60) days from the date hereof.

(9) The imposition of a Lien on the Project Facility other than a Lien being contested as provided in Section 8.8(B) of this Lease Agreement or a Permitted Encumbrance.

(10) The removal of the Equipment or any portion thereof outside Onondaga County, New York, without the prior written consent of the Agency, other than in connection with a removal under Section 9.2(B) hereof.

(B) Notwithstanding the provisions of Section 10.1(A) hereof, if by reason of force majeure (as hereinafter defined) the Company shall be unable, in whole or in part, to carry out its obligations under this Lease Agreement and if the Company shall give notice and full particulars of such force majeure in writing to the Agency within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease Agreement of the Company, 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), 3.3, 4.1, 6.6, 6.7, 8.2, 8.4, 8.5 and 8.7 hereof. The term "force majeure" as used herein shall include acts outside of the control of 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, and partial or entire failure of

utilities. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Company, and the Company shall not be required to settle any strike, lockout or other industrial disturbance by acceding to the demands of the opposing party or parties.

SECTION 10.2. REMEDIES ON DEFAULT.

(A) Whenever any Event of Default shall have occurred, 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 unpaid installment purchase payments payable pursuant to Section 5.3 hereof, and (b) all other payments due under this Lease Agreement; or

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

SECTION 10.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand

therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred, 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 OPTION 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.

SECTION 11.2. OBLIGATION TO SELL AND PURCHASE THE 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 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 or any other person pursuant to this Lease Agreement and the other Basic Documents. The obligation of the Agency under this Section 11.2 to convey the 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, if any, 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 PROJECT FACILITY.

(A) At the closing of any purchase of the 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; and (2) to release and convey to the Company all of the Agency's right and interest in and to any rights of action or any net proceeds of insurance settlements or Condemnation awards with respect to the Project Facility (but not including any amounts relating to the Unassigned Rights).

(B) The sale and conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the delivery by the Agency to the Company of the Bill of Sale to Company in substantially the form attached hereto as Exhibit B. 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 in substantially the form attached hereto as Exhibit C.

(C) The Company will pay all expenses and taxes, if any, applicable to or arising from such transfers of title.

(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.

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 AGENCY:

Onondaga County Industrial Development Agency
333 West Washington Street
Syracuse, New York 13202
Attention: Julie Cerio, 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.

IF TO THE COMPANY:

Addcom, Electronics
7268 Caswell Avenue North
Syracuse, NY 13212
Attn: David M. Adams, Sr.

WITH A COPY TO:

Pappas Cox Kimpel Dodd Levine P.C.
614 James Street
Syracuse, NY 13203
Attn: P. Douglas Dodd, Esq.

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

SECTION 12.2. BINDING EFFECT. This Lease Agreement shall inure to the benefit of 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 covenants or agreements provided herein on the part 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 such circumstance shall not render the provision in question inoperative or unenforceable in any other circumstance. Further, if any one or more of the sentences, clauses, paragraphs or sections herein is contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable or remaining covenants and agreements hereof and shall 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 of New York.

SECTION 12.7. RECORDING AND FILING. This Lease Agreement (or memorandum thereof) and the Mortgage and any other mortgage executed by the Agency granting a mortgage on the Land or the Project Facility shall be recorded by the Agency in the office of the County Clerk of Onondaga County, New York.

SECTION 12.8. SURVIVAL OF OBLIGATIONS.

(A) The obligations of the Company to make the payments required by Sections 5.3, 6.6 and 6.7 hereof and to provide the indemnity required by Sections 3.3 and 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 Agency.

(B) The obligations of the Company 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 12.9. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

SECTION 12.10. 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 therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, director, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, directors, agents (other than the Company) and employees of the Agency shall not be liable personally herein 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 or therein shall not constitute or give rise to an obligation of the State of New York or of the County of Onondaga, and neither the State of New York nor the County of Onondaga 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 Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

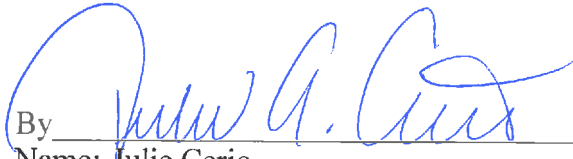
(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party

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 (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (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, directors, 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 and hold harmless the Agency and its members, officers, directors, 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, directors, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request. Any failure to provide notice, indemnity or security to the Agency pursuant to this Section 11.10 shall not affect the full force and effect of any Event of Default under this Lease Agreement.

SECTION 12.11. SUBORDINATION TO THE MORTGAGE. This Lease Agreement and all rights of the Company and the Agency hereunder are and shall be subordinate to the Lien of the Mortgage and any assignment of rents on the Project Facility and all advances thereunder and all renewals and replacements thereof. The subordination of this Lease Agreement to the Mortgage and to any assignment of rents shall be automatic, without the execution of any further subordination agreement by the Company or the Agency. Nonetheless, if the Bank requires a further written subordination agreement, the Company and the Agency hereby agree to execute, acknowledge and deliver the same.

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

**ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By 
Name: Julie Cerio
Title: Executive Director

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

On the 10 day of April in the year 2018 before me, the undersigned, personally appeared **JULIE CERIO**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

ANTHONY P. REZZIGNO
Notary Public, State of New York
No. 02R16060653
Qualified in Onondaga County
Commission Expires June 25, 2019

ADDCOM ELECTRONICS

By 
Name: David M. Adams, Sr.
Title: Owner

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

On the 30 day of April in the year 2018, before me, the undersigned, personally appeared **DAVID M. ADAMS**, 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 D. DODD
Notary Public, State of New York
Qualified in Onondaga Cty No. 02004982980
My Commission expires February 26, 20 22

EXHIBIT A

Property Description

EXHIBIT B

FORM BILL OF SALE TO COMPANY

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York (the "Grantor"), for the consideration of One and 00/100 Dollars (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from _____, a _____, with an address of _____ (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and assigns unto the Grantee, and its successors and assigns, all of the Grantor's right, title and interest in and to the approximately _____square foot building (the "Facility") and all the materials, machinery, equipment, fixtures and furnishings (the "Equipment") constructed and acquired by the Grantor pursuant to a Lease and Leaseback Agreement dated as of April 10, 2018, by and between the Grantor and the Grantee, which Facility and Equipment are located on the real property located at _____, _____, County of Onondaga, New York.

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 ANY OF THE FACILITY AND/OR EQUIPMENT DESCRIBED ABOVE. THE GRANTEE ACCEPTS TITLE TO SUCH FACILITY AND/OR EQUIPMENT "AS IS," WITHOUT RECOURSE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. IN THE EVENT OF A DEFICIENCY OR DEFAULT OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer on the date indicated beneath the signature of such officer and dated as of the _____ day of _____.

**ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By _____

Name: Julie Cerio

Title: Executive Director

EXHIBIT C

FORM TERMINATION OF LEASE AND LEASEBACK AGREEMENT

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a New York public benefit corporation, having its office at 333 West Washington Street, Syracuse, New York 13202 (the "Agency") and **ADDCOM ELECTRONICS**, a sole proprietorship, with an address of _____ (the "Company") entered into a Lease and Leaseback Agreement (the "Lease Agreement") dated as of April 10, 2018, relating to certain premises located in the City of Syracuse, County of Onondaga, State of New York.

A memorandum of the Lease Agreement was recorded on _____, in the Onondaga County Clerk's Office in Book _____ of Deeds at page _____.

The Lease Agreement has been terminated and the Onondaga County Clerk is hereby authorized to discharge and terminate of record the memorandum of Lease Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the _____ day of _____.

**ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By _____
Name: Julie Cerio
Title: Executive Director

ADDCOM ELECTRONICS

By _____
Name: _____
Title: _____

[illegible]

On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared **JULIE CERIO**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

[illegible]

On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT D

FORM ANNUAL EMPLOYMENT REPORT

Onondaga County Industrial Development Agency Annual Survey of Companies

[2012]

Overview: As an agent of the Onondaga County Industrial Development Agency, _____ is required annually to document for the term of its contractual agreement with the Agency: its employment levels, insurance coverage, payment of taxes and fees, and in some instances amount of indebtedness. To fulfill your compliance requirements, please:

1. Complete the employment and/or indebtedness sections of the document;
2. Attach the required supporting documentation;
3. Sign and certify the document; and
4. Return to the Agency postmarked no later than _____ :

Failure to comply with this request may result in an action by the Agency to terminate the benefits granted to you.

I. Contact Information – please update any of the following information.

File Number: _____

Parent Company: _____

Project Name: _____

Project Location: _____

Responsible Company Officer: _____

Officer Title: _____

Officer Phone: _____

Officer Fax: _____

Officer Email: _____

II. Employment Section – Please report the number of full-time equivalent (FTE) employees working at the project location, including the employees of any tenants or subtenants.

The Agency definition of the term “full-time equivalent employee” is located on the last page of this document.

Number of FTE jobs as of _____

Number of FTE jobs as of _____

Number of FTE construction jobs created
between -) _____

III. Outstanding Indebtedness – Please report the information for any Agency authorized bonds and notes issued, outstanding or retired during the period beginning _____ and ending _____.

Current Interest Rate: _____

Outstanding Balances as of : _____

Payments during the period
to : _____

Outstanding Balance as of : _____

Final Maturity Date of the Issue: _____

Were the bonds or notes retired during the
reporting period of to
Yes ☐ No ☐

IV. Required Attachments – Please attach the copies of the following documents.

- ☐ NYS-45-MN Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Form, filed for the quarter ending _____.
- ☐ For companies that have made sales tax exempt purchases utilizing the sale tax exempt certificate provided to it by the Onondaga County Industrial Development Agency, a copy of NYS ST-340 Annual Statement to NYS Department of Tax and Finance of the value of all sales and use tax exemptions claimed by the Company under the authority granted by the Agency.

V. Certification: The undersigned hereby certifies the Company has complied with all provisions of its agreement with the Agency and that the information provided to the Agency in this annual survey is accurate and correct.

Signed

Date

Name (Printed)

Title

Phone

DEFINITIONS

A FULL-TIME EQUIVALENT JOB is a full-time permanent employee as described below:

Full-time Permanent Employee: (i) a full-time, permanent, private-sector employee on the Company's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Company to other employees with comparable rank and duties; or (ii) two part-time, permanent, private-sector employees on Company's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Company to other employees with comparable rank and duties.

NUMBER OF FULL-TIME CONSTRUCTION JOBS is equal the number of employees engaged in construction activity during the construction phase of an authorized project of the IDA.

EXHIBIT E

FORM ANNUAL SALES TAX REPORT



New York State Department of Taxation and Finance

Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

ST-340
(7/02)

For Period Ending December 31, _____ (enter year)

Project information

Name of IDA agent/project operator		Federal employer identification number (FEIN)	
Street address		Telephone number ()	
City	State	ZIP code	
Name of IDA agent/project operator's authorized representative, if any		Title	
Street address		Telephone number ()	
City	State	ZIP code	
Name of IDA			
Street address			
City	State	ZIP code	
Name of project			
Street address of project site			
City	State	ZIP code	

1 Project purpose:

☐ Services	☐ Construction	☐ Agriculture, forestry, fishing
☐ Wholesale trade	☐ Retail trade	☐ Finance, insurance or real estate
☐ Transportation, communication, electric, gas, or sanitary services		
☐ Manufacturing	☐ Other (specify) _____	

2 Date project began: / /
MM
DD
YYYY

3 Beginning date of construction or installation (actual or expected): / /
MM
DD
YYYY

4 Completion date of construction phase of project (actual or expected): / /
MM
DD
YYYY

5 Completion date of project (actual or expected): / /
MM
DD
YYYY

6 Duration of project (years/months; actual or expected): /
Years
Months

7 Total sales and use tax exemptions (actual tax savings; NOT total purchases)		7	\$	
Print name of officer, employee, or authorized representative signing for the IDA agent/project operator			Title of person signing	
Signature			Date	

Failure to annually file a complete report may result in the removal of authority to act as an IDA agent/project operator.
 Mail completed report to: NYS Tax Department, IDA Unit, Bldg 8 Rm 738, W A Harriman Campus, Albany NY 12227.