

TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY

SUFFOLK COUNTY, NEW YORK

C.A.P.S. REALTY HOLDINGS, LLC

and

EASTERN WHOLESALE FENCE CO., INC.

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GROUND LEASE AND LEASE AGREEMENT

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Dated as of December 1, 2004

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## Article I.

## DEFINITIONS

## Article II.

## REPRESENTATIONS AND COVENANTS

Section 2.1.	Representations and Covenants of Issuer .....	3
Section 2.2.	Representations and Covenants of Company and of Eastern .....	4
Section 2.3.	Covenant with Owners.....	6

## Article III.

## FACILITY SITE AND TITLE INSURANCE

Section 3.1.	Agreement to Convey to Issuer.....	7
Section 3.2.	Title Insurance .....	7
Section 3.3.	Subordination of Agreement.....	7

## Article IV.

## ACQUISITION, CONSTRUCTION AND EQUIPPING OF FACILITY; ISSUANCE OF THE BONDS

Section 4.1.	Acquisition, Renovation and Equipping of Facility. ....	7
Section 4.2.	Issuance of the Bonds; Disbursement of Bond Proceeds.....	8
Section 4.3.	Application of Bond Proceeds .....	8
Section 4.4.	Completion by Company and, or, Eastern.....	9
Section 4.5.	Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties .....	9

## Article V.

## DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1.	Demise of Project.....	10
Section 5.2.	Duration of Lease Term; Quiet Enjoyment. ....	10
Section 5.3.	Rent Payable. ....	11
Section 5.4.	Duration and Release Term; Quiet Enjoyment.....	11
Section 5.5.	Lease Payments and Other Amounts Payable. ....	12
Section 5.6.	Obligations of the Company and of Eastern Hereunder Unconditional .....	13
Section 5.7.	Payment of Additional Moneys in Prepayment of Bonds .....	14
Section 5.8.	Rights and Obligations of the Company and Issuer upon Prepayment of Bonds .....	14
Section 5.9.	Financing Statements .....	14

## Article VI.

## MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1.	Maintenance and Modifications of Facility by Company and Eastern.....	14
Section 6.2.	Installation of Additional Equipment.....	15
Section 6.3.	Taxes, Assessments and Utility Charges. ....	15
Section 6.4.	Insurance Required .....	16
Section 6.5.	Additional Provisions Respecting Insurance. ....	16
Section 6.6.	Application of Net Proceeds of Insurance .....	17
Section 6.7.	Right of the Company, the Issuer or the Trustee to Pay Taxes, Insurance Premiums and Other Charges.....	17

## Article VII.

## DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1.	Damage or Destruction of the Facility.....	18
Section 7.2.	Condemnation.....	20
Section 7.3.	Condemnation of Company or Eastern-Owned Property .....	22
Section 7.4.	Recovery Against Contractor, Etc. ....	22
Section 7.5.	Waiver of Real Property Law Section 227 .....	22

## Article VIII.

## SPECIAL COVENANTS

Section 8.1.	No Warranty of Condition or Suitability by the Issuer.....	22
Section 8.2.	Hold Harmless Provisions and Special Environmental Agreement. ....	23
Section 8.3.	Right to Inspect the Facility .....	25
Section 8.4.	Agreement to Provide Information .....	25
Section 8.5.	Identification of Equipment .....	26
Section 8.6.	Books of Record and Account; Financial Statements.....	26
Section 8.7.	Compliance With Orders, Ordinances, Etc.....	26
Section 8.8.	Discharge of Liens and Encumbrances.....	27
Section 8.9.	Company and Eastern to File Statements With Internal Revenue Service.....	27
Section 8.10.	Company and Eastern Each to Maintain Its Legal Existence; Conditions Under Which Exceptions Permitted .....	27
Section 8.11.	Depreciation Deductions and Investment Tax Credit.....	27
Section 8.12.	Employment Opportunities, Notice of Jobs.....	28
Section 8.13.	Further Assurances.....	28

## Article IX.

RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING; MORTGAGE  
AND PLEDGE OF INTERESTS

Section 9.1.	Restriction on Sale of Facility; Release of Certain Land.....	28
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Section 9.2.	Removal of Equipment .....	29
Section 9.3.	Assignment, Leasing and Subleasing. ....	29
Section 9.4.	Mortgage and Pledge of Issuer's Interests to Trustee.....	30
Section 9.5.	Merger of Issuer.....	30

## Article X.

### EVENTS OF DEFAULT AND REMEDIES

Section 10.1.	Events of Default Defined. ....	31
Section 10.2.	Remedies on Default.....	33
Section 10.3.	Remedies Cumulative .....	35
Section 10.4.	Agreement to Pay Attorneys' Fees and Expenses. ....	35
Section 10.5.	No Additional Waiver Implied by One Waiver.....	35
Section 10.6.	Certificate of No Default .....	35

## Article XI.

### EARLY TERMINATION OF AGREEMENT; OPTION IN FAVOR OF COMPANY

Section 11.1.	Early Termination of Agreement.....	36
Section 11.2.	Conditions to Early Termination of Agreement .....	36
Section 11.3.	Amounts Remaining on Deposit with the Trustee upon Payment of Bonds .....	37

## Article XII.

### MISCELLANEOUS

Section 12.1.	Notices .....	37
Section 12.2.	Binding Effect.....	38
Section 12.3.	Severability .....	38
Section 12.4.	Amendments, Changes and Modifications .....	38
Section 12.5.	Execution of Counterparts .....	39
Section 12.6.	Applicable Law.....	39
Section 12.7.	List of Additional Equipment; Further Assurances. ....	39
Section 12.8.	Survival of Obligations.....	39
Section 12.9.	Table of Contents and Section Headings not Controlling .....	39

EXHIBIT A	Legal Description of Real Property
EXHIBIT B	Equipment
SCHEDULE 1	Schedule of Lease Payments

THIS GROUND LEASE AND LEASE AGREEMENT, dated as of December 1, 2004 (the "Agreement"), is between the TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation existing under the laws of the State of New York, having its principal office at 747 East Main Street, Riverhead, New York 11901 (the "Issuer"), C.A.P.S. Realty Holdings, LLC, a New York limited liability company, duly organized and validly existing under the laws of the State of New York, having an office at 274 Middle Island Road, Medford, New York 11763 (the "Company") and Eastern Wholesale Fence Co., Inc., a New York corporation, duly organized and validly existing under the laws of the State of New York, having an office at 274 Middle Island Road, Medford, New York 11763 ("Eastern").

## R E C I T A L S

Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York;

The aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State;

The aforesaid act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities or to create security interests therein and to assign and pledge the revenues and receipts from the leasing of its facilities;

Pursuant to and in accordance with the provisions of the aforesaid act, the Issuer was created and is empowered under the Act to undertake the providing, financing and leasing of the Facility defined below;

The Series A Bonds shall be issued for the purposes of financing the acquisition of a parcel of Land of approximately 8.5 acres at the Calverton Enterprise Park in the Town of Riverhead and the Building located thereon, the Land and Building being located at 4062 Grumman Boulevard and commonly known as Building No. 169 at the Calverton Enterprise Park, Riverhead, and the Series B Bonds shall be issued for the purpose of financing the partial renovation of the Building and the purchase and installation of Equipment in the Building, the Land and the Building to be leased by the Issuer to the Company, and subleased by the Company to Eastern, and the Equipment to be leased by the Issuer to Eastern and the Land, Building and Equipment to be used by Eastern for the manufacture of extruded P.V.C. fence profiles and to assemble P.V.C. fence sections, gates and posts, including incidental expenses in connection therewith;

For purposes of this Agreement, the "Facility" shall mean the Land, the Building and the Equipment leased and released under this Agreement, and acquired, renovated, equipped and financed in whole or in part with Bond Proceeds.

The Company and Eastern have agreed with the Issuer, on behalf of the Issuer and as the Issuer's agents, to acquire, renovate and equip the Facility in accordance with the Plans and Specifications and the Company has agreed to lease the Land and the Building to the Issuer, the Issuer has agreed with the Company to lease the Land and the Building from the Company, Eastern has agreed to lease the Equipment to the Issuer, the Issuer has agreed with Eastern to lease the Equipment from Eastern and the Issuer has agreed with the Company and with Eastern to finance the cost of the acquisition of the Land, Renovation of the Building and purchase and installation of the Equipment in the Building by the issuance of the Bonds, and Eastern has agreed to sublease the Facility from the Company and to operate and maintain the Facility, all in accordance with and upon the terms and conditions set forth in this Agreement; and

## AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

### ARTICLE I.

#### DEFINITIONS

All capitalized terms used in this Agreement and not otherwise defined shall have the meanings assigned thereto in the Definitions in or attached to the Indenture of Trust, dated as of December 1, 2004 (the "Indenture"), by and between the Issuer and Commerce Bank, National Association as Trustee (the "Trustee") which are incorporated herein and made a part hereof by reference.

### ARTICLE II.

#### REPRESENTATIONS AND COVENANTS

Section 2.1. Representations and Covenants of Issuer. The Issuer makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Issuer is duly established and validly existing under the provisions of the Act and has full legal right, power and authority to execute, deliver and perform each of the Issuer Documents and the other documents contemplated thereby. Each of the Issuer Documents and the other documents contemplated thereby have been duly authorized, executed and delivered by the Issuer.

(b) The Issuer will cause the Land to be acquired, the Building to be acquired and renovated and the Equipment to be acquired and installed in the Building and will lease

the Land and Building to the Company and to lease the Equipment to Eastern pursuant to this Agreement, all for the public purposes of the State as set forth in the Act.

(c) To finance the Costs of the Land and Building, the Issuer will issue the Series A Bonds in the aggregate principal amount of \$1,995,000. To finance the Costs of the Renovation of the Building and the purchase and installation of the Equipment in the Building, the Issuer will issue the Series B Bonds in the aggregate principal amount of \$2,905,000. The Bonds will be issued, mature, bear interest, be redeemable and have other terms and provisions as provided for in the Bonds and the Indenture.

(d) The Issuer has determined that, based upon the review by the Issuer of the materials submitted and the representations made by the Company and Eastern relating to the Facility, the provision of financial assistance for the Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQRA Act.

(e) Neither the execution and delivery of any of the Issuer Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Issuer Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, or of the Issuer's By-Laws, as amended, or of any corporate restriction or any agreement or instrument to which the Issuer is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Issuer under the terms of the Act or any such law, ordinance, By-Laws, restriction, agreement or instrument, except for Permitted Encumbrances.

(f) Each of the Issuer Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, except to the extent that the enforceability (but not the validity) may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights.

(g) The Issuer has been induced to enter into this Agreement by the agreement of the Company to locate the Facility in the Town and by the agreement of Eastern to operate and maintain the Facility in the Town.

Section 2.2. Representations and Covenants of Company and of Eastern. The Company and Eastern each make the following representations and covenants on its own behalf as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company and Eastern is a corporation each duly organized and validly existing under the laws of the State of New York, each is in good standing under the laws of the State and each has full legal right, power and authority to execute, deliver and perform each of the Company Documents or Eastern Documents and the other documents contemplated thereby, as applicable. Each of the Company Documents or Eastern Documents and the other documents contemplated thereby, as applicable, has been duly authorized, executed and delivered by the Company or by Eastern, as appropriate.

(b) Neither the execution and delivery of any of the Company Documents or of the Eastern Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Company Documents or the Eastern Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Company's or Eastern's By-Laws, as amended, or any corporate restriction or any agreement or instrument to which the Company or Eastern is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company or Eastern under the terms of any such law, ordinance, By-Laws, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

(c) The Facility and the design, acquisition, renovation, equipping and operation thereof will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility, and the Company and Eastern shall each hold the Issuer harmless from any liability or expense resulting from any failure by either the Company or Eastern to comply with the provisions of this subsection (d).

(d) The Company and Eastern shall jointly and severally perform or cause to be performed, for and on behalf of the Issuer, each and every obligation of the Issuer under and pursuant to the Indenture and the Mortgage.

(e) Each of the Company Documents and of the Eastern Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Company enforceable against the Company or of Eastern enforceable against Eastern, as applicable, in accordance with its terms, except to the extent that the enforceability (but not the validity) thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights.

(f) The Company and Eastern each agree that it (i) shall not perform any act, enter into any agreement or use or permit the Facility, or any portion thereof, to be used in any manner, or for any trade or business or other non-exempt use related to the purposes of either the Company or of Eastern, which would adversely affect the exclusion of interest on the Bonds from federal gross income pursuant to Section 103 of the Code, and (ii) shall not do or fail to do any act or undertaking which may give rise to unrelated trade or business income with respect to its operations at the Facility.

(g) The Facility will create permanent jobs in the Town of Riverhead, which will increase the economic health and well being of the residents of the Town of Riverhead, and help preserve and increase permanent private sector jobs.

(h) None of the cost of the Facility will be incurred for facilities or property that are primarily used in making retail sales to customers who personally visit the Facility, using the definition of "retail sales" in Section 862 of the General Municipal Law.



(i) The will be operated throughout the Lease Term as a "manufacturing facility", as such quoted term is defined in the Code.

(j) The Facility will be operated throughout the Lease Term as a "project", as such quoted term is defined in the Act, and is and will continue to be a "manufacturing facility" within the meaning of and to the extent required by the Code and so long as any portion of the Bonds shall be outstanding, neither the Company nor Eastern will take any action, or fail to take any action, which would (i) cause the Facility not to constitute a "project" and a "manufacturing facility" or (ii) adversely affect the tax-exempt status of interest on the Bonds.

(k) Both the Company and Eastern agree that neither it nor any related party to either the Company or Eastern (as defined in Treas. Reg. § 1.150-1(b)) will purchase any of the Bonds in an amount related to the obligation represented by this Agreement.

(l) Neither the Company nor Eastern has taken and does not intend to take any action and knows of no action that any other person, firm or corporation has taken or intends to take, which would cause interest on the Bonds to be includable in the gross income of the recipients thereof for federal income tax purposes.

(m) Neither "reconstruction" nor "acquisition" of any part of the Facility to be paid for with any of the proceeds of the Bonds "commenced" prior to November 1, 2004, within the meanings ascribed to such terms under Section 144 of the Code.

(n) No other bonds, notes or other obligations, the interest on which is, or is claimed to be, exempt from federal taxation under Section 103 of the Code are outstanding, the proceeds of which have been or will be used with respect to facilities located, in whole or in part, in the Town of Riverhead, New York, the Principal User or Users of which are or will be either the Company or Eastern or any Principal User of the Facility, or one or more Related Persons.

(o) The provision of "financial assistance", as such term is defined in Section 854(14) of the General Municipal Law of the State, for the Facility by the Issuer to the Company will induce the Company to locate the Facility in the Town and to Eastern will induce Eastern to operate and maintain the Facility in the Town.

(p) The leasing of the Facility by the Issuer from the Company and Eastern, the releasing to the Company of the Land and the Building, and subleasing by the Company to Eastern and the releasing to Eastern of the Equipment under this Agreement, all for use by Eastern will not result in the removal of an industrial or manufacturing plant or other commercial activity of the Company or Eastern from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or Eastern.

Section 2.3. Covenant with Owners. The Issuer, the Company and Eastern each agree that this Lease Agreement and the Tax Compliance Agreement are executed in part to induce the purchase by others of the Bonds. Accordingly, all covenants and agreements on the part of the Issuer, the Company and Eastern set forth in this Lease

Agreement and the Tax Compliance Agreement are hereby declared to be for the benefit of the Owners from time to time of the Bonds.

### ARTICLE III.

#### FACILITY SITE AND TITLE INSURANCE

Section 3.1. Agreement to Convey to Issuer. The Company has conveyed or has caused to be conveyed to the Issuer (i) good and marketable leasehold title to the Land, including the Building and any other improvements thereon, and (ii) Eastern has conveyed or has caused to be conveyed to the Issuer lien-free leasehold title to the Equipment, in each case except for Permitted Encumbrances.

Section 3.2. Title Insurance. The Company has requested, and the Issuer has agreed, that it not be required to obtain title insurance for the benefit of the Issuer. The parties agree that the Issuer shall have no obligation to perfect title to the Land nor shall the Issuer have any obligation to remove Liens from the Land or the Building. The Company has obtained mortgage title insurance for the benefit of the Trustee in an amount equal to \$4,900,000 (i) insuring leasehold title to the Land, and (ii) insuring the Lien of the Mortgage on the Land, except for Permitted Encumbrances. To the extent not used to clear title to the Land, the balance of the Net Proceeds of such insurance shall be applied by the Trustee to redeem the Bonds pursuant to Section 3.01 of the Indenture.

Section 3.3. Subordination of Agreement. This Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to the Mortgage and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

### ARTICLE IV.

#### ACQUISITION, CONSTRUCTION AND EQUIPPING OF FACILITY; ISSUANCE OF THE BONDS

##### Section 4.1. Acquisition, Renovation and Equipping of Facility.

(a) The Company agrees that, on behalf of the Issuer, it will acquire the Land and the Building. Eastern agrees that on behalf of the Issuer it will renovate the Building and purchase and install the Equipment in the Building in accordance with the Plans and Specifications.

(b) Eastern may revise the Plans and Specifications from time to time, but any structural revisions may only occur with the written approval of the Issuer, which approval may not be unreasonably withheld or delayed but may be subject to such reasonable conditions as the Issuer may deem appropriate.

(c) Leasehold title to all materials, equipment, machinery and other items of Property incorporated or installed in the Facility shall vest in the leasehold estate of the Issuer immediately upon either the Company's or Eastern's obtaining an interest in or to the

materials, equipment, machinery and other items of Property. The Company and Eastern, as appropriate under the circumstances, shall execute, deliver and record or file all instruments necessary or appropriate to so vest title to the Issuer and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(d) The Issuer hereby appoints the Company and Eastern its true and lawful agents, and the Company and Eastern hereby accepts such agency (i) to acquire, renovate and equip the Facility in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, utility easements, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for renovating the Building and acquiring and installing the Equipment in the Building with the same powers and with the same validity as the Issuer could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the Facility from funds made available therefor in accordance with this Agreement, and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing and payable to the Issuer under the terms of any contract, order, receipt, or writing in connection with renovation of the Building and the purchase and installation of the Equipment in the Building, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security.

(e) The Issuer shall enter into, and accept the assignment of, such contracts as either the Company or Eastern may request in order to effectuate the purposes of this Section 4.1.

(f) The Company and Eastern, as agents for the Issuer, shall comply with all provisions of the Labor Law of the State applicable to the acquisition, renovation and equipping of the Facility and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions.

Section 4.2. Issuance of the Bonds; Disbursement of Bond Proceeds. In order to provide funds for payment of the Costs of the Facility, together with other payments and incidental expenses in connection therewith, the Issuer agrees that it will issue, sell and cause the Bonds to be delivered on the terms set forth in the Indenture. Bond Proceeds shall be disbursed in accordance with the provisions of the Indenture and Section 4.3 hereof.

Section 4.3. Application of Bond Proceeds. Except as provided in Section 10.2(a)(iv) hereof, Bond Proceeds, upon the written direction of an Authorized Representative of the Company or Eastern and with the approval of the initial purchasers of the Bonds, as appropriate under the circumstances, and on the conditions provided for in the Indenture, shall be applied to pay only the following costs and items of expense paid by or on behalf of the Issuer on or after December 7, 2004, except as may otherwise be provided under the Tax Compliance Agreement:

(i) the cost of preparing the Plans and Specifications (including any preliminary study or planning of the Facility or any aspect thereof),

(ii) all costs of acquiring, renovating and equipping the Facility (including environmental audits, architectural, engineering and supervisory services with respect to the Facility),

(iii) all fees, taxes, charges and other expenses for recording or filing, as the case may be, the instrument or instruments conveying the Land to the Issuer, and any other documents that the Issuer or the Trustee may deem desirable in order to protect or perfect the fee and leasehold title to the Land and any security interest contemplated by the Mortgage or the Indenture,

(iv) the premium on any fee or mortgagee title insurance procured on the Land and the Building,

(v) all legal, accounting and any other fees, costs and expenses incurred in connection with the preparation, printing, reproduction, authorization, issuance, execution, sale and distribution of the Bonds and Bond Documents and all other documents in connection herewith or therewith, with the acquisition of fee and leasehold title to the Facility and with any other transaction contemplated by this Agreement or the Indenture,

(vi) any administrative fee and fee for services of the Issuer, and

(vii) reimbursement to either the Company or Eastern for any of the above-enumerated costs and expenses.

#### Section 4.4. Completion by Company or Eastern.

(a) In the event that the Net Proceeds of the Bonds are not sufficient to pay in full all costs of acquiring, renovating and equipping the Facility in accordance with the Plans and Specifications, the Company and Eastern jointly and severally agree to pay, for the benefit of the Issuer and the Trustee, all such sums as may be in excess of the Net Proceeds of the Bonds. Leasehold title to all portions of the Facility installed or renovated at either the Company's or Eastern's cost or expense shall immediately upon such installation or construction vest in the leasehold estate of the Issuer. The Company or Eastern, as appropriate, shall execute, deliver and record or file such instruments as the Issuer or the Trustee may request in order to perfect or protect the Issuer's title to or the lien of the Mortgage on such portions of the Facility.

(b) Neither the Company nor Eastern shall be entitled to any reimbursement for such excess cost or expense from the Issuer or the Trustee or the Owner of the Bonds nor shall it be entitled to any diminution or abatement of any other amounts payable by either the Company or Eastern under this Ground Lease Agreement.

(c) Upon completion of the Facility; Eastern shall file a certificate indicating that the Facility is complete with the Trustee.

Section 4.5. Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties. In the event of a default by any contractor, subcontractor,

materialman or other Person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company and Eastern, as appropriate under the circumstances, at their expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Issuer, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company and Eastern, as appropriate under the circumstance, in its own name or in the name of the Issuer, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety or other Person which the Company or Eastern, as the case may be, deems reasonably necessary, and in such event the Issuer, at the Company's or Eastern's expense, hereby agrees to cooperate fully with the Company and Eastern and to take all action necessary to effect the substitution of the Company or Eastern, as appropriate under the circumstance, for the Issuer in any such action or proceeding. The Net Proceeds of any recovery from a contractor or subcontractor or materialman or other Person shall be deposited in the Renewal Fund and applied as provided in Section 7.4 hereof and the Indenture.

## ARTICLE V.

### DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1. Demise of Project. The Company hereby demise and leases the Land, as particularly described in Exhibit A attached hereto, and the Building, subject to Permitted Encumbrances, and such other buildings or foundations as shall at the date of execution of this Agreement shall be located in or on the Land, to the Issuer and the Issuer hereby rents and leases the Land and the Building from the Company upon the terms and conditions of this Agreement. Eastern hereby leases the Equipment, as particularly described in Exhibit B attached hereto, subject to Permitted Encumbrances, to the Issuer and the Issuer hereby rents and leases the Equipment from Eastern upon the terms and conditions of this Agreement. Notwithstanding the use of the Issuer's interest in the Facility, the interests leased hereunder and the use of the Facility by Eastern shall not merge and the respective obligations of the parties shall continue until this Agreement is terminated pursuant to its terms.

### Section 5.2. Duration of Lease Term; Quiet Enjoyment.

(a) The Company shall deliver to the Issuer sole and exclusive possession of the Land and the Building; and Eastern shall deliver to the Issuer sole and exclusive possession of the Equipment, each subject to Permitted Encumbrances, and the leasehold estates created hereby shall commence on the date of execution of this Agreement and the Issuer shall accept possession of the Land and the Building and the Equipment (or the rights thereto) on such date.

(b) The leasehold estate created hereby in the Land and the Building shall terminate at 11:59 P.M. on the date on which the Series A Bonds shall have been paid or provision for such payment shall have been made in accordance with the Indenture, or on

such earlier date as may be provided hereunder, and the leasehold estate created hereby in the Equipment shall terminate at 11:59 P.M. on the date on which the Series B Bonds shall have been paid or provision for such payment shall have been made in accordance with the Indenture, or on such earlier date as may be provided hereunder.

(c) Subject to Permitted Encumbrances, neither the Company nor Eastern shall take any action, other than pursuant to this Agreement, to prevent the Issuer from having quiet and peaceable possession and enjoyment of the Facility during the Lease Term and each will, at the request of the Issuer and at the Company's and Eastern's cost, cooperate with the Issuer in order that the Issuer may have quiet and peaceable possession and enjoyment of the Facility.

#### Section 5.3. Rent Payable.

(a) The Issuer shall pay to the Company and to Eastern rent for the Facility for the entire Lease Term (not diminished or reduced by exercise of the early termination of this Agreement) in the aggregate and total amount of ten dollars, payment of which has been made at execution of this Agreement and receipt of which is hereof acknowledged.

#### Section 5.4. Duration and Release Term: Quiet Enjoyment.

(a) The Issuer hereby demises and releases to the Company the Land and the Building and sole and exclusive possession of the Land and the Building (subject to Sections 3.3, 8.3 and 10.2 hereof) during the Release Term (which shall be coterminous with the Lease Term and is hereafter also referred to as the Lease Term), which shall commence on the Closing Date, and the Company shall accept possession of the Land and the Building on the Closing Date.

(b) The Company hereby demises and subleases the Land and the Building (subject to the terms of the release by the Issuer to the Company) to Eastern for the Lease Term. The Issuer hereby releases the Equipment and sole and exclusive possession of the Equipment to Eastern during the Lease Term and Eastern shall accept possession of the Equipment on the Closing Date, it being the intention of the parties hereto that on the Closing Date Eastern shall be in sole and exclusive possession of the Facility.

(c) Subject to the Permitted Encumbrances, neither the Company nor the Issuer shall take any action, other than pursuant to this Agreement, to prevent Eastern from having quiet and peaceful possession and enjoyment of the Facility during the Lease Term and each will, at Eastern's request and at Eastern's cost, cooperate with Eastern in order that Eastern may have quiet and peaceful possession and enjoyment of the Facility.

(d) Lease Payments for the leasing of the Facility shall be made by Eastern as provided in Section 5.5 hereof and shall continue until the Bonds shall have been paid or provision therefore provided under the terms of the Indenture and as provided in Article XI hereof.

### Section 5.5. Lease Payments and Other Amounts Payable.

(a) Company shall pay to the Issuer on the Closing Date the Issuer's administrative fee in the amount of \$36,750 plus the Issuer's costs of the publication of the public notice. One day prior to the first Business Day of January, 2005 and one day prior to the first Business Day of each calendar month thereafter, the Company shall pay a rental payment equal to one-sixth ( $1/6^{\text{th}}$ ) of the interest payment due on the Bonds on the next succeeding Interest Payment Date;

(b) One day prior to the first Business Day of January, 2005 and one day prior to the first Business Day of each calendar month thereafter as long as the Bonds or any portion thereof are outstanding, the Company shall pay a rental payment equal to one-twelfth ( $1/12^{\text{th}}$ ) of the principal (including Sinking Fund Payment amounts) due with respect to the Bonds on the next succeeding Redemption or Maturity Date;

(c) On any such date as the principal of all of the Bonds then Outstanding shall be payable as a result of redemption of the Bonds or acceleration of the maturity thereof as provided in the Bonds and the Indenture, the Company shall pay a rental payment equal to the aggregate principal amount of all Bonds then Outstanding, together with any accrued and unpaid interest payable thereon; and

(d) All payments made pursuant to paragraphs (a), (b) and (c) of this Section 5.5(a) shall be made directly to the Trustee for deposit into the Bond Fund. In addition to the basic lease payments for the Facility pursuant to Section 5.5(a) hereof, throughout the Lease Term, Eastern shall pay to the Issuer as additional rent for the Facility, within ten (10) calendar days of the receipt of demand therefor, an amount equal to the sum of the reasonable expenses of the Issuer and the members thereof incurred (i) by reason of the Issuer's leasehold, financing, leasing or releasing of the Facility, or (ii) in connection with the carrying out of the Issuer's duties and obligations under the Issuer Documents, the payment of which is not otherwise provided for under this Agreement. Except as otherwise provided in Section 5.5(a) hereof, the foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Issuer.

(e) In addition, the Company shall pay as additional rent for the Facility within fifteen (15) calendar days after receipt of a written demand therefor, the Ordinary Expenses and Extraordinary Expenses payable by the Issuer to the Trustee pursuant to and under the Indenture.

(f) It is the intention of the parties to this Agreement that the Facility not be exempt from the payment of real property taxes or assessments solely by reason of the Issuer's lease of the Facility as provided in this Agreement and the Company covenants that it will not take any action or permit any action to be taken, which would cause the Land to be removed from the fully taxable assessment roll. If, however, the Facility is determined to be exempt from the payment of real property taxes or assessments solely by reason of the Issuer's lease of the Facility as provided in this Agreement, the Company will, and hereby agrees to, execute a payment in lieu of taxes agreement (the "Payment in Lieu of Taxes

Agreement") requiring the Company to pay an amount, for the benefit of the various taxing jurisdictions authorized to levy real property taxes and, or, assessments on the Facility equal to but not in excess of, that which would have been required to be paid by the Company to all of such taxing jurisdictions with respect to the Facility but for the Issuer's lease of the Facility as provided in this Agreement and to pay to the Issuer, for the benefit of such taxing jurisdictions, such amount as the Town of Riverhead determines the Company would have had to pay to such taxing jurisdictions had the Facility been subject to the payment of real property taxes and assessments during the period which it has been determined that Facility was exempt from the payment of real property taxes by reason of the Issuer's lease of the Facility as provided in this Agreement, and the date on which the Payment in Lieu of Taxes Agreement became effective.

Such Payment in Lieu of Taxes Agreement shall permit the Company, in good faith, to contest any such taxes, assessments and other charges. In the event of any such contest, such Payments in Lieu of Taxes Agreement shall allow the Company to permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provide that the adequate book reserves in accordance with generally accepted accounting principles have been established by the Company with respect thereto.

Accordingly, in addition to the basic lease payments for the Facility pursuant to Section 5.5(a) hereof, throughout the Lease Term Eastern shall timely pay to the appropriate taxing authority as additional rent for the Facility an amount equal to 100% of the real property taxes, assessments and charges levied from time to time required to be paid pursuant to the aforesaid Payment in Lieu of Taxes Agreement.

(g) Eastern, under the provisions of this Section 5.5, agrees to make the above-mentioned payments without any further notice in lawful money of the United States of America (except payments specified in paragraph (a) which shall be made in immediately available funds). In the event Eastern shall fail to timely make any payment required in Section 5.5(a) Eastern shall pay the same together with all late payment penalties specified in the Bonds. In the event Eastern shall fail to timely make any payment required in either Sections 5.5(b) or 5.5(c), Eastern shall pay the same together with interest and penalties on such payment as provided by law from the date on which such payment was due until the date on which such payment is made. In the event Eastern shall fail to timely make any payments required to be paid to either the Issuer or to a taxing jurisdiction required in Section 5.5(d), Eastern shall pay the same with interest and penalty as provided in law for the late payment of such amounts.

Section 5.6. Obligations of the Company and of Eastern Hereunder Unconditional. The obligations of the Company and of Eastern to make the payments required in Section 5.5 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and of Eastern, respectively, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Issuer. The Company and Eastern each agree it will not (i) suspend, discontinue or abate any payment required hereunder, (ii) fail to observe any of its other covenants or agreements in



this Agreement, or (iii) terminate this Agreement for any cause whatsoever unless and until the Bonds, including premium, if any, and interest thereon, is paid or provided for.

Section 5.7. Payment of Additional Moneys in Prepayment of Bonds. In addition to any other moneys required or permitted to be paid pursuant to this Agreement, Eastern may, subject to the terms of the Indenture, pay moneys to the Trustee (i) to be applied as the prepayment of amounts to become due and payable by Eastern pursuant to Section 5.5(a) hereof, or (ii) to be used for the redemption or prepayment of any Bonds at such time or times and on such terms and conditions as is provided in such Bonds and in the Indenture. Eastern shall notify the Issuer and the Trustee in writing as to the purpose of any such payment.

Section 5.8. Rights and Obligations of the Company and Issuer upon Prepayment of Bonds. In the event the Bonds shall have been paid in full or provision for such payment shall have been made in accordance with the Indenture, (i) all references in this Agreement to the Bonds, the Indenture and the Mortgage shall be ineffective and (ii) this Agreement shall be terminated pursuant to the terms of Section 11.1 hereof. In the event of any such payment or the making of any such provision, the Issuer, at the request of and at the sole cost of the Company, shall obtain and record or file appropriate discharges or releases of the Mortgage, and any other security interest relating to the Facility or this Agreement.

Section 5.9. Financing Statements. Eastern hereby irrevocably appoints both the Issuer and the Trustee, or either of them, as Eastern's lawful attorneys-in-fact and agents, to prepare and execute any UCC-1 Financing Statements or UCC-3 Amendments or Assignments on Eastern's behalf in order to protect the Issuer's and the Trustee's security interests in payments made pursuant to this Agreement and any assignment thereof and in any Property demised under this Agreement, and on Eastern's behalf to file such Financing Statements signed by the Issuer and the Trustee, or either of them, without Eastern's execution thereof, in any appropriate public office. The Issuer agrees to cooperate with the Trustee in preparing and executing any such financing statements but shall only be required to prepare and execute any such financing statements at the direction and expense of Eastern.

## ARTICLE VI.

### MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1. Maintenance and Modifications of Facility by Company and Eastern.

(a) Neither the Company nor Eastern shall abandon the Facility or cause or permit any waste thereto. During the Lease Term, neither the Company nor Eastern shall remove any part of the Facility outside of the jurisdiction of the Issuer and shall (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (iii) operate the Facility in a sound and economic manner.

(b) With the written consent of the Issuer and the Trustee, which shall not be unreasonably withheld, delayed or conditioned, either the Company or Eastern from time to time may make any material structural additions, modifications or improvements to the Facility or any part thereof, provided such actions do not adversely affect the structural integrity of the Facility. All such additions, modifications or improvements made by either the Company or Eastern shall become a part of the Facility and the leasehold Property of the Issuer. The Company and Eastern each agrees to deliver to the Issuer all documents which may be necessary or appropriate to convey to the Issuer leasehold title to such Property and to perfect or protect the lien of the Mortgage. No consent of the Issuer shall be required under this Section 6.1(b) for such additions, modifications or improvements costing \$50,000 or less in any year.

Section 6.2. Installation of Additional Equipment. Subject to the provisions of Section 8.5 hereof, Eastern from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility if the acquisition and installation of such property is not financed from the proceeds of the Bonds or from insurance proceeds held under the Indenture. Eastern from time to time may create or permit to be created any lien on such machinery, equipment or other personal property. Further, Eastern from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur (i) if any Event of Default has occurred; or (ii) if any such removal shall adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided further, that if any damage is occasioned to the Facility by such removal, Eastern agrees to promptly repair such damage at its own expense.

### Section 6.3. Taxes, Assessments and Utility Charges.

(a) Eastern agrees to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, payments in lieu of taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility, including all amounts due and owing pursuant to Section 5.5(d) hereof, and any machinery, equipment or other Property installed or brought by Eastern therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Facility or any part or component thereof, or the rental or sale of the Facility or any part thereof and any taxes levied upon or with respect to the income or revenues of the Issuer from the Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body 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,

Eastern shall be obligated under this Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) Eastern may, in good faith, contest the amount, but not the validity, of any such taxes, payments in lieu of taxes, assessments and other charges. In the event of any such proceedings, Eastern shall pay such taxes, assessments or other charges so contested under protest during the period of such proceedings and any appeal therefrom.

(c) Within thirty (30) days of receipt of written request therefor, Eastern shall deliver to the Trustee and to the Issuer official receipts of the appropriate taxing authorities or other proof reasonably satisfactory to the Trustee evidencing payment of any tax.

Section 6.4. Insurance Required. At all times throughout the Lease Term, Eastern shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by facilities of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by Eastern.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance which Eastern is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility. This coverage shall be in effect from and after the Closing Date.

(c) Insurance protecting the Issuer and Eastern against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by Eastern under Section 8.2 hereof) and arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or occurrence with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage) and with a blanket excess liability coverage in an amount not less than \$5,000,000 protecting the Issuer and Eastern against any loss or liability or damage for personal injury, including bodily injury or death, or property damage.

#### Section 6.5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. The company issuing the policies is required by Section 6.4 hereof shall be rated "A" or better by A.M. Best Co., Inc. 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 procuring entity is engaged.

All policies evidencing the insurance required by Section 6.4(a) hereof shall contain a standard New York non-contributory mortgagee clause showing the interest of the Trustee as first mortgagee, shall provide for payment to the Trustee of the Net Proceeds of insurance to the outstanding amount secured by the Mortgage resulting from any claim for loss or damage thereunder and all policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Issuer and the Trustee. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Issuer and the Trustee as additional named insureds. Eastern acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Issuer to the Trustee pursuant to the Mortgage and Eastern consents thereto. Upon request of the Trustee, Eastern will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under the Mortgage) to the Trustee, the policies of insurance required under Section 6.4(a), so and in such manner and form that the Trustee shall at all times, upon such request and until the payment in full of the Bonds, have and hold said policies and the Net Proceeds thereof, as collateral and further security under the Mortgage for the payment of the Bonds. The policies under Section 6.4(a) shall contain appropriate waivers of subrogation.

(b) The policies (or certificates and binders) of insurance required by Section 6.4(a) hereof shall be deposited with the Trustee on or before the Closing Date. A copy of the policy (or certificates and binders) of insurance required by Section 6.4(c) hereof shall be delivered to the Agency on or before the Closing Date. Eastern shall deliver to the Issuer and the Trustee before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy or policies, Eastern shall furnish to the Issuer and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Agreement. Eastern shall provide such further information with respect to the insurance coverage required by this Agreement as the Issuer and the Trustee may from time to time reasonably require.

Section 6.6. Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Sections 6.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.7. Right of the Company, the Issuer or the Trustee to Pay Taxes, Insurance Premiums and Other Charges. If Eastern fails (i) to pay any tax or assessment, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, or other governmental charge required to be paid by Section 6.3 hereof, (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid

by any law or ordinance relating to the use or occupancy of the Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Facility or any part thereof (unless contested in accordance with the provisions of Section 8.8(b) hereof), or (v) to pay any other amount or perform any act hereunder required to be paid or performed by Eastern hereunder, the Company, the Issuer or the Trustee may pay or cause to be paid such tax, assessment or other governmental charge or the premium for such insurance or any such other payment or may perform any such act. No such payment shall be made or act performed by the Company, the Issuer or the Trustee until at least ten (10) calendar days shall have elapsed since notice shall have been given by the Trustee to the Issuer, with a copy of such notice being given to Eastern and to the Company (or by the Issuer to Eastern, the Company and the Trustee), and in the case of any tax, assessment or governmental charge or the amounts specified in paragraphs (i), (iii) and (v) hereof, no such payment shall be made in any event if Eastern is contesting the same in good faith to the extent and as permitted by this Agreement unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Company, the Issuer or the Trustee shall affect or impair any rights of the Issuer hereunder or of the Trustee under the Indenture or the Mortgage arising in consequence of such failure by Eastern. Eastern shall, on demand, reimburse the Company, the Issuer or the Trustee for any amount so paid or for expenses or costs incurred in the performance of any such act by the Company, the Issuer or the Trustee pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Company, the Issuer or the Trustee at the per annum rate the lesser of (i) ten percent (10%) or (ii) the prime rate as announced from time to time in the Wall Street Journal plus 6%, and such amount, together with such interest, shall become additional indebtedness secured by the Mortgage.

## ARTICLE VII.

### DAMAGE, DESTRUCTION AND CONDEMNATION

#### Section 7.1. Damage or Destruction of the Facility.

(a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the Lease Term:

(i) the Issuer shall have no obligation to replace, repair, rebuild, restore or relocate the Facility; and

(ii) there shall be no abatement or reduction in the amounts payable by Eastern under this Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated); and

(iii) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Trustee and deposited as provided in the Indenture and except as otherwise provided in Section 11.1 and subsection (f) hereof, the Company and Eastern shall at their option either

(A) replace, repair, rebuild, restore or relocate the Facility, or (B) redeem a principal amount of Bonds equal to such Net Proceeds in accordance with the Indenture.

If the Company and Eastern replaces, repairs, rebuilds, restores or relocates the Facility, the Trustee shall disburse the Net Proceeds in the manner set forth in the Indenture to pay or reimburse the Company or Eastern, as appropriate, for the cost of such replacement, repair, rebuilding, restoration or relocation.

(b) Any such replacements, repairs, rebuilding, restorations or relocations shall be subject to the following conditions:

(i) the Facility shall be in substantially the same condition and value as an operating entity as existed prior to the damage or destruction;

(ii) the Facility shall continue to constitute a "project" as such term is defined in the Act, and the exclusion of the interest on the Bonds from gross income for Federal income tax purposes shall not, in the opinion of Bond Counsel, be adversely affected;

(iii) the Facility shall continue to be a "manufacturing facility" as such term is defined in Section 144 of the Code;

(iv) the Facility will be subject to no Liens, other than Permitted Encumbrances; and

(v) any other conditions the Trustee may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements and be promptly and fully paid for by either the Company or by Eastern in accordance with the terms of the applicable contracts.

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, restoration or relocation, the Company and Eastern shall nonetheless complete the work and pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. All such replacements, repairs, rebuilding, restoration or relocations made pursuant to this Section, whether or not requiring the expenditure of the Company's or Eastern's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) Any balance of such Net Proceeds remaining under the Indenture after payment of all costs of replacement, repair, rebuilding, restoration or relocation shall, subject to any rebate required to be made to the Federal government pursuant to the Indenture or the Tax Compliance Agreement, be used to redeem the Bonds as provided in the Indenture.

(f) If the Company and Eastern shall exercise their option to terminate this Agreement pursuant to Section 11.1 hereof such Net Proceeds shall be applied to the

payment of the amounts required to be paid by Section 11.2 hereof. If an Event of Default hereunder shall have occurred and the Trustee shall have exercised its remedies under Section 10.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

(g) If the entire amount of the Bonds and interest thereon has been fully paid, or provision therefor has been made in accordance with the Indenture, all such remaining Net Proceeds shall be paid to the Company and Eastern.

(h) Except upon the occurrence of an Event of Default, the Company and Eastern, as appropriate, with the consent of the Trustee, which consent shall not be unreasonably withheld, delayed or conditioned, shall have the right to settle and adjust all claims under any policies of insurance required by Sections 6.4(a) and (d) hereof on behalf of the Issuer and on its own behalf.

#### Section 7.2. Condemnation.

(a) If title to or use of the Facility shall be taken by Condemnation (in whole or in part) at any time during the Lease Term:

(i) the Issuer shall have no obligation to replace, repair, rebuild, restore or relocate the Facility or acquire, by construction or otherwise, facilities of substantially the same nature as the Facility ("Substitute Facilities"); and

(ii) there shall be no abatement or reduction in the amounts payable by Eastern under this Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated or Substitute Facilities acquired); and

(iii) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid to the Trustee and deposited as provided in the Indenture and except as otherwise provided in Section 11.1 and subsection (f) hereof, the Company and Eastern shall either:

(A) replace, repair, rebuild, restore or relocate the Facility or acquire Substitute Facilities, or

(B) redeem an amount of Bonds equal to the Net Proceeds in accordance with the Indenture.

If the Company or Eastern replaces, repairs, rebuilds, restores or relocates the Facility or acquires Substitute Facilities, the Trustee shall disburse the Net Proceeds in the manner set forth in the Indenture to pay or reimburse the Company or Eastern, as appropriate, for the cost of such replacement, repair, rebuilding, restoration, relocation or acquisition of Substitute Facilities.

(b) Any such replacements, repairs, rebuilding, restorations, relocations or acquisitions of Substitute Facilities shall be subject to the following conditions:

(i) the Facility or the Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to the condemnation;

(ii) the Facility or the Substitute Facilities shall continue to constitute a "project" as such term is defined in the Act, and the exclusion of the interest on the Bonds from gross income for Federal income tax purposes shall not, in the opinion of Bond Counsel, be adversely affected;

(iii) the Facility or Substitute Facility shall continue to constitute a "manufacturing facility" as such term is defined in the Code;

(iv) the Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances; and

(v) any other conditions the Trustee may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements and be promptly and fully paid for by the Company or Eastern in accordance with the terms of the applicable contracts.

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, restoration, relocation or acquisition of Substitute Facilities, the Company and Eastern shall nonetheless complete the work or the acquisition and pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. All such replacements, repairs, rebuilding, restoration, relocations and such acquisition of Substitute Facilities made pursuant to this Section, whether or not requiring the expenditure of the Company's or Eastern's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) Any balance of such Net Proceeds remaining in the Renewal Fund after payment of all costs of replacement, repair, rebuilding, restoration, relocation or acquisition of Substitute Facilities shall, subject to any rebate required to be made to the Federal government pursuant to the Indenture or the Tax Compliance Agreement, be used to redeem the Bonds as provided in the Indenture.

(f) If the Company shall exercise its option to terminate this Agreement pursuant to Section 11.1 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Trustee shall have exercised its remedies under Section 10.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

(g) If the entire amount of the Bonds and interest thereon has been fully paid, or provision therefor has been made in accordance with the Indenture, all such remaining Net Proceeds shall be paid to the Company and Eastern.



(h) Except upon the occurrence of an Event of Default, the Company and Eastern, as appropriate, with the consent of the Trustee, which consent shall not be unreasonably withheld, delayed or conditioned, shall have the right to settle and adjust all claims under any Condemnation proceedings on behalf of the Issuer and on its own behalf.

Section 7.3. Condemnation of Company or Eastern-Owned Property. The Company and Eastern, as appropriate, shall be entitled to the proceeds of any Condemnation award or portion thereof made for damage to or taking of any Property which, at the time of such damage or taking, is not part of the Facility.

Section 7.4. Recovery Against Contractor, Etc.

(a) If at any time during the Lease Term, provided no Event of Default under Section 10.1 has occurred, proceeds shall become available from any recovery against a contractor, subcontractor, materialman or other Person with respect to the Facility, such proceeds shall be deposited under the Indenture and the Net Proceeds of such recovery shall be paid to the Company or Eastern, as appropriate, as reimbursement for the Costs of the Facility which were not paid out of Bond Proceeds upon requisitions by the Company substantially in accordance with provisions of the Indenture with such variations as are appropriate and the balance remaining, if any, shall be applied to redeem the Bonds pursuant to the Indenture.

(b) After the occurrence of an Event of Default under Section 10.1 hereof, the proceeds of any such recovery shall be applied as provided in Section 10.2 hereof.

(c) If the entire amount of the Bonds and interest thereon have been fully paid, or provision therefor has been made in accordance with the Indenture, the surplus thereof shall be paid to Eastern for its business purposes.

(d) Except upon the occurrence of an Event of Default, the Company and Eastern with the consent of the Trustee, which consent shall not be unreasonably withheld, delayed, or conditioned, shall have the right to settle and adjust all claims against such contractors, subcontractors, materialmen or other Persons.

Section 7.5. Waiver of Real Property Law Section 227. The Company and Eastern each hereby waive the provisions of Section 227 of the Real Property Law of the State or any law of like import now or hereafter in effect.

## ARTICLE VIII.

### SPECIAL COVENANTS

Section 8.1. No Warranty of Condition or Suitability by the Issuer.

(a) THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY OR EASTERN'S PURPOSES OR NEEDS.

(b) The Company and Eastern each acknowledge that it has negotiated, and that the Issuer has not participated in any negotiation of, the terms, conditions and fees of the Bonds and the Issuer makes no representation that such terms, conditions or fees are either reasonable or appropriate.

Section 8.2. Hold Harmless Provisions and Special Environmental Agreement.

(a) The Company and Eastern each hereby releases the Issuer from, agrees that the Issuer shall not be liable for and agrees to jointly and severally indemnify and hold the Issuer and its members, officers, employees and agents harmless from and against any and all (i) claims and liability for loss or damage to Property or any injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or (ii) liability arising from or expense incurred by the Issuer's providing financial assistance, as such term is defined in Section 854(14) of the General Municipal Law of the State, including, without limiting the generality of the foregoing, all claims arising from the issuance of the Bonds, including, without limitation, any allegation that any untrue statement of a material fact or omission to state a material fact required to be stated necessary to make any statement of material fact not misleading in connection with the sale of the Bonds, all claims arising from the exercise by either the Company or by Eastern of the authority conferred upon it pursuant to Section 4.1 of this Agreement, any sales or use taxes which are or may be payable with respect to goods supplied or services rendered with respect to the Facility and all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Issuer and its members, officers, employees and agents are not incurred or do not result from the intentional or willful wrongdoing of the Issuer or any of its members, agents or employees.

(b) Without limitation by the provisions of Section 8.2(a), and in addition to the provisions of Section 8.2(a); neither the Company nor Eastern shall cause or permit the Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, State and local laws or regulations, nor shall either the Company or Eastern cause or permit a release of Hazardous Substances onto the Facility, except in compliance with all applicable federal, State and local laws, ordinances, rules and regulations. Both the Company and Eastern shall comply with and ensure compliance by all contractors, subcontractors, tenants and subtenants with all applicable federal, State and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all contractors, subcontractors, tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company and Eastern shall jointly (a) to the extent reasonably required by federal, State and local laws, rules and regulations, conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Substances, on, from, or affecting the Facility (i) in accordance with all applicable federal, State, and local laws, ordinances, rules, regulations, and policies, (ii) to the satisfaction of the Issuer and (iii) in accordance with the orders and directives of all

federal, State, and local governmental authorities; and (b) defend, indemnify, and hold harmless the Issuer, its members, agents and employees from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (i) the presence, disposal, release, or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise, unless arising from the intentional acts or misconduct of the Issuer, (ii) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, and/or (iv) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of the Issuer which are based upon or in any way related to such Hazardous Substances or in any way related to any other law, rule, regulation, code or order related to the Facility but not related to Hazardous Substances, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this Section, "Hazardous Substances" includes, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), Articles 17 and 27 of the New York State Environmental Conservation Law and in the regulations adopted and publications promulgated pursuant any of the foregoing, or any other federal, State or local environmental law, ordinance, rule, or regulation. The provisions of this Section shall be in addition to any and all other obligations and liabilities either the Company or Eastern may have to either the Issuer at common law.

(c) Notwithstanding the provisions of the foregoing, the Company and Eastern may in good faith contest the validity or the applicability of any requirement of the nature referred to in paragraph (a) or (b) hereof by appropriate legal proceedings conducted in good faith and with due diligence. Notwithstanding the provisions of this paragraph, if, because of a breach or violation of the provisions of paragraph (a) or (b) hereof (without giving effect to this paragraph), the Issuer or any of its members, agents, or employees, shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Issuer, the Company and Eastern shall immediately jointly and severally provide legal protection and/or pay amounts necessary to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(d) If any action shall be brought against the Issuer based upon any cause of action in respect of which indemnity may be sought by the Issuer against either the Company or Eastern, the Issuer shall promptly notify the Company and Eastern in writing, and the Company and Eastern will jointly and severally assume the defense thereof, including the employment of counsel reasonably satisfactory to the Issuer and the payment of all expenses and the right to negotiate and consent to settlement; provided, however, the Issuer shall have

the right to defend itself in any such action but the fees and expenses of such defense including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, shall be at the expense of the Issuer unless (i) the defense of itself by the Issuer has been authorized in writing by the Company or Eastern, (ii) the Issuer shall have reasonably concluded that there may be a conflict of interest between the Issuer and either the Company or Eastern in the conduct of the defense of such action or (iii) the Company and Eastern shall not in fact have employed counsel and other defense experts reasonably satisfactory to the Issuer for the assumption of the defense of such action. Neither the Company nor Eastern shall be liable for any settlement of any action or claim effected without the consent of the Company and Eastern which consent shall not be unreasonably withheld.

(e) The Company and Eastern jointly and severally hereby agree to indemnify and hold the Trustee and its directors, officers, agents and employees (collectively, the "Indemnitees") harmless from and against any and all claims, liabilities, losses, damages, fines, penalties, and expenses, including out-of-pocket, incidental expenses, legal fees and expenses, and the allocated costs and expenses of in-house counsel and legal staff ("Losses") that may be imposed on, incurred by, or asserted against, the Indemnitees or any of them for following any instruction or other direction upon which the Trustee is authorized to rely pursuant to the terms of this Agreement or the Indenture. In addition to and not in limitation of the immediately preceding sentence, the Company and Eastern also agree to jointly and severally indemnify and hold the Indemnitees and each of them harmless from and against any and all Losses that may be imposed on, incurred by, or asserted against the Indemnitees or any of them in connection with or arising out of the Trustee's performance under this Agreement and the Indenture, provided the Trustee had not acted with gross negligence or engaged in willful misconduct. The provisions of this Section 8.2(e) shall survive the termination of this Agreement and the Indenture and the resignation or removal of the Trustee for any reason.

(f) The indemnity agreements contained in this Section 8.2 shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of either the Issuer or the termination of this Agreement and until the expiration of any applicable statute of limitations.

Section 8.3. Right to Inspect the Facility. The Issuer and its duly authorized agents shall have the right at all reasonable times to inspect the Facility.

Section 8.4. Agreement to Provide Information. The Company and Eastern each agree, whenever requested by the Issuer, to provide and certify or cause to be provided and certified such information concerning the Company and Eastern, its finances, and other topics as the Issuer from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable it to make any reports required by law or governmental regulation. Without limiting the foregoing, both the Company and Eastern acknowledge and affirm to the Issuer that it has read and understands the Issuer's annual financial reporting requirements contained in Section 859 of the General Municipal Law and the Issuer's filing requirement contained in Section 874(9) of the General Municipal Law, acknowledges that the Issuer cannot comply with said annual reporting requirements

and filing requirements without necessary information being provided by the Company and Eastern and agrees to provide to the Issuer, not later than February 1 of each year, the name and address of the then current owner of the Land, Building and Equipment, the number of jobs at the Facility, the estimated value of the financial assistance provided by the Issuer to the Company and to Eastern during the preceding calendar year and such other information as the Issuer may reasonably request which may be necessary for the Issuer to comply with its annual financial reporting requirement. Both the Company and Eastern each further acknowledge and affirm to the Issuer that it has read and understands the Company's and Eastern's annual financial reporting requirement contained in Section 874(8) of the General Municipal Law and agrees to file a statement with the State Department of Taxation and Finance, on a form and in such manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales and use tax exemptions claimed by either the Company or Eastern as agent of the Agency with respect to the Facility.

Section 8.5. Identification of Equipment. All Equipment which is or may become the leasehold property of the Issuer shall be properly identified by Eastern by such appropriate records, including computerized records, as may be approved by the Issuer and the Trustee.

Section 8.6. Books of Record and Account; Financial Statements. The Company and Eastern each agree to maintain, and to cause each Guarantor 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 financial affairs of the Company and of Eastern and of each Guarantor. Financial statements are to be prepared using straight line depreciation over the useful life of any asset.

Section 8.7. Compliance With Orders, Ordinances, Etc.

(a) Both the Company and Eastern agree with the Issuer that it will promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, foreseen or unforeseen, of all federal, State, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers and companies or associations insuring the Facility, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. The Company and Eastern shall furnish or cause to be furnished to the Issuer reasonable evidence of receipt by the Company and Eastern of all required and available governmental permits and licenses, if any, related to the Facility.

(b) Notwithstanding the provisions of subsection (a) of this Section 8.7, the Company and Eastern may in good faith actively contest the validity or the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company or Eastern, as appropriate under the circumstance, may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, provided that adequate book reserves in accordance with generally accepted accounting principles (in the opinion of the Accountant) have been established with respect thereto. If the Issuer or the Trustee shall notify the Company or Eastern that by failure to comply with

such requirement or requirements the Facility or any part thereof may be subject to loss or forfeiture, or the Lien of the Mortgage may be impaired, the Company and Eastern shall promptly take such action with respect thereto as shall be satisfactory to the Issuer and, or, the Trustee.

Section 8.8. Discharge of Liens and Encumbrances.

(a) The Company and Eastern each agree with the Issuer that it shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 8.8, the Company and Eastern may in good faith actively contest any such Lien. In such event, the Company or Eastern, as appropriate under the circumstance, may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that adequate book reserves in accordance with generally accepted accounting principles (in the opinion of the Accountant) have been established with respect thereto. If the Issuer or the Trustee shall notify the Company or Eastern that by nonpayment of any such item or items the Facility or any part thereof may be subject to loss or forfeiture, or the Lien of the Mortgage may be impaired, however, the Company or Eastern, as appropriate under the circumstance, shall promptly secure payment of all such unpaid items by filing the requisite bond.

Section 8.9. Company and Eastern to File Statements With Internal Revenue Service. The Company and Eastern each agree with the Issuer to file, and to cause each Guarantor to file, with the Internal Revenue Service of the United States Treasury Department or any other authorized governmental agency any and all statements or other instruments which may be required by the Code at the times required therein.

Section 8.10. Company and Eastern Each to Maintain Its Legal Existence; Conditions Under Which Exceptions Permitted. The Company and Eastern each agree that it will maintain, and will cause each Guarantor to maintain, its and their legal existence, not dissolve or otherwise dispose of all or substantially all of its or their assets, and not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it or them without the prior written consent of the Issuer.

Section 8.11. Depreciation Deductions and Investment Tax Credit. The Issuer and the Company agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility pursuant to Section 167 or Section 168 of the Code and to any investment tax credit pursuant to Section 38 of the Code with respect to any part of the Facility that constitutes "Section 38 Property", except the Equipment for which Eastern shall be so entitled to depreciate deductions.

Section 8.12. Employment Opportunities, Notice of Jobs. Eastern covenants and agrees that, in consideration of the participation of the Issuer in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively, the "Referral Agencies"). Eastern also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership (PL 97-300) programs who shall be referred by the Referral Agencies.

Section 8.13. Further Assurances. The Company and Eastern each hereby agree to execute and deliver to the Issuer all such documents and instruments and do all such other acts and things as may be necessary or required by the Issuer to enable the Issuer to exercise and enforce its rights under this Agreement, and to record and file and re-record and re-file all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the Issuer to validate, preserve and protect the rights of the Issuer under this Agreement.

## ARTICLE IX.

### RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS

#### Section 9.1. Restriction on Sale of Facility; Release of Certain Land.

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Issuer shall not sell, convey, transfer, encumber or otherwise dispose of its interest in the Facility or any part thereof or any of its rights under this Agreement, without the prior written consent of the Company, Eastern and the Trustee.

(b) With the prior written consent of the Trustee (which consent may not be unreasonably withheld but may be subject to such reasonable conditions as the Trustee may deem appropriate), the Issuer, the Company and Eastern from time to time may release from the provisions of this Agreement, any part of, or interest in, the Land which is not necessary, desirable or useful for the Facility. In such event, the Issuer, at the Company's sole cost and expense, shall execute and deliver, and request the Trustee to execute and deliver, any and all instruments necessary or appropriate to so release such part of, or interest in, the Land and convey such title thereto or interest therein, free from the lien of the Mortgage, to the Company or such other Person as the Company may designate. As a condition to such conveyance, the Trustee shall be provided with a copy of the instrument transferring such title or interest in such Land, an instrument survey of the Land to be conveyed, together with a certificate of an Authorized Officer of the Company stating that there is then no Event of Default under this Agreement and such part of, or interest in the Land is not necessary, desirable or useful for the Facility.

(c) No conveyance of any part of, or interest in the Land effected under the provisions of this Section 9.1 shall entitle Eastern to any abatement or diminution of the payments payable by it under this Agreement.

Section 9.2. Removal of Equipment.

(a) The Issuer shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where Eastern determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, Eastern, with the prior written consent of the Trustee (which consent may not be unreasonably withheld or delayed but may be subject to such reasonable conditions as the Trustee may deem appropriate), may remove such items from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, free from the lien of the Mortgage, provided that such removal will not materially impair the operation of the Facility for the purpose for which it is intended or change the nature of the Facility so that (i) it does not constitute a "project" under the Act or (ii) it does not constitute a "manufacturing facility" under Section 144 of the Code.

(b) The Issuer shall execute and deliver to Eastern all instruments necessary or appropriate to enable Eastern to sell or otherwise dispose of any such item of Equipment. Eastern shall pay any costs (including counsel fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

(c) The removal of any item of Equipment pursuant to this Section shall not entitle Eastern to any abatement or diminution of the payments payable by it under this Agreement.

Section 9.3. Assignment, Leasing and Subleasing.

(a) This Agreement may not be assigned, in whole or in part, and the Facility may not be leased or subleased, in whole or in part, without the prior written consent of the Trustee and the Issuer in each instance, which consents will not be unreasonably withheld or delayed or conditioned. Any assignment or sublease shall be on the following conditions:

(i) no assignment or sublease shall relieve the Company and Eastern from primary liability for any of its obligations hereunder;

(ii) the assignee shall assume the obligations of the Company and Eastern hereunder to the extent of the interest assigned;

(iii) the Company or Eastern, as appropriate, shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Issuer and to the Trustee a true and complete copy of such assignment or sublease and the instrument of assumption;

(iv) neither the validity nor the enforceability of the Bonds or any Bond Document shall be adversely affected thereby;



(v) the exclusion of the interest on the Bonds from gross income for Federal income tax purposes will not be adversely affected;

(vi) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act;

(vii) the Facility shall continue to constitute a "manufacturing facility" as such quoted term is defined in the Code.

(b) If the Trustee or the Issuer shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 9.3, the Company or Eastern, as appropriate, at its cost shall furnish the Trustee or the Issuer, as appropriate, with an opinion, in form and substance reasonably satisfactory to the Trustee or the Issuer, as appropriate, (i) of Bond Counsel as to items (v) and (vi) above, and (ii) of Independent Counsel as to items (i), (ii) and (iv) above.

Section 9.4. Mortgage and Pledge of Issuer's Interests to Trustee. The Issuer shall (i) mortgage its interest in the Facility, and (ii) pledge and assign its rights to and interest in this Agreement and in all amounts payable by Eastern pursuant to Section 5.5 hereof and all other provisions of this Agreement (other than amounts payable to the Issuer for its' own account and interest and for the benefit of the Issuer and not for the Trustee or holders of the Bonds and except for the moneys and investments from time to time in the Rebate Fund), to the Trustee as security for the payment of the principal of, and premium, if any, and interest on the Bonds. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Issuer. Notwithstanding the foregoing, all indemnities herein contained shall subsequent to such mortgage, pledge and assignment continue to run to the Issuer for its benefit as well as for the benefit of the Trustee.

Section 9.5. Merger of Issuer.

(a) Nothing contained in this Agreement shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or transfer of title to the entire Facility to any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility, provided that:

(i) upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Agreement to be kept and performed by the Issuer shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred; and

(ii) the exclusion of the interest on the Bonds from gross income for Federal income tax purposes shall not be adversely affected thereby.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Issuer shall give notice thereof in reasonable detail to the Company, Eastern and the Trustee and shall furnish to the Company, Eastern and the Trustee

(i) a favorable opinion of Independent Counsel as to compliance with the provisions of Section 9.5(a)(i) hereof, and (ii) a favorable opinion of Bond Counsel opining as to compliance with the provisions of Section 9.5(a)(ii) hereof. The Issuer promptly shall furnish such additional information with respect to any such transaction as the Company, Eastern or the Trustee may reasonably request.

## ARTICLE X.

### EVENTS OF DEFAULT AND REMEDIES

#### Section 10.1. Events of Default Defined.

(a) The following shall be "Events of Default" under this Agreement:

(i) the failure by Eastern to pay or cause to be paid on the date due, the amounts specified to be paid pursuant to Section 5.5 hereof;

(ii) the failure by either the Company or Eastern to observe and perform any covenant contained in Sections 5.5(d), 6.3, 6.4, 6.5, 8.2, 8.4 and 9.3 hereof;

(iii) the institution of any action, proceeding or protest specified in Section 11.1(b)(ii) hereof;

(iv) any representation or warranty of either the Company or Eastern herein, in any other Company Document or in the Bond Purchase Agreement shall prove to have been false or misleading in any material respect;

(v) the failure by either the Company or Eastern to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in Section 10.1(a)(i), (ii) or (iii)) for a period of thirty (30) calendar days after written notice, specifying such failure and requesting that it be remedied, given to the Company or to Eastern, as appropriate, by the Issuer or the Trustee; provided, however, that if such default cannot be cured within thirty (30) calendar days but the Company or Eastern, as appropriate, is proceeding diligently and in good faith to cure such default, then the Company or Eastern, as the case may be, shall be permitted an additional ninety (90) calendar days within which to remedy the default;

(vi) the dissolution or liquidation of either the Company or of Eastern; or the failure by either the Company or Eastern to release, stay, discharge, lift or bond within sixty (60) calendar days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by either the Company or Eastern generally to pay its debts as they become due; or an assignment by either the Company or Eastern for the benefit of creditors; or the commencement by either the Company or Eastern (as the debtor) of a case in Bankruptcy or any proceeding under any

other insolvency law; or the commencement of a case in Bankruptcy or any proceeding under any other insolvency law against either the Company or Eastern (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against either the Company or Eastern as the debtor in such case or proceeding, or such case or proceeding is consented to by either the Company or Eastern, as appropriate, or remains undismissed for sixty (60) calendar days, or either the Company or Eastern consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of either the Company or Eastern for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors (the term "dissolution or liquidation of either the Company or Eastern" as used in this subsection shall not be construed to include any transaction permitted by Section 8.10 hereof);

(vii) an Event of Default under or a default on the part of either the Company or Eastern of its obligations under the Mortgage, the Indenture, the Environmental Compliance and Indemnification Agreement, the Agreement or the Guaranty shall have occurred and be continuing;

(viii) the invalidity, illegality or unenforceability of any of the Bond Documents; or

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 4.1 and 6.1 of this Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other parties to this Agreement and to the Trustee, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, 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, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

## Section 10.2. Remedies on Default.

(a) Whenever any Event of Default shall have occurred, the Issuer or the Trustee may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) declare, by written notice to the Company and Eastern, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid amounts payable pursuant to Section 5.5(a) hereof in amount equal to the aggregate unpaid principal balance of all Bonds together with all interest which has accrued and will accrue thereon to the date of payment, and (B) all other payments due under this Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vi) hereof shall have occurred, all payments due under this Agreement shall become immediately due and payable without notice to either the Company or Eastern or the taking of any other action by the Trustee;

(ii) re-enter and take possession of the Facility, on ten (10) calendar days written notice to both the Company and Eastern, without terminating this Agreement and without being liable for any prosecution or damages therefor, and lease the Facility to another Person for the account of the Company and Eastern, holding the Company and Eastern liable for the amount, if any, by which the aggregate of amounts payable by the Company and Eastern hereunder exceeds the aggregate of the rents and other amounts received from such other Person under the new lease;

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

(iv) terminate, on ten (10) calendar days written notice to both the Company and Eastern, the Lease Term and all rights of the Company and Eastern under this Agreement and, without being liable for any prosecution or damages therefor, exclude both the Company and Eastern from possession of the Facility and lease the Facility to another Person for the account of the Company and Eastern, holding the Company and Eastern liable for the amount, if any, by which the aggregate of the amounts payable by the Company and Eastern hereunder exceeds the aggregate of the amounts received from such other Person under the new lease;

(v) enter upon the Facility and complete the renovation and equipping of the Facility in accordance with the Plans and Specifications (with such changes as the Trustee may deem appropriate) and in connection therewith (a) engage architects, contractors, materialmen, laborers and suppliers and others, (b) employ watchmen to protect and preserve the Facility, (c) assume any contract relating to the Facility and take over and use all labor, materials, supplies and equipment, whether or not previously incorporated into the Facility, (d) pay, settle or compromise all bills or claims, (e) discontinue any work or change any course of action already undertaken with respect to the Facility, (f) take or refrain from taking such action hereunder as the Trustee may from time to time determine; (g) apply any undisbursed money held under the Indenture (other than those sums held for the benefit of either the Issuer or the Trustee and except for the moneys and investments from time to time in the Rebate Fund) to the payment of the costs and expenses incurred in connection with the foregoing; and (h) apply any undisbursed moneys held under the Indenture (other than those sums held for the benefit of either the Issuer or the Trustee and except for the moneys and investments from time to time in the Rebate Fund) to the payment of the outstanding principal amount of the Bonds and premium, if any, and accrued and unpaid interest on the Bonds;

(vi) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder to secure possession of the Facility, and to enforce the obligations, agreements or covenants of both the Company and Eastern under this Agreement;

(vii) take any other action at law or in equity that may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of both the Company and Eastern under this Agreement.

(b) In the event the Facility is leased to another Person pursuant to Section 10.2(a)(ii) or (iv) hereof, the Issuer or the Trustee, as appropriate, may (but shall be under no obligation to) make such repairs or alterations in or to the Facility as it may deem necessary or desirable for the implementation of such lease, and the Company and Eastern jointly and severally shall be liable and each agrees to pay the costs of such repairs or alterations and the expenses incidental to the effecting of such lease, together with interest on such costs and expense paid by the Trustee at the per annum rate of twelve percent (12%), notwithstanding that the Lease Term and all rights of the Company under this Agreement may have been terminated pursuant to Section 10.2(a)(iii) hereof.

(c) No action taken pursuant to this Section 10.2 shall relieve Eastern from its obligation to make all payments required by Section 5.5 hereof.

(d) Eastern shall have the right upon notice to the Issuer and the Trustee to enter the Facility with agents or representatives of the Issuer and the Trustee to remove any

equipment or other personalty owned by Eastern if such equipment or personalty is not part of the Facility.

(e) The Issuer shall have all of the rights, powers and remedies of a secured party under the Uniform Commercial Code of New York, including without limitation, the right to lease or otherwise dispose of any or all of the Equipment and to take possession of the Equipment, and for that purpose Issuer may enter the Facility and remove the Equipment therefrom, and neither the Company nor Eastern will resist or interfere with such action.

Section 10.3. Remedies Cumulative. No remedy herein conferred upon or reserved to the Issuer or the Trustee 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 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 Issuer or the Trustee, as appropriate, 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 Agreement.

Section 10.4. Agreement to Pay Attorneys' Fees and Expenses.

(a) In the event either the Company or Eastern should default under any of the provisions of this Agreement and the Issuer 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 either the Company or Eastern herein contained, the Company or Eastern shall, on demand therefor, pay to the Issuer the reasonable fees of such attorneys and such other expenses so incurred.

(b) In the event either the Company or Eastern should default under any of the provisions of this Agreement and the Trustee 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 either the Company or Eastern herein contained, the Company and Eastern shall, on demand therefor, pay to the Trustee the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.6. Certificate of No Default. Both the Company and Eastern shall deliver to the Issuer and the Trustee each year no later than January 15 a certificate signed by the Chief Executive Officer of the Company or Eastern, as appropriate, stating that the Company or Eastern, as appropriate, is not in default under and no Event of Default exists under this Agreement, the Mortgage, the Tax Compliance Agreement or any other Company Document. Such certificate shall also contain all information required by Section 8.4 hereof.

## ARTICLE XI.

EARLY TERMINATION OF AGREEMENT;  
OPTION IN FAVOR OF COMPANYSection 11.1. Early Termination of Agreement.

(a) The Company and Eastern shall have the joint option to terminate this Agreement at any time that the Bonds are subject to redemption in whole under the Indenture and upon filing with the Issuer and the Trustee a certificate signed by an Authorized Representative of both the Company and Eastern stating the intention to do so pursuant to this Section and the date upon which such payment shall be made (which date shall not be less than thirty (30) nor more than ninety (90) days from the date such certificate is filed) and upon compliance with the requirements set forth in Section 11.2 hereof.

(b) The Issuer shall have the option to terminate this Agreement (i) at any time after the Bonds have been paid in full or provision therefor shall have been made pursuant to the Indenture, (ii) if either the Company or Eastern institute an action, proceeding or protest contending or alleging that the Facility or any part thereof is exempt from the payment of real property taxes or assessments solely by reason of the Issuer's lease of the Facility as provided in this Agreement, or (iii) if a court of competent jurisdiction determines that the Facility is exempt from the payment of real property taxes or assessments solely by reason of the Issuer's lease of the Facility as provided in the Agreement unless the Company and Eastern execute and deliver to the Issuer the Payment in Lieu of Taxes Agreement specified in Section 5.5(d) hereof within fifteen (15) Business Days of such judicial determination and pay such amount to the Issuer so that all amounts which would have been or will be payable as taxes and assessments with respect to the Facility but for the Issuer's execution of this Agreement through the then current tax year of each applicable taxing jurisdiction have been paid to either such taxing jurisdiction or to the Issuer. In the event the Issuer exercise its option to terminate this Agreement in accordance with the provisions of this Section 11.1(b) hereof, the Issuer shall file with the Company, Eastern and the Trustee a certificate signed by an Authorized Representative of the Issuer stating that this Agreement is terminated by the Issuer, the reason therefore and that such termination is effective the date of such filing.

Section 11.2. Conditions to Early Termination of Agreement. In the event either the Company, Eastern or the Issuer exercise their option to terminate this Agreement in accordance with the provisions of Section 11.1(a) hereof, the Company and Eastern shall make the following payments (which shall be a condition precedent to the termination of this Agreement by the Company and Eastern but shall not be a condition precedent to the termination of this Agreement by the Issuer):

(a) To the Trustee for the account of the Issuer: an amount certified by the Trustee which, when added to the total amount on deposit with the Trustee for the account of the Issuer and Eastern and available for such purpose, will be sufficient to pay the principal of, Redemption price of, and interest on the Bonds.

(b) To the Issuer: an amount certified by the Issuer sufficient to pay all unpaid fees and expenses of the Issuer incurred under this Agreement and the Bond Documents.

(c) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under the Bond Documents.

In the event this Agreement is terminated by the Issuer and the payments specified herein have not been made by the Company or Eastern, the obligation to make such payment shall survive the termination of this Agreement and any such unpaid amounts shall be due and payable by the Company and Eastern with interest at the per annum rate of ten percent (10%).

Section 11.3. Amounts Remaining on Deposit with the Trustee upon Payment of Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds and the payment of all fees, charges, expenses and other amounts required to be paid under this Agreement and the Bond Documents, all amounts on deposit with the Trustee for the account of the Issuer and Eastern under the Bond Documents (except for amounts attributable to amounts to be paid to either the Issuer or the Trustee for their own account and for their benefit and except for the moneys and investments from time to time in the Rebate Fund) shall belong to and be paid to Eastern by the Trustee as an overpayment of rent and neither the Trustee nor the Owners of the Bonds shall have any rights hereunder, except those that shall have theretofore vested.

## ARTICLE XII.

### MISCELLANEOUS

Section 12.1. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address as any party may specify in writing to the other:



To the Issuer:

Town of Riverhead Industrial Development Agency  
Town Hall  
747 East Main Street  
Riverhead, New York 11901  
Attention: Executive Director

To the Company:

C.A.P.S. Realty Holdings, LLC  
274 Middle Island Road  
Medford, New York 11763  
Attention: Peter E. Williams Jr.

To Eastern:

Eastern Wholesale Fence Co., Inc.  
274 Middle Island Road  
Medford, New York 11763  
Attention: Peter E. Williams Jr.

To the Trustee:

Commerce Bank, National Association  
90 Fifth Avenue  
New York, New York 10011  
Attention: Corporate Trust Department

A duplicate copy of each notice, certificate and other written communication given hereunder by either the Issuer, the Company or Eastern to the other shall also be given to the Trustee, and a duplicate copy of each notice, certificate and any other written communication given hereunder by either the Trustee or the Issuer to the other shall also be given to the Company and Eastern, at the address herein set forth or provided for. Such notice shall be deemed to have been given upon receipt or upon refusal of the party being notified to accept delivery of such notice.

Section 12.2. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 12.3. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.4. Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and without the concurring written consent of the Trustee.

Section 12.5. Execution of Counterparts. This 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. Only possession of the counterpart marked "Secured Party's Original" shall be effective to perfect the rights of any holder of the Agreement as counterparts shall be marked "Duplicate" and no security interest therein can be created except by possession of the "Secured Party's Original" counterpart.

Section 12.6. Applicable Law. This Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 12.7. List of Additional Equipment; Further Assurances.

(a) Upon the installation of all of the Equipment therein, Eastern shall prepare and deliver to the Issuer and the Trustee a schedule listing all of the Equipment. If requested by the Issuer or the Trustee, Eastern shall thereafter furnish to the Issuer and the Trustee, within sixty (60) days after the end of each calendar year, a schedule listing all of the Equipment not theretofore previously described in the aforesaid schedule.

(b) The Issuer (at the expense of Eastern), the Company and Eastern shall execute and deliver all instruments and shall furnish all information necessary or appropriate to perfect or protect any security interest created or contemplated by this Agreement, the Indenture and the Mortgage.

Section 12.8. Survival of Obligations. This Agreement shall survive the purchase and sale of the Bonds and the performance of the obligations of the Company to make payments required by Section 5.5 and all indemnities shall survive the foregoing and any termination or expiration of this Agreement and the payment of the Bonds.

Section 12.9. Table of Contents and Section Headings not Controlling. The Table of Contents and the headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the Issuer, the Company and Eastern have caused this Agreement to be executed in their respective names by their duly authorized officers, all dated as of December 1, 2004.

TOWN OF RIVERHEAD INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Name: Robert C. Dick  
Title: Chairman

C.A.P.S. REALTY HOLDINGS, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EASTERN WHOLESALE FENCE CO., INC.

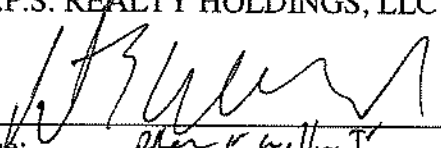
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Issuer, the Company and Eastern have caused this Agreement to be executed in their respective names by their duly authorized officers, all dated as of December 1, 2001.

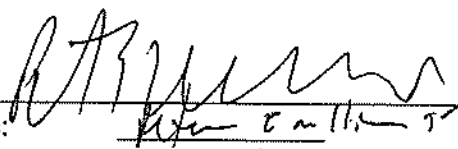
TOWN OF RIVERHEAD INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name: Robert C. Dick  
Title: Chairman

C.A.P.S. REALTY HOLDINGS, LLC

By:   
Name: Robert C. Dick  
Title: Chairman

EASTERN WHOLESALE FENCE CO., INC.

By:   
Name: Robert C. Dick  
Title: Chairman

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

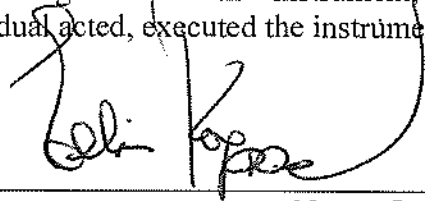
On this December 27, 2004, before me personally came Robert C. Dick, to me known, who, being by me duly sworn, did depose and say that he resides at 127 Ackerly Street, Riverhead, New York 11901, that he is the Chair of the TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY, the public benefit corporation of the State of New York described in and which executed the within instrument.

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

MARY E. GUILD  
Notary Public, State of New York  
No. 01GU4801774  
Qualified in Suffolk County  
Commission Expires July 31, 2005

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

On the 28 day of December in the year 2004 before me, the undersigned, a notary public in and for said State, personally appeared Peter E. Williams Jr. 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

Ellis Koeppel  
Notary Public, State of New York  
No. 01KO4884264  
Qualified in Nassau County  
Commission Expires Feb. 9, 2007

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

## SCHEDULE A - DESCRIPTION

### AMENDED 12/27/2004

ALL that certain plot, piece or parcel of land, situate, lying and being at Calverton, in the Town of Riverhead, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at the intersection of the easterly side of Wading River - Manorville Road and the northerly side of Grumman Boulevard;

RUNNING THENCE easterly along the northerly side of Grumman Boulevard 8,592.52 feet;

RUNNING THENCE north 04 degrees 20 minutes 00 seconds west 525.31 feet;

RUNNING THENCE north 03 degrees 58 minutes 17 seconds west, 195.55 feet;

RUNNING THENCE north 04 degrees 15 minutes 27 seconds west, 380.67 feet;

RUNNING THENCE south 86 degrees 15 minutes 00 seconds west, 50.44 feet to the true point or place of Beginning;

RUNNING THENCE from said point of Beginning south 86 degrees 15 minutes 00 seconds west, 124.98 feet;

RUNNING THENCE along the arc of a curve bearing to the right, having a radius of 170.00 feet, a distance of 225.99 feet;

RUNNING THENCE north 17 degrees 35 minutes 07 seconds west, 182.82 feet;

RUNNING THENCE along the arc of a curve bearing to the left, having a radius of 230.00 feet, a distance of 30.23 feet;

RUNNING THENCE north 64 degrees 53 minutes 02 seconds east, 65.21 feet;

RUNNING THENCE north 03 degrees 59 minutes 08 seconds west, 150.25 feet;

RUNNING THENCE north 86 degrees 11 minutes 26 seconds east, 103.87 feet;

RUNNING THENCE north 03 degrees 59 minutes 08 seconds west, 208.64 feet;

RUNNING THENCE north 86 degrees 00 minutes 52 seconds east, 10.24 feet;

RUNNING THENCE north 03 degrees 59 minutes 08 seconds west, 233.46 feet;

RUNNING THENCE north 41 degrees 50 minutes 40 seconds east, 85.13 feet;

RUNNING THENCE north 85 degrees 45 minutes 51 seconds east, 151.16 feet;

RUNNING THENCE south 04 degrees 15 minutes 27 seconds east, 962.36 feet;

RUNNING THENCE along the arc of a curve bearing to the right, having a radius of 50.00 feet, a distance of 78.98 feet to the point or place of BEGINNING.

TOGETHER WITH the benefits and subject to the burdens of Easements for Access in Liber 12148 page 185; Liber 12148 page 186 and Liber 12150 page 996.



EXHIBIT B

EQUIPMENT

All equipment, fixtures, machinery, building materials and items of personal property acquired, installed and constructed and/or to be acquired, installed and constructed in connection with the renovation and equipping of the Town of Riverhead Industrial Development Agency/C.A.P.S. Realty Holdings, LLC/Eastern Wholesale Fence Co., Inc. Facility located in the Town of Riverhead, Suffolk County, New York and acquired in whole or in part with proceeds of the Town of Riverhead Industrial Development Agency's Tax-Exempt Industrial Development Revenue Bonds, Series 2004 (\_\_\_\_\_).

