

PECONIC CROSSING, LLC

and

TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY

LEASE AGREEMENT

Dated as of December 15, 2016

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THIS LEASE AGREEMENT, dated as of December 15, 2016 (the "Lease Agreement"), by and between PECONIC CROSSING, LLC, a limited liability company (the "Company") qualified to do business in the State of New York, and the TOWN OF RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency and a public benefit limited liability company of the State of New York (the "Agency").

WITNESSETH:

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

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, civic, commercial or industrial purposes or certain other purposes, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; provided, however, that no industrial development agency may provide "financial assistance", as defined in the Enabling Act ("Financial Assistance"), in respect of any "project", as defined in the Enabling Act, that will result in the removal of an industrial or manufacturing plant of the project occupant 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 project occupation located within the State (as established by Section 862 of the Enabling Act); and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of any "project" on such terms and conditions as it deems advisable; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Agency was created for the benefit of the Town of Riverhead, Suffolk County, New York (the "Town") and the inhabitants thereof by Chapter 624 of the Laws of 1980 (the "Agency Act") (together with the Enabling Act, the "Act"); and

WHEREAS, the Company has made application to the Agency for Financial Assistance with respect to the acquisition of parcel, demolition of existing structure, and construction of a 52,205 +/- square foot building located at 11 West Main Street, Riverhead, New York (S.C.T.M. #0600-128.00-03.00-068.002) for use as 45 units of workforce and artist gallery space for use by Project residents rental housing with downstairs interior parking garage and vehicle access across adjacent parcel to Peconic Avenue for project known as Peconic Crossing at an aggregate cost, including costs associated with the financing thereof, estimated to be \$18,541,044 (the "Project"); and

WHEREAS, the Agency, in accordance with the provisions of the State Environmental Quality Review Act ("SEQRA") has issued a "negative declaration" in accordance with SEQRA

with respect to the Agency's providing Financial Assistance to the Company and has determined that the Agency's providing such Financial Assistance to the Company will not result in any negative impacts upon the environment; and

WHEREAS, the Agency, by resolution duly adopted on November 7, 2016, after a public hearing was duly called, held and conducted pursuant to the Act, approved the providing of Financial Assistance to the Company for the Project; and

WHEREAS, the Company proposes to transfer a leasehold interest in the Land, upon the terms and conditions set forth in the Ground Lease (as defined herein), to the Agency, construct the Building, as agent of the Agency, acquire the Equipment and install the same in the Building, as agent of the Agency, and sublease the Project from the Agency, upon the terms and conditions set forth in this Lease Agreement; and

WHEREAS, the Agency desires to acquire a leasehold interest in the Land, upon the terms and conditions set forth in the Ground Lease, from the Company, cause the Company to construct the Building, as agent of the Agency, cause the Company to acquire the Equipment and install the same in the Building, as agent of the Agency, and sublease the Project to the Company, upon the terms and conditions set forth in this Lease Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I.

DEFINITIONS

The following words and terms as used in this Lease Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent:

“Act” means, collectively, the Enabling Act and the Agency Act.

“Agency” means (i) the Town of Riverhead Industrial Development Agency and its successors and assigns, and (ii) any public benefit limited liability company or political subdivision resulting from or surviving any consolidation or merger to which the Agency or its successors may be a party.

“Agency Act” means Chapter 624 of the Laws of 1980, as amended from time to time.

“Agreement Term” means the period from the date of execution of this Lease Agreement to the earlier of either the date of termination of this Lease Agreement or the PILOT Agreement (as defined herein) or a date of termination mutually agreed upon by the parties.

“Building” means building to be constructed at 11 West Main Street, Riverhead, New York (S.C.T.M. 0600-128.00-03.00-068.002), as agent of the Agency, for its use as workforce rental housing.

“Closing Date” means the date of delivery of this Lease Agreement.

“Company” means Peconic Crossing, LLC., a limited liability company qualified to do business in the State.

“Condemnation” means the taking of title to, or the use of, property under the exercise of the power of eminent domain by any governmental entity or other person acting under governmental authority.

“Default” means any Event of Default under Article VIII hereof.

“Enabling Act” means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time.

“Equipment” means equipment to be purchased by the Company, on behalf of the Agency, and installed in the Building.

“Ground Lease” means a Ground Lease dated as of December 15, 2016 by and between the Company and the Agency.

“Guarantor” means the guarantor under the Guaranty.

“Guaranty” means a Guaranty dated as of December 15, 2016 from Conifer Realty, LLC to the Agency, pursuant to which Conifer Realty, LLC guarantees to the Agency the full and

prompt payment when due of certain amounts payable by the Company to the Agency with respect to the Project.

“Land” means the parcel of real property located at 11 West Main Street, Riverhead, New York in the Town of Riverhead, known as SCTM #0600-128.00-03.00-068.002 and more particularly described on Exhibit A hereto, and leased from the Company to the Agency pursuant to a Ground Lease, and subleased from the Agency to the Company, pursuant to this Lease Agreement.

“Lease Agreement” means this Lease Agreement, dated as of December 15, 2016 by and between the Agency and the Company, as amended from time to time.

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

“Mortgage” shall be the Mortgages made pursuant to the construction loan from Capital One, National Association in the amount of \$8,330,000, construction and permanent loan from Housing Trust Fund Corporation, acting by and through the Governor’s Office of Storm Recovery in the amount of \$4,550,000, construction and permanent loan from CDCLI Funding Corp. in the amount of \$200,000, construction and permanent loan from Community Development Corporation of Long Island, Inc. in the amount of \$275,000, construction and permanent loan from Suffolk County in the amount of \$350,000, and permanent loan from The Community Development Trust, LP or an affiliate, including, CDT, II, LLC in an amount not to exceed \$2,930,000, as shall have been recorded of record against parcel located at 11 West Main Street, Riverhead, New York to which, this Lease Agreement is subject and subordinate excepting PILOT obligations set forth in separate agreement which shall have the same priority as Real Property Taxes. All Mortgages as stated herein are hereby approved and consented thereto.

“Permanent Mortgage” means that Mortgage made to the Company by The Community Development Trust, LP, or an affiliate, including CDT, II, LLC (the “Permanent Lender”) dated contemporaneously herewith.

“Permitted Encumbrances” means (i) exceptions to title set forth in the Title Report, (ii) any Mortgage, (iii) the Lease Agreement, (iv) utility, access and other easements and rights-of-way, restrictions and exceptions that do not materially impair the utility or the value of the Project affected thereby for the purposes for which it is intended, (v) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens, (vi) Liens for taxes not yet delinquent and

(vii) Peconic Crossing Development Agreement by and between the County of Suffolk and Peconic Crossing, LLC dated December 15, 2016 and attached exhibits being the Easement, Leasehold Mortgage and Declaration of Covenants and Restrictions for Affordable Housing Rental Units.

“Person” means an individual, partnership, limited liability company, association, joint venture, trust or unincorporated organization, or a government or any governmental agency, public benefit limited liability company or political subdivision.

“Project” means the Project defined in the preambles to this Lease Agreement, being, collectively, the Land, the Building and the Equipment.

“PILOT Agreement” means a Payment-in-Lieu of Taxes Agreement, dated as of December 15, 2016, by and between the Agency and the Company relating to the Project.

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

“State” means the State of New York.

“Title Report” means that certain title report delivered to the Agency from the Company concerning the Land.

“Town” means the Town of Riverhead, Suffolk County, New York.

ARTICLE II.

TRANSFER OF LEASEHOLD INTEREST IN LAND AND BUILDING; REPRESENTATION REGARDING PROJECT

Section 2.1 Leasehold Interest in Land and Building. The Company warrants and represents to the Agency that it has good and marketable title to the Land and the Building and that it has conveyed a leasehold interest in such good and marketable title to the Land and the Building to the Agency pursuant to the Ground Lease. The Company warrants and represents that the Land and the Building will be free of any Lien that would have the effect of impairing the use of the Project.

Section 2.2 Representation Regarding Project. The Company hereby represents and warrants to the Agency that completion of the Project will not result in the removal of an industrial or manufacturing plant of the project occupant 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 project occupation located within the State (as established by Section 862 of the Enabling Act).

Section 2.3 Due Authorizations, Execution and Delivery. The execution and delivery of this Ground Lease by the Managing Member and the performance by the Managing Member of the transactions contemplated hereby have been duly authorized by all requisite corporate, limited liability company, partnership or trust actions or proceedings. Each Managing Member is duly organized, validly existing and in good standing under the laws of the state of its formation with power to enter into this Agreement and to consummate the transactions contemplated hereby.

Section 2.4 No Representation or Warranty of Existing Equipment by the Agency. The Agency makes no representation or warranty, either express or implied, to the Company as to the condition, title, design, merchantability or fitness of any and all equipment currently existing on the Land or the Building.

ARTICLE III.

ACQUISITION OF LEASEHOLD INTEREST IN THE LAND AND BUILDING AND RECONSTRUCTION AND EQUIPPING OF THE BUILDING BY THE COMPANY, AS AGENT OF THE AGENCY; SUBLEASE OF PROJECT TO COMPANY BY THE AGENCY; POSSESSIONS AND QUIET ENJOYMENT

Section 3.1 Construction and Equipping of the Building by the Company, as Agent of the Agency. (a) In accordance with resolution of the Agency dated November 7, 2016, the Company is hereby appointed the true and lawful agent of the Agency, and the Company hereby accepts such agency appointment, to construct the Building pursuant to and in accordance with the building plans and specifications filed with and appertaining to any and all Town building permits or approvals applicable to the Project, to purchase and install the Equipment thereon, and to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent of the Agency, in connection therewith, all with the same powers and the same validity as if the Agency were acting in its own behalf, but solely at the expense of the Company; provided however, that (y) the appointment of the Company as agent of the Agency hereunder may be terminated, at the option of the Agency, upon delivery of written notice thereof to the Company, on or after twenty-four months from the date of execution of this Lease Agreement in the event construction and equipping of the Building is not substantially completed; provided, however, that if such failure to substantially complete construction and equipping of the Building within such period is caused by an event of force majeure the obligation of the Company to complete such construction and equipping shall be suspended and tolled during the continuance of such event of force majeure and the appointment of the Company as agent of the Agency shall not be terminated during such period; and (z) the appointment of the Company as agent of the Agency hereunder shall be terminated on the date on which this Lease Agreement is terminated. The term "force majeure" as used herein shall consist of acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, 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, or any civil or military authority, insurrections, riots, epidemics, landslides, lighting, earthquakes, fire, hurricanes, storms, floods, washouts, arrests, restraint of government and people, civil disturbances, explosions, or partial or entire failure of utilities, or other cause or event not reasonably within the control of the Company.

(b) The Company hereby agrees to construct the Building, as agent of the Agency, pursuant to and in accordance with the building plans and specifications filed with and appertaining to any and all Town building permits or approvals applicable to the Project, to acquire the Equipment and install the Equipment in the Building, as agent of the Agency, and to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, and in general to do all things which may be requisite or proper all for the acquisition of the Land and the Building and the construction of the Building and the purchase and installation of the Equipment in the Building, with the same powers and with the same validity as the Agency could do if acting in its own behalf, to pay all costs and expenses thereof, and all fees, costs and expenses incurred by the Agency in the acquisition of a leasehold interest in the Land, the construction of the Building and the purchase and installation of the Equipment in the Building and to ask, demand, sue for, levy, recover and receive all such sums

of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt, or writing in connection with the acquisition of a leasehold interest in the Land and construction 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 provided, however, that the Agency shall not be required to execute or participate in any contract or arrangement with any contractor or other party entered into by the Company.

Section 3.2 Sublease of Project to the Company by the Agency. The Agency hereby agrees to sublease the Project, consisting of the Building and the Equipment located or to be located on the Land, as more particularly described in Exhibit A attached hereto, to the Company and the Company hereby agrees to sublease the Project from the Agency upon the terms and conditions of this Lease Agreement.

Section 3.3 Possessions and Quiet Enjoyment. (a) The Agency shall deliver to the Company sole and exclusive possession of the Project (subject to the terms of this Lease Agreement) on the Closing Date, including the right to recover all rents and profits therefrom, and the Company shall accept possession of the Project on the Closing Date. Except as provided in Sections 3.4, 6.4 and 8.2 hereof, the Agency, on and after the Closing Date, shall neither take nor suffer or permit any action to prevent the Company, until the expiration of the Agreement Term, from having quiet and peaceable possession and enjoyment of the Project and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project as hereinabove provided.

(b) The parties further agree the Agency shall have no obligation to reconstruct, or complete reconstruction of the Building, purchase or install the Equipment in the Building or in any manner conserve or protect the Project or any portion thereof.

(c) Title to all materials, Equipment, machinery and other items of property intended to be incorporated or installed in and to become part of the Project shall vest in the Agency, subject to this Lease Agreement, immediately upon deposit on the Land or in limited liability company or installation in the Building, whichever shall first occur.

(d) The Company shall not, during the Agreement Term, permit to stand, and will, at its own expense, take all steps reasonably necessary to remove, any mechanics' or other liens against the Building for labor or material furnished in connection with the construction of the Building.

(e) The Company hereby agrees that, during the Agreement Term, 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, which then or at any time thereafter may be applicable to its construction of the Building or any part thereof, purchase and installation of the Equipment in the Building, or to any use, manner of use or condition of the Project or any part thereof, of all federal, State, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers and companies or associations insuring the premises

having jurisdiction of the Project or any part thereof, or to any use, manner of use or condition of the Project or any part thereof.

(f) In the event of default of any contractor or subcontractor or suppliers of Equipment under any contract made by it in connection with the Project or in the event of a breach of warranty with respect to any materials, workmanship, or performance guaranty, the Company may proceed, either separately or in conjunction with others, to exhaust its respective remedies and the remedies of the Agency against the contractor, subcontractor or supplier so in default and against each surety for the performance of such contract. The Company may, in its own name or in the name of the Agency, prosecute or defend any action or proceeding against any contractor, subcontractor, supplier or surety which the Company deems reasonably necessary, and in such event the Agency hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding.

Section 3.4 Contracts. Every agreement, contract or arrangement made by the Company in furtherance of its responsibilities under this Article III shall be payable solely from funds provided by the Company and not by the Agency, and every such agreement, contract or arrangement shall contain a suitable legend to that effect and shall be filed with the Agency within five days of the execution thereof by the Company.

Section 3.5 Termination of Gallery Space Use. The grade level artist gallery space shall be utilized by Project residents. In the event that the Company determines not to continue the use by Project residents, application shall be made to the Agency by the Company for such other use and user as requested by the company. Approval by the Agency shall not be unreasonably withheld.

ARTICLE IV.

MAINTENANCE AND OPERATION OF PROJECT; INSURANCE; PAYMENT OF TAXES, ASSESSMENTS AND UTILITY CHARGES

Section 4.1 Maintenance and Operation of Project by the Company. (a) The Company hereby agrees that during the Agreement Term it will, at its own expense, (i) keep the Project, and every part and parcel thereof, in as reasonably safe condition as its operations shall permit and in good repair, working order and condition; (ii) promptly make all necessary repairs, replacements and renewals to the Project (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) and maintain the Project in a condition that permits compliance with all governmental requirements applicable to the Project; (iii) operate or cause to be operated the Project in a safe and sound manner; (iv) comply with such standards and periodic maintenance inspections as shall be required to enforce warranty and similar claims against contractors, subcontractors and suppliers for the Project and any standards imposed by any insurance policies in effect at any time with respect to the Project or any part thereof.

(b) The Company hereby agrees that, during the Agreement Term, it will itself, and that it will cause all other tenants or occupants of the Project to promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which may be applicable to the operation and, or, maintenance of the Project, or any part thereof, or to any use, manner of use or condition of the Project, or any part thereof, of all federal, State, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers and companies or associations insuring the premises having jurisdiction of the Project, or any part thereof, or to any use, manner of use or condition of the Project or any part thereof.

Section 4.2 Insurance. At all times throughout the Agreement Term, the Company and additionally each first floor commercial entity as sub-tenant shall each maintain separate insurance policies against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to, public liability insurance and other insurance protecting the Company and the Agency against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and a \$2,000,000 aggregate and \$100,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed by any applicable workmen's compensation law; protecting the Company and the Agency against any loss or liability or damage for personal injury or property damage. Additionally, the Company shall, at all times throughout the Agreement Term, provide worker's compensation insurance, disability benefits insurance, and such other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees who are located at or assigned to the Project.

All insurance required by this Section 4.2 shall be procured and maintained in financially sound and generally recognized responsible insurance companies rated at least "A-" by A.M. Best selected by the Company and permitted to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in the construction and operation of facilities similar to the Project. All policies evidencing such insurance protecting the Agency shall include the Agency as a named insured and shall provide for at least thirty (30) days' written notice of the cancellation thereof to the Agency.

All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of any construction as agent of the Agency authorized by this Lease Agreement. Within a reasonable time following the renewal or replacement of any such policy of insurance, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease Agreement.

Section 4.3 Taxes, Assessments and Utility Charges. (a) The Company agrees to pay as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever, which may at any time be lawfully assessed or levied against or with respect to the Project, including any machinery, Equipment or other property installed or brought by the Company or any other tenant or occupant therein or thereon, (ii) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project, 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, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Agreement Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such contest, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that adequate book reserves in accordance with generally accepted accounting principles have been established with respect thereto and the Company shall have furnished security for the payment of such taxes, assessments and other charges as may be required in such challenge proceedings or requested by the Agency. The foregoing right to contest and not pay taxes, assessments or other charges shall not alleviate any obligation to timely make all payments in accordance with the provisions of the PILOT Agreement.

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

ARTICLE V.

DAMAGE, DESTRUCTION OR CONDEMNATION

Section 5.1 Damage or Destruction of Project. If the Project shall be damaged or destroyed, in whole or in part, at any time during the Agreement Term, the Company shall, to the extent moneys from the proceeds of insurance or otherwise are available therefore, promptly replace, repair, rebuild or restore the Project to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company subject to obtaining necessary and applicable governmental approvals and permits; provided, however, that no contract for such replacements, repair, rebuilding or restoration shall be let in the name of the Agency unless the Agency shall specifically appoint the Company its agent with respect to any such replacement, repair, rebuilding or restoration.

Section 5.2 Condemnation of Project. If at any time during the Agreement Term the whole or any part of title to, or the use of, the Project shall be taken by Condemnation, this Lease Agreement shall immediately terminate with respect to such portions of the Project. Proceeds of any condemnation award, after payment to the Agency of any amounts then due the Agency under the PILOT Agreement or this Lease Agreement, shall be paid to the Company.

ARTICLE VI.

SPECIAL COVENANTS

Section 6.1 No Warranty of Condition or Suitability by the Agency. The Agency makes no representation or warranty, either express or implied, to the Company as to the condition, title, design, merchantability or fitness of the Project, or that it is or will be suitable for the Company's purposes or needs.

Section 6.2 Hold Harmless Provisions and Special Environmental Agreement.

(a) During the Agreement Term, but subject to Section 9.1, the Company hereby releases the Agency and its members, agents and employees from, agrees that the Agency and its members, agents and employees shall not be liable for and agrees to indemnify and hold the Agency and its members, agents and employees harmless from and against any and all 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 acquisition of a leasehold interest in the Land and the Building or the reconstruction, equipping, operation, maintenance or leasing of the Project or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Project.

(b) Without limitation by the provisions of Section 6.2(a), and in addition to the provisions of Section 6.2(a); the Company shall not cause or permit the Project or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials and Hazardous Substances, except in compliance with all applicable federal, State and local laws or regulations, nor shall the Company cause or permit a release of Hazardous Materials and Hazardous Substances onto the Project or onto any other property, except in compliance with all applicable federal, State and local laws, ordinances, rules and regulations. The Company 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 shall (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 Materials and Hazardous Substances, on, from, or affecting the Project (i) in accordance with all applicable federal, State, and local laws, ordinances, rules, regulations, and policies, (ii) to the satisfaction of the Agency 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 Agency and 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 Materials and 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 Agency, (ii) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous

Materials and Hazardous Substances, (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials and Hazardous Substances, and/or (iv) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of the Agency which are based upon or in any way related to such Hazardous Materials and Hazardous Substances or in any way related to any other law, rule, regulation, code or order related to the Project but not related to Hazardous Materials and Hazardous Substances, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. For purposes of this Section, "Hazardous Materials" and "Hazardous Substances" includes, without limitation, any flammable explosives, radioactive materials, 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 Superfund Amendments and Reauthorization Act of 1986 (Pub.L. No. 99-499, 100 state, 1613 (1986), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, 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 that the Company may have to the Agency at common law.

(c) Notwithstanding the provisions of the foregoing, the Company 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 Agency or any of its members, agents, or employees, shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Company shall immediately 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 Agency based upon any cause of action in respect of which indemnity may be sought by the Agency against the Company, the Agency agrees to promptly notify the Company, in writing, and the Company will assume the defense thereof, including the employment of counsel reasonably satisfactory to the Agency, the payment of all expenses and the right to negotiate and consent to settlement; provided, however, the Agency shall have the right to defend itself in any such action but the fees and expenses of such defense including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, shall be at the expense of the Agency unless (i) the defense of itself by the Agency has been authorized in writing by the Company, (ii) the Agency shall have reasonably concluded that there may be a conflict of interest between the Company and the Agency in the conduct of the defense of such action or (iii) the Company shall not in fact have employed counsel and other defense experts reasonably satisfactory to the Agency for the assumption of the defense of such action. The Company shall not be liable for any settlement of any action or claim effected without its consent which consent shall not be unreasonably withheld.

(e) The indemnity agreements contained in this Section 6.2 shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the

Agency or the termination of this Lease Agreement and until the expiration of any applicable statute of limitations.

(f) The Company shall, and hereby agrees to, whether or not it carries casualty insurance or is self-insured, be solely responsible for the risk of any casualty, loss or damage from whatever cause to the Project and the Agency shall not, unless arising from the intentional acts or misconduct of the Agency, be responsible or liable therefor.

(g) The Company further agrees to enforce any and all provisions of any lease, sub-lease or similar agreement to which it is a party pertaining in any manner to compliance with environmental law, rule or regulation enacted or adopted by any governmental body and to remediate any environmental contamination in or on the Land or the Building.

Section 6.3 Payment of Expenses by the Company. The Company shall promptly reimburse the Agency for every expense, reasonably required and incurred in reasonable amounts by the Agency, including attorneys' fees and court costs, with respect to this Lease Agreement and any prior written agreement between the parties relating to the transactions contemplated herein.

Section 6.4 Right to Inspect the Project. The Agency and its duly authorized agents shall have the right at all reasonable times and on at least twenty-four hours' notice to the Company to inspect the Project; provided, however, that the Agency shall not have any duty to make any such inspection nor incur any liability or obligation by reason of not making such inspection.

Section 6.5 Agreement to Provide Information. The Company agrees, whenever requested by the Agency, within a reasonable period of time, to provide and certify or cause to be provided and certified such information concerning the Company and any tenant, subtenant or occupant of the Project as the Agency from time to time reasonably considers necessary or appropriate in connection with the transactions contemplated by this Lease Agreement, including, but not limited to, such information as to enable it or the Agency to make any reports required by law or governmental regulation. Without limiting the foregoing, the Company acknowledges and affirms to the Agency that it has read and understands the Agency's annual financial reporting requirements contained in Section 859 and 859-a of the General Municipal Law, the Agency's filing requirement contained in Section 874(9) of the General Municipal Law and Section 875 of the General Municipal Law acknowledges that the Agency cannot comply with said annual reporting requirements and filing requirements without necessary information being provided by the Company and any tenant, subtenant or occupant of the Project and agrees to provide to the Agency (i) not later than February 1 of each year, the name and address of the then current owner of the Project, the number of jobs at the Project, the estimated value of the financial assistance provided by the Agency to the Company during the preceding calendar year and such other information as the Agency may reasonably request which may be necessary for the Agency to comply with its annual financial reporting requirement, and (ii) within ten days of the date that the Agency designates the Company to act as agent of the Agency for purposes of extending a sales tax exemption to the Company, the information required by Section 874(9) of the General Municipal Law. The Company each further acknowledges and affirms to the Agency that it has read and understands the Company'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 the Company as agent of the Agency with respect to the Project.

Section 6.6 Books of Record and Account; Financial Statements. The Company hereby agrees to maintain, and to cause the 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 the Guarantor. Financial statements are to be prepared using straight line depreciation over the useful life of any asset.

Section 6.7 Compliance With Orders, Ordinances, Etc. (a) The Company hereby agrees with the Agency that it will promptly comply, and that it will make all reasonable efforts to cause all tenants, subtenants and occupants of the Project to 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 Project, which now or at any time hereafter may be applicable to the Project or any part thereof, or to any use, manner of use or condition of the Project or any part thereof. The Company shall furnish or cause to be furnished to the Agency reasonable evidence of receipt by the Company of all required and available governmental permits and licenses, if any, related to the Project.

(b) Notwithstanding the provisions of subsection (a) of this Section 6.7, the Company may in good faith actively contest the validity or the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company 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 its independent accountant) have been established with respect thereto. If the Agency shall notify the Company that by failure to comply with such requirement or requirements the Project or any part thereof may be subject to loss or forfeiture, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

Section 6.8 The Company to Maintain Its Legal Existence; Conditions Under Which Exceptions Permitted. The Company hereby agrees that it will maintain, and will cause the Guarantor to maintain, its legal existence, not dissolve or otherwise dispose of all or substantially all of its assets, and not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it without the prior written consent of the Agency. Notwithstanding the foregoing, the following transfers shall be permitted upon written notice but without the prior consent of the Agency: (i) a transfer of the Company's investor member interest in the Company and (ii) removal and Replacement of the Company's managing member(s) pursuant to its Amended and Restated Agreement Operating Agreement.

Section 6.9 Employment Opportunities, Notice of Jobs. The Company hereby covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Project to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Project is located (collectively, the "Referral Agencies"). The Company hereby 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 6.10 Further Assurances. (a) The Company hereby agrees to execute and deliver to the Agency all such documents and instruments and do all such other acts and things as may be necessary or required by the Agency to enable the Agency to exercise and enforce its rights under this Lease 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 Agency to validate, preserve and protect the rights of the Agency under this Lease Agreement.

(b) The Agency agrees to consider granting its consent to, and hereby agrees not to unreasonably withhold its consent from, such documents as may be necessary to permit the Company to obtain financing for the Project.

Section 6.11 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should Default under any of the provisions of this Lease Agreement and the Agency employs attorneys or incurs other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay, to the extent permitted by law, to the Agency the reasonable fees and expenses of such attorneys and such other expenses so incurred. In the event that a court of competent jurisdiction finally determines that a default did not occur then no such fees shall be owed.

Section 6.12 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 6.13 Waiver of Jury Trial. In any action arising hereunder the parties mutually waive trial by jury and agree the venue shall be Suffolk County, New York.

Section 6.14 Obligations of the Company Hereunder Unconditional; No Release of Obligations of Agency. (a) The obligations of the Company to make the payments required hereunder and of the Company 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 shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees that 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 Lease Agreement or (iii) except as provided in Section 9.1 hereof, terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the constructing and equipping of the Project to be used as contemplated in this Lease Agreement or otherwise, any defect in the title, design, operation, merchantability, fitness or condition of all or any portion of the Project or in the suitability of all or any portion of the Project for the Company's purposes or needs, failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of the Agency to perform or observe any agreement, express or implied, or any duty, liability or obligation arising out of or in connection with this Lease Agreement. In the event the Company should fail to make any payment pursuant to this Lease Agreement, the payment in default shall continue as an obligation of the Company until the amount in default shall have been fully paid.

(b) Failure of the Company to comply with this Section 6.14 hereof shall not be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease Agreement, and, in the event the Agency should fail to perform any such agreement, the Company may institute in any court of competent jurisdiction located in Suffolk County, New York, such action against the Agency as the Company may deem necessary to compel performance or recover damages for such non-performance; provided, however, that the Company shall look solely to the Agency's estate and interest in the Project for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other property or assets of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Lease Agreement, the relationship of the Agency and the Company hereunder, the Company's use of the Project or any other liability of the Agency to the Company.

Section 6.15 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties to this Lease Agreement that the Agency is entering into this Lease Agreement in order to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(i) If there shall occur a Recapture Event (as defined below) prior to the completion of the construction and equipping of the Project and the Company thereafter sells all or substantially all of the Project or causes all or substantially all of the Project to be sold within two years of the exercise of such option to terminate this Lease Agreement, the Company shall pay to the Agency, as a return of public benefits conferred by the Agency, all Benefits as defined below.

(ii) If there shall occur a Recapture Event after the earlier of (i) the date on which the Project shall have been substantially completed, or (ii) twenty-four months from the date of execution of this Lease Agreement (the earlier of said dates hereinafter the "Operations Commencement Date"), the Company shall

pay to the Agency as a return of public benefits conferred by the Agency, the amounts set forth in this paragraph (a)(ii) of Section 6.15.

1. one hundred percent (100%) of the Benefits if the Recapture Event occurs within the first six (6) years after the Operations Commencement Date;
2. eighty percent (80%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the Operations Commencement Date;
3. sixty percent (60%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the Operations Commencement Date;
4. forty percent (40%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the Operations Commencement Date;
5. twenty percent (20%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the Operations Commencement Date.

The term "Benefits" shall mean, collectively, all Financial Assistance realized by the Company including, but not limited to, exemption from real property tax, mortgage recording tax, transfer tax, sales or use tax, and filing and recording fees.

The term "Recapture Event" shall mean any of the following events:

1. The Company shall have liquidated its operations and/or assets or shall have ceased all or substantially all of its operations at the Project (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the Town);
2. The Company shall have leased all or any portion of the Project in violation of the limitations imposed by Section 7.1 hereof, without the prior written consent of the Agency;
3. The Company shall have effected substantial changes in the scope and nature of the Company's operations at the Project;
4. The Company shall have transferred all or substantially all of its employees to a location outside of the Town; or
5. The Company shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Project.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Project, (ii) the inability at law of the Company to rebuild, repair, restore or replace the Project after the damage or destruction of the project, in whole or in part, to substantially its condition prior to such event, which inability shall have arisen in good faith through no fault on the part of the Company, or (iii) a matter to which the Agency shall have given its express prior written consent.

6. The submission of any knowingly materially false or knowingly materially misleading information in the Application or proceedings held by the Agency on the Application. This is a continuing obligation of the Company.

7. Failure to comply with the requirements of General Municipal Law Section 875.

(b) The Company covenants and agrees to furnish the Agency with written notification upon any Recapture Event occurring within ten (10) years of the Operations Commencement Date, which notification shall set forth the terms thereof. The provisions of this Section 6.15 shall survive the termination of this Lease Agreement for any reason whatsoever, notwithstanding any provision of this Lease Agreement to the contrary.

(c) In the event any payment owing by the Company under this Section 6.15 shall not be paid on demand by the Company, such payment shall bear interest from the date of such demand at the rate of nine percent (9%) per annum until the Company shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

(d) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Company under this Section 6.15.

(e) The Company covenants and agrees to furnish the Agency with written notification upon any such disposition of the Project or any portion thereof made within ten (10) years of its completion, which notification shall set forth the terms of such sale. The provisions of this Section 6.15 shall survive the termination of this Lease Agreement for any reason whatsoever, notwithstanding any provision of this Lease Agreement to the contrary.

(f) In the event of a conflict between this section 6.15 "Recapture of Agency Benefits" and the General Municipal Law Section 875, Section 875 shall control.

Section 6.16 Sales Tax

The "Sales Tax Agent Authorization Letter" is attached to the Lease as Exhibit B. All notices, filings and requirements of the letter shall be promptly performed by the Company.

ARTICLE VII.

ASSIGNMENT AND RESTRICTION ON LEASE OF PROJECT

Section 7.1 Assignment and Restriction on Lease of Project. (a) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of all the Agency's interest in the Project as an entirety to, any other public benefit limited liability company or political subdivision which has the legal authority to lease the Project, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the entity resulting from such consolidation or surviving such merger or to which the Project shall be transferred. Subject to the foregoing, the Agency agrees that it will not assign or convey its right, title and interest in and to this Lease Agreement, the Project, or any portion thereof, without the prior written consent of the Company.

(b) As soon as reasonably practical, but in no event later than thirty (30) days after the consummation of any such consolidation, merger or transfer of all the Agency's interest in the Project created hereunder, the Agency shall give notice thereof in reasonable detail to the Company. The Agency promptly shall furnish such additional information with respect to any such transaction as the Company reasonably may request.

(c) Except for (i) necessary easements and rights of way granted in the ordinary course of business, and (ii) collateral assignments made in connection with the financing of the Project by the Company, the Company hereby agrees that it will not assign or convey its rights, title and interest in and to this Lease Agreement, the Project, or any portion thereof, without the prior written consent of the Agency.

(d) The Agency and the Company from time to time may release from the provisions of this Lease Agreement and the estate created hereby any part of, or interest in, the Land which is not necessary, desirable or useful for the Project. In such event, the Agency, at the Company's sole cost and expense, shall execute and deliver any and all instruments necessary or appropriate so to release such part of, or interest in, the Land and convey such title thereto or interest therein to the Company or such other Person as the Company may designate.

(e) The Permanent Lender, upon foreclosure of the Permanent Mortgage may continue to operate the Project in the place and stead of the Company under and pursuant to the terms of this Lease upon written notice to the Agency pursuant to this section 7.1(e). At any time during the term of this Lease, the Company or the Permanent Lender may, in writing, request that the Agency accept and approve a substitute entity to assume all Agency obligations under this Lease. Upon such notice the Agency shall approve such substitute entity upon reasonable review of the qualifications of such substitute entity, which approval shall not be unreasonably denied.

ARTICLE VIII.

EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Events of Default Defined. The following shall be an "Event of Default" under this Lease Agreement and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events: Notwithstanding the foregoing, the Company's investor member or Permanent Lender shall have the right, but not the obligation, to cure an Event of Default hereunder, and the Agency agrees to accept such cure as if provided by the Company itself. In the event of an uncured default, upon written notice to the Agency the Company's Investor Member shall have the right to remove and replace the Company's managing member in order to preserve all of the Company's rights under the Lease Agreement.

(i) The failure by the Company to pay or cause to be paid, when due and after the expiration of any applicable grace period, the amounts specified to be paid either pursuant to this Lease Agreement or pursuant to the PILOT Agreement;

(ii) The failure by the Company to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed, other than a payment obligation referenced in subparagraph (i) hereof, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied, given to the Company by the Agency, unless, by reason of the nature of such failure the same cannot be remedied within such thirty (30) day period, in which event the period during which such failure may be remedied shall be extended to such period during which the Company is proceeding with reasonable diligence in remedying such failure;

(iii) The commencement by the Company of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or State bankruptcy, insolvency or other similar law, or the consent by it to the receiver, liquidator, assignee, Managing Member, custodian, sequestrator (or other similar official) of the Company or for all or substantially all of its property, or the making by it of any assignment for the benefit of creditors.

Section 8.2 Remedies on Default. (a) Whenever any Event of Default shall have occurred and be continuing, the following remedies shall be available:

(i) The Agency may terminate this Lease Agreement as provided in Section 9.1(b) hereof;

(ii) The Agency may take any other action at law which may appear necessary or desirable to collect any amounts then due and to enforce the obligations, agreements or covenants of the Company under this Lease Agreement.

Section 8.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to

exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article VIII, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Lease Agreement.

Section 8.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

Section 8.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 8.6 Certificate of No Default. The Company shall deliver to the Agency each year no later than January 15 a certificate signed by the member of the Company stating to the best of Company's knowledge and belief, with any duty of inquiry, that the Company is not in default under this Lease Agreement and no Event of Default exists under this Lease Agreement, the PILOT Agreement, or any other document executed and delivered by the Company in connection with the Project.

ARTICLE IX.

TERMINATION OF LEASE AGREEMENT AND GROUND LEASE

Section 9.1 Termination of Lease Agreement and Ground Lease. (a) The Agency and the Company shall terminate this Lease Agreement and the Ground Lease after receipt by the Agency of a written request of the Company to terminate this Lease Agreement and the Ground Lease and after complying with the provisions of paragraphs (c) and (d) hereof.

(b) (i) The Agency may terminate this Lease Agreement upon the occurrence and continuance of any Event of Default provided in Section 8.1 hereof by delivering a written notice to the Company and the Permanent Lender stating that a specified Event of Default has occurred and is continuing and stating that this Lease Agreement is terminated by the Agency, or (ii) the Agency may terminate this Lease Agreement any time not more than ninety (90) days prior to or at any time following the taxable status date applicable to the tax year during which the Company will be required to make payments in lieu of taxes under the PILOT Agreement equal to 100% of the taxes that would have been owing on the Project but for the Agency's ownership of the Project by delivering a written notice to the Company stating such fact and stating that this Lease Agreement is terminated by the Agency; in each case after complying with the provisions of paragraphs (c) and (d) hereof.

(c) The Agency shall, at the sole expense of the Company, execute, deliver and record or file such instruments, and shall take such other action as may be deemed necessary or appropriate by the Company, to evidence or confirm termination of this Lease Agreement and the Ground Lease which shall otherwise remain in full force and effect and constitute a Lien against the Project, to the extent provided in paragraph (e) of this Section 9.1 with respect to the Lease Agreement, subject to such Liens (i) as existed when the Project (or the Land or Building) was acquired by the Agency, (ii) as were created by the Company or any tenant, subtenant, occupant of the Project, agent of the Company or Person authorized by the Company, (iii) to the creation of which the Company consented to or in the creation of which the Company acquiesced, and (iv) which the Company was required to remove but failed to do so. The Company hereby unconditionally agrees to accept any such instruments, to permit recordation or filing of any such instruments and to execute any instruments, as may be deemed necessary or appropriate by the Agency, to evidence termination of this Lease Agreement, the Ground Lease and of the PILOT Agreement. Failure of the Company to accept or execute any such instruments shall not be a defense or bar to the validity of the termination of this Lease Agreement, the Ground Lease or the PILOT Agreement or the re-conveyance of a leasehold interest in the Project from the Agency to the Company. Delivery of any such instruments, including, without limitation, such Ground Lease from the Agency to the Company, shall not relieve the Company of any of its obligations under either the Lease Agreement or the PILOT Agreement.

(d) If, at the expiration of the Agreement Term, the Company shall not have then satisfied any monetary obligation to the Agency pursuant to either this Lease Agreement or the PILOT Agreement, the Agency, prior to the execution of any instruments referenced in paragraph (c) hereof, may provide to the Company a statement itemizing, in reasonable detail, the amount of any such monetary obligation as the Agency shall in good faith

then know or estimate and the Company shall either pay all or a part of such sum to the Agency or to an escrow agent acceptable to the Company and the Agency. If any such sum shall be paid to an escrow agent as herein provided, the Company and the Agency shall immediately negotiate, arbitrate or litigate to determine the right of the Agency to receive any such sum. Any interest earned on the investment of such sum when held and invested by such escrow agent shall be paid to the Company or the Agency in accordance with the determination of such negotiation, arbitration or judicial proceeding.

(e) Upon termination of this Lease Agreement neither the Agency nor the Company shall have any further obligation incurred during the Agreement Term hereunder except for the obligations of the Company set forth in Sections 3.1(b), 3.3(a), (e) and (f), 4.3(a), 6.2, 6.3, 6.11, 6.13, 6.14, 6.15, 8.4, 9.1 and 10.7 hereof which shall survive such termination and shall continue in full force and effect until the expiration of any applicable statute of limitations.

(f) Any request of the Company to terminate this Lease Agreement as provided in paragraph (a) hereunder shall state the date on which this Lease Agreement shall terminate, which date shall not be less than thirty (30) days nor more than ninety (90) days after the date on which the Agency receives such request. Any direction of the Agency to terminate this Lease Agreement, as provided in paragraph (b) hereunder, shall state the date on which this Lease Agreement shall terminate, which date shall not be less than fifteen (15) days nor more than forty-five (45) days after the date on which the Company receives said direction.

ARTICLE X.

MISCELLANEOUS

Section 10.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by registered mail, postage prepaid, addressed as follows:

To the Agency:	Town of Riverhead Industrial Development Agency Town of Riverhead Town Hall 200 Howell Avenue Riverhead, New York 11901 <u>Attention:</u> Executive Director
To the Company:	Peconic Crossing, LLC 1000 University Avenue, Suite 500 Rochester, NY 14607
With Copy To:	Cannon Heyman & Weiss, LLP 726 Exchange Street, Suite 500 Buffalo, NY 14210
With Copy To:	Red Stone -- Fund 42 Limited Partnership c/o Red Stone Equity Partners, LLC 200 Public Square, Suite 2050 Cleveland, Ohio 44114 <u>Attention:</u> Executive Director/General Counsel
With Copy To:	Nixon Peabody LLP 100 Summer Street Boston, Massachusetts 02110 Attention: Roger W. Holmes, Esq. Fax No. (866)947-1881

With Copy To: The Community Development Trust, LP
 1350 Broadway, Suite 700
 New York, New York 10018

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

Section 10.2 Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the Agency and the Company and their respective successors and assigns in accordance with its terms.

Section 10.3 Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.4 Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.5 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State. Venue is agreed to be vested in the Supreme Court of the State of New York at Suffolk County.

Section 10.6 Recording and Filing. This Lease Agreement, or a memorandum thereof, shall be recorded in the Office of the Clerk, Suffolk County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation thereof.

Upon the reasonable request of either party to this Lease Agreement, the other party will do, execute, acknowledge and delivery or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Company as is reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Lease Agreement and any rights of either party hereunder.


Section 10.7 Liability Limited. It is expressly agreed, anything herein to the contrary notwithstanding, that each and all of obligations of the Agency hereunder are non recourse obligations of the Agency payable solely out of the revenues and rights of the Agency under this Lease Agreement. No recourse shall be had for the payment of any amount hereunder or for any claim based thereon or upon any obligation, covenant or agreement contained in this Lease Agreement against any past, present or future officer, member or director of the Agency, or any incorporator, member, officer, director or Managing Member of any successor limited liability company, as such, either directly or through the Agency or any successor limited liability company, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such incorporator, member, officer, director or Managing Member as such is hereby expressly waived and released as a condition of and consideration for the execution of this Lease Agreement.

Section 10.8 Table of Contents and Section Headings not Controlling. The Table of Contents and the Headings of the several Sections in this Lease Agreement have been prepared for the convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Lease Agreement.

Section 10.9 Estoppel Certificates. The Agency, within 10 days after a request in writing by the Company, shall furnish a written statement, duly acknowledged, that this Lease Agreement is in full force and effect and that there are no defaults thereunder by the Company or if there are any defaults, such statement shall specify the defaults the Agency claims to exist.

IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective corporate names as of the date first set forth above.

TOWN OF RIVERHEAD INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Thomas Cruso
Chairperson

PECONIC CROSSING, LLC,
a New York limited liability company

By: Peconic Crossing Managing Member, LLC,
its Managing Member

By: Conifer Realty, LLC,
its Sole Member

By: _____
Name: Cheryl Stulpin
Title: Senior Vice President

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

On the 13th day of December in the year 2016 before me, the undersigned, a notary public in and for said State, personally appeared Thomas Cruso 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

RICHARD A. EHLERS
Notary Public, State of New York
Suffolk County No. 02EH4738288 / 8
Commission Expires February 28, 20__

IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective corporate names as of the date first set forth above.

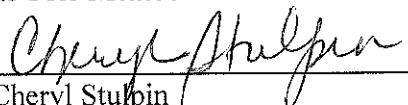
TOWN OF RIVERHEAD INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Thomas Cruso
Chairperson

PECONIC CROSSING, LLC,
a New York limited liability company

By: Peconic Crossing Managing Member, LLC,
its Co-Managing Member

By: Conifer Realty, LLC,
its Sole Member

By: 
Name: Cheryl Stulpin
Title: Senior Vice President

STATE OF NEW YORK)

COUNTY OF monroe)

ss.:

On the 12th day of December in the year 2016 before me, the undersigned, a notary public in and for said State, personally appeared Cheryl Stulpin personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

PATRICIA E. LEONE
Notary Public - State Of New York
No. 01LE6346686
Qualified in Monroe County
My Commission Expires August 22, 2020

EXHIBIT A

Description of the Land

Exhibit A

ALL THAT certain plot, piece or parcel of land, lying and being at Riverhead, Town of Riverhead, County of Suffolk and State of New York, being lot 2 on the subdivision map of "The Bank of New York" and filed in the Suffolk County Clerk's Office on March 17, 1999 as Map No. 10251, said parcel being more particularly bounded and described as follows:

BEGINNING at a point on the southerly side of West Main Street (N.Y.S. Rte. 25) said point being South 86 degrees 43 minutes 01 seconds West 98.97 feet as measured along the southerly side of West Main Street (N.Y.S. Rte. 25) from the intersection of the southerly side of West Main Street (N.Y.S. Rte. 25) with the westerly side of Peconic Avenue;

THENCE from said point of beginning, along lot 1 of the aforementioned subdivision map the following eight (8) courses and distances;

1. South 4 degrees 06 minutes 08 seconds East, a distance of 12.57 feet to a point, thence
2. North 88 degrees 38 minutes 05 seconds East, a distance of 7.52 feet to a point, thence
3. South 13 degrees 37 minutes 03 seconds West, a distance of 17.27 feet to a point, thence
4. South 4 degrees 06 minutes 08 seconds East, a distance of 110.51 feet to a point of curvature, thence
5. Along the arc of a curve bearing to the right having a radius of 6.16 feet, an arc distance of 16.20 feet to a point of tangency, thence
6. North 33 degrees 26 minutes 32 seconds West, a distance of 17.53 feet to a point, thence
7. South 86 degrees 28 minutes 04 seconds West, a distance of 39.21 feet to a point, thence
8. South 3 degrees 31 minutes 56 seconds East, a distance of 86.97 feet to a wood bulkhead and the shoreline of the Peconic River;

THENCE westerly along a wood bulkhead and the shoreline of the Peconic the following five (5) courses and distances:

1. North 76 degrees 39 minutes 26 seconds West, a distance of 2.27 feet to a point, thence
2. North 1 degree 12 minutes 19 seconds West, a distance of 1.04 feet to a point, thence
3. North 59 degrees 37 minutes 21 seconds West, a distance of 87.10 feet to a point, thence
4. North 32 degrees 54 minutes 48 seconds East, a distance of 0.73 feet to a point, thence
5. North 3 degrees 56 minutes 33 seconds West, a distance of 2.07 feet to a point on the shoreline of the Peconic River;

THENCE westerly along the shoreline of the Peconic River South 60 degrees 25 minutes 04 seconds West, a distance of 0.98 feet to the lands of the Town of Riverhead;

THENCE northerly along the lands of the Town of Riverhead and land now or formerly of Antonio Valeri, North 4 degrees 11 minutes 49 seconds West, a distance of 172.48 feet to the southerly side of West Main Street (N.Y.S. Rte. 25);

THENCE easterly along the southerly side of West Main Street (N.Y.S. Rte. 25) the following two (2) courses and distances;

1. South 71 degrees 55 minutes 19 seconds East, a distance of 26.45 feet to a point, thence
2. North 86 degrees 43 minutes 01 seconds East, a distance of 108.09 feet to lot 1 of the
aforementioned subdivision map and the point or place of BEGINNING.

TOGETHER WITH an easement for ingress and egress to and from Peconic Avenue as described in Declaration of Restrictive Covenant and Grant of Easement made by The Bank of New York, dated April 10, 1998 and recorded March 17, 1999 in Liber 11951 at Page 686 and Agreement Confirming and Clarifying Access Agreement dated as of November 9, 2016 by and between JPMorgan Chase Bank, N.A. and Peconic Crossing, LLC recorded November 14, 2016 in Liber 12887 of Deeds, page 415.

EXHIBIT B

Sales Tax Agent Authorization Letter

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: December 15, 2018

ELIGIBLE LOCATION:

11 West Main Street, Riverhead, New York

December 15, 2016

TO WHOM IT MAY CONCERN

Re: Town of Riverhead Industrial Development Agency
(Peconic Crossing, LLC)

Ladies and Gentlemen:

The Town of Riverhead Industrial Development Agency (the "**Agency**"), by this notice, hereby advises you as follows:

1. Pursuant to a certain Lease Agreement, dated as of December 15, 2016 (the "Lease Agreement"), between the Agency and Peconic Crossing, LLC, a limited liability company organized and existing under the laws of the State of New York (the "**Company**"), the Agency has authorized the Company to act as its agent in connection with the Company Facility described therein located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Lease Agreement.

2. Upon the Company's request, the Agency has appointed **Conifer-LeChase Construction, LLC** (the "**Agent**"), pursuant to this Sales Tax Agent Authorization Letter (the "**Sales Tax Agent Authorization Letter**") to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Lease Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Article 28 of the Tax Law and GML 875 with respect to the scope of Sales Tax Exemption provided under the Lease Agreement and hereunder.**

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("**Form ST-60**") to evidence that the Agency has appointed the Agent as its agent (the form of which is to be completed by Agency and the Company). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the Facility and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the

The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

**TOWN OF RIVERHEAD
INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name:
Title:

ACCEPTED AND AGREED TO BY:

Pecanic Crossing, LLC

By: Pecanic Crossing Managing Member, LLC

By: Canifer Realty, LLC

By:



Name: Cheryl Stulpin

Title: Senior Vice President

ACCEPTED AND AGREED TO BY:

By:

Name:
Title:

The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

**TOWN OF RIVERHEAD
INDUSTRIAL
DEVELOPMENT AGENCY**

By: 

Name:

Title:

ACCEPTED AND AGREED TO BY:

Conifer LeChase Construction, LLC

By: 

Name: Brian J. Russo

Title: Vice President

ACCEPTED AND AGREED TO BY:

By: _____

Name:

Title: