

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

GOSHEN DEVELOPER JV, LLC

AND

ROYAL WINE CORPORATION

LEASEBACK AGREEMENT

DATED AS OF FEBRUARY 2, 2023

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LEASEBACK AGREEMENT

THIS LEASEBACK AGREEMENT, dated as of February 2, 2023 (the "**Leaseback Agreement**"), is among the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation existing under the laws of the State of New York, with offices at the Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553. (the "**Agency**"), **GOSHEN DEVELOPER JV, LLC**, a New York limited liability company, with offices at 133 Pearl Street, Boston, Massachusetts 02110 ("**Goshen**"), **ROYAL WINE CORPORATION**, a New York corporation, with offices at 63 Lefante Drive, Bayonne, New Jersey, 07002 ("**Royal**" and together with Goshen, collectively, the "**Company**").

WITNESSETH:

WHEREAS, the Agency is authorized and empowered by Title I of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 390 of the Laws of 1972 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act, among other things, to: (i) make contracts and leases, and to execute such documents as necessary or convenient, with a public or private person, firm, partnership, or corporation; (ii) to acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects (as defined in the Act); and (iii) to sell, lease and otherwise dispose of any such property; and

WHEREAS, the Agency, by resolution adopted on August 17, 2022, agreed, at the request of the Company to undertake a multi-faceted project the first phase of which consists of the following (provided, however, that each of the following is expressly applicable solely to Phase One) (the "**Project**"): (A)(i) the acquisition of a leasehold interest in approximately 82 acres of vacant land located at 2500 State Route 17M, Goshen, New York (Tax Map No. 117-1-1.222) (the "**Land**") (ii) the construction of an approximately 626,862 base building to house a production/manufacturing facility to also include a visitors' center and retail sales center for the Company's juice and wine production as well as associated site improvements including, but not limited to, parking, infrastructure, mechanical systems, special epoxy flooring, cooling systems, interior concrete tank pads and upgraded utilities as well as exterior site improvements, (collectively, the "**Facility**"); and (iii) the acquisition and installation in and on the Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance to Phase One in the form of exemptions from State and local sales and use tax, mortgage recording tax and real property

tax (collectively, the "*Financial Assistance*"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a leaseback agreement; and

WHEREAS, for avoidance of doubt: (i) this Leaseback Agreement applies only to Phase One; and (ii) the terms "Project", "Equipment", "Project Facility" and "Financial Assistance", each mean as their definition applies to Phase One and not Phase Two or Phase Three, and all other definitions and references in this Leaseback Agreement, unless specifically noted, shall similarly be restricted to Phase One and exclude Phase Two and Phase Three; and

WHEREAS, the Agency proposes to assist the Company's acquisition, construction and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company and/or its designee as its agent with respect to undertaking and completing the Project Facility; (2) accepting a leasehold interest in the Land and the Facility from the Company pursuant to a Lease Agreement and acquiring an interest in the Equipment pursuant to a bill of sale from the Company; and (3) subleasing the Project Facility to the Company pursuant to this Leaseback Agreement; and

WHEREAS, Goshen is the current fee owner of the Land and Facility; Royal will operate the Project Facility and each will participate in the completion of the Project. Royal Wine Corporation leases the Land from Goshen Developer JV, LLC pursuant to a lease agreement dated April 29, 2022, as amended by First Amendment of Lease dated as of the date hereof, with a term of 16 years (the "*Operating Lease*") and upon construction will be the operator of the Project Facility. The Company has leased the Land and the Facility to the Agency pursuant to the Lease Agreement dated as of February 2, 2023 (the "*Lease Agreement*"); and

WHEREAS, effective upon execution of this Leaseback Agreement, the Operating Lease shall be deemed a sublease under this Leaseback Agreement;

WHEREAS, in order to induce the Company to develop the Project Facility, the Agency is willing to take a leasehold interest in the Land, the Facility, the Equipment and personal property constituting the Facility and lease said Project Facility back to the Company pursuant to the terms and conditions contained herein; and

WHEREAS, all things necessary to constitute this Leaseback Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution, and delivery of this Leaseback Agreement have, in all respects, been duly authorized.

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
RECITALS AND DEFINITIONS**

1.1 RECITALS.

The foregoing recitals are incorporated herein by reference as if fully set forth hereinbelow.

1.2 DEFINITIONS.

For all purposes of this Leaseback Agreement and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions attached hereto as **Exhibit "C"** except as otherwise expressly defined herein or the context hereof otherwise requires.

1.3 INTERPRETATION.

In this Leaseback Agreement, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "herein," "hereunder," and any similar terms as used in this Leaseback Agreement refer to this Leaseback Agreement; the term "heretofore" shall mean before and the term "hereafter" shall mean after the date of this Leaseback Agreement;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Leaseback Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Leaseback Agreement.

(d) The Agency will take a leasehold interest in the Project Facility, lease the Project Facility to the Company pursuant to this Leaseback Agreement and designate the Company as its agent for purposes of completing the Project, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and Orange County and improving their standard of living.

**ARTICLE II
REPRESENTATIONS AND COVENANTS**

2.1 REPRESENTATIONS OF THE AGENCY.

The Agency makes the following representations to the Company as the basis for the undertakings on its part herein contained:

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

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

(c) The Agency will take a leasehold interest in the Project Facility, lease the Project Facility to the Company pursuant to this Leaseback Agreement and designate the Company as its agent for purposes of completing the Project, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and County of Orange, New York and improving their standard of living.

(d) The Agency has been induced to enter this Leaseback Agreement by the undertaking of the Company to acquire, construct, equip, complete and maintain the Project Facility and related investments and job creation in Orange County, New York.

(e) This Leaseback Agreement and the other Agency Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Agency, enforceable in accordance with their respective terms.

2.2 REPRESENTATIONS AND COVENANTS OF THE COMPANY.

Goshen and Royal, each as noted or jointly as the Company, acknowledges, represents, warrants and covenants to the Agency as follows:

(a) Goshen is a limited liability company duly organized, validly existing and in good standing under the laws of New York, has the power to enter into this Leaseback Agreement and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Leaseback Agreement and the other Company Documents.

(b) Royal is a corporation duly organized, validly existing and in good standing under the laws of New York, has the power to enter into this Leaseback Agreement and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Leaseback Agreement and the other Company Documents.

(c) This Leaseback Agreement and the other Company Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(d) Goshen is the present fee owner of the Land and Facility and shall remain the fee owner of the Land and Facility for the term of this Leaseback Agreement unless otherwise consented to in writing by the Agency. Royal will operate the Project Facility and each will participate in the completion of the Project. Royal leases the Project Facility from Goshen pursuant to the Operating Lease.

(e) The Company shall complete the Project Facility on or before the Completion Date.

(f) This Project is not primarily used for retail as set forth in the Act.

(g) For the duration of the term hereof, the Company shall ensure the Operating Lease remains in full force and effect, the term of which shall be extended for at least as long as the term of this Leaseback Agreement, and shall operate the Project Facility as the Project Facility for the purposes presented herein and in accordance with the Application and Plans and Specifications presented to the Agency.

(h) Neither the execution and delivery of this Leaseback Agreement and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, Goshen Developer JV, LLC's Articles of Organization and/or Operating Agreement;

(2) Result in a breach of, or conflict with any term or provision in, Royal Wine Corporation's Certificate of Formation and/or By-Laws and/or Shareholder Agreement;

(3) Require consent under (which has not been heretofore received) or result in a breach of or default under the Operating Lease, any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty or other agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected; or

(4) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company or violate any Applicable Laws. The Company shall operate the Facility in accordance with this Leaseback Agreement and as a qualified "project" under the Act.

(i) The providing of Financial Assistance to the Project by the Agency:

(1) Has been an important consideration in the Company's decision to acquire, construct, equip and complete the Project Facility in Orange County;

(2) Will not result in the removal of an industrial or manufacturing plant or commercial activity of any Project Facility 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 any user, occupant, or proposed user or occupant of the Project Facility located within the State, except as permitted by the Act; and

(3) Will preserve or increase the overall number of permanent, private sector jobs in the State and Orange County.

(j) So long as the Agency holds a leasehold interest in the Project Facility, the Project Facility is and will continue to be a "project" (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency's counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility not to constitute a "project" (as such quoted term is defined in the Act).

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

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

(m) The Company acknowledges the Agency's Labor Policy and the Company's obligation to comply with the Labor Policy with respect to the Project. The Company further understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services from: (i) business enterprises located in Orange County; (ii) certified minority and or women-owned business enterprises; and (iii) business enterprises that employ residents of Orange County. The Company further understands and acknowledges that consideration will be given by the Agency to the Company's efforts to comply, and compliance, with this objective at any time an extension of benefits is sought or involvement by the Agency with the Project is requested by the Company.

(n) The Company is ready to proceed with construction of the Project Facility.

(o) The acquisition, construction, equipping and completion of the Project Facility will promote employment opportunities and help prevent economic deterioration in Orange County by the creation and/or preservation of both full and part-time jobs.

(p) The Company has all currently necessary permits, licenses, and governmental approvals and consents (collectively, "Approvals") for the construction and equipping of the Project Facility and has or will have such Approvals timely for each phase of, and throughout the, construction and equipping of the Project Facility.

(q) The Company will not sublease the whole or any portion of the Project Facility for an unlawful purpose.

(r) No part of the Project Facility will be located outside of Orange County.

(s) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the Company) under and pursuant to this Leaseback Agreement, the Lease Agreement and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.2.

(t) The Company agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project is located. The Company further agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, it will first consider persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the Department of Labor for such new employment opportunities.

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

(v) As a condition precedent to receiving or benefiting from any State sales and use tax exemption benefits, the Company acknowledges and agrees to all terms and conditions of Section 875(3) of the Act. Section 875(3) of the Act is herein incorporated by reference. As part of such conditions precedent:

(1) The Company shall not take any State or local Sales and Use Tax exemptions to which it is not entitled, which are in excess of the amount authorized by the Agency in reliance on the Company's Application or which are for property or services not authorized.

(2) The Company shall comply with all material terms and conditions to use property or services in the manner required by the Agency Documents.

(3) The Company shall cooperate with the Agency in the Agency's efforts to recover, recapture, receive or otherwise obtain from the Company any Sales Tax Recapture Amount (as defined herein) and shall, upon the Agency's request, immediately pay to the Agency any Sales Tax Recapture Amount, together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise. The Company acknowledges and agrees that the failure of the Company to promptly pay any Sales Tax Recapture Amount to the Agency will be grounds for the State Commissioner of Taxation and Finance to collect sales and use taxes from the Company under Article 28 of the State Tax Law, together with interest and penalties.

(w) The amount of State and local sales and use tax benefits comprising the Financial Assistance approved by the Agency shall not exceed \$3,813,793.75. The Company shall not request, obtain nor claim State and local sales and use tax exemptions in excess of this amount.

(x) The Company hereby acknowledges that any exemption from mortgage recording tax authorized by the Agency as part of the Financial Assistance is limited by Section 874 of the Act. The amount of exemption from mortgage recording tax is estimated to be \$517,000.

(y) The Company hereby acknowledges, agrees and covenants to timely pay all costs of construction, equipping and completing the Project, and its obligations hereunder including, but not limited to, Article 4 hereof.

(z) In the event of a default hereunder, the Company shall cooperate with the Agency in the Agency's efforts to recover, recapture, receive or otherwise obtain from the Company any Recapture Amount and shall, upon the Agency's request, immediately pay to the Agency any Sales Tax Recapture Amount, together with any interest or penalties thereon imposed by the Agency or by operation of law or by judicial order or otherwise.

(aa) The Company hereby represents, warrants and covenants that no properties owned or leased by the Company in Orange County are currently the subject of any violations, including but not limited to zoning and/or permitting, by any governmental agency nor are any such properties delinquent in any taxes or payments in lieu thereof to any municipality. The Company further represents, warrants and covenants that all Company owned or leased properties are in compliance with, all laws, ordinances, rules, regulations, and requirements of all Governmental Authorities and that there is no pending or threatened action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Leaseback Agreement.

(bb) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminant, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent. The Company hereby agrees that at all times during which it is operating the Project, and whether or not this Leaseback Agreement is in effect, to comply with, and ensure compliance by its subtenants or sublessees with, the provisions of the Environmental Compliance and Indemnification Agreement, dated as of the date hereof (the "*Environmental Compliance and Indemnification Agreement*").

(cc) The Company hereby acknowledges and agrees that the Financial Assistance being provided by the Agency under the Company Documents constitutes "public funds" unless otherwise excluded under Section 224-a(3) of the New York Labor Law, and by executing this Leaseback Agreement, (i) confirms that it has received notice from the Agency pursuant to Section 224-a(8)(d) of the New York Labor Law and (ii) acknowledges its obligations pursuant to Section 224-a(8)(a) of the New York Labor Law. Other than the Agency Financial Assistance estimates provided herein and disclosed to the Company, the Agency makes no representations or covenants with respect to the total sources of "public funds" received by the Company in connection with the Project.

2.3 PUBLIC AUTHORITIES LAW REPRESENTATIONS.

The parties hereto acknowledge that the Facility and the interest therein conveyed to the Agency under the Lease Agreement, dated as of the date hereof, by and between the Company and the Agency (the "*Lease Agreement*") and conveyed by the Agency back to the Company pursuant to the terms of this Leaseback Agreement are not "property" as defined in Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the Company's obligations to the Agency under the Tax Agreement (as herein defined), the Environmental Compliance and Indemnification Agreement and this Leaseback Agreement, including (i) the Company's obligation to acquire, construct, equip and maintain the

Facility on behalf of the Agency and (ii) the performance by the Company of the Unassigned Rights.

ARTICLE III CONVEYANCE OF LEASEHOLD INTEREST IN PROJECT FACILITY

3.1 AGREEMENT TO CONVEY LEASEHOLD INTEREST TO COMPANY.

The Company has conveyed to the Agency, pursuant to the Lease Agreement, a leasehold interest in the Land and Facility, as more fully described in **Exhibit "A"** attached hereto, any improvements now or hereafter constructed and installed thereon, subject to Permitted Encumbrances and all of its right, title and interest in the Equipment via a Bill of Sale, as more fully described in **Exhibit "B"** attached hereto. Under this Leaseback Agreement, the Agency hereby does convey, demise, or will cause to be conveyed or demised, to the Company, a subleasehold interest in the Project Facility subject to Permitted Encumbrances and exclusive of the Agency's Unassigned Rights.

3.2 USE OF PROJECT FACILITY.

Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in accordance with the terms of this Leaseback Agreement and for the purposes described in the third WHEREAS clause of this Leaseback Agreement; provided that such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act.

ARTICLE IV CONSTRUCTION AND EQUIPPING OF THE PROJECT

4.1 CONSTRUCTION AND EQUIPPING OF THE PROJECT FACILITY.

(a) The Company shall promptly construct, equip and complete the Project Facility, all in accordance with the Plans and Specifications on or before the Completion Date. Unless a written waiver is first obtained from the Agency, in accordance with the Agency's Labor Policy, the Company and its Additional Agents (as defined herein), shall utilize local labor, contractors and suppliers for the construction, equipping and completion of the Project Facility. For purposes of this Leaseback Agreement, and in particular this Section 4.1, the term "*local*" shall mean Orange, Ulster, Sullivan, Dutchess, Putnam, Rockland and Westchester Counties (collectively, the "*Local Labor Area*"). Failure to comply with the local labor requirements of this Section 4.1 (collectively, "*Local Labor Requirements*") may result in the revocation or recapture of all benefits provided/approved to the Project by the Agency. Failure to comply with any portion of Article 4 may result in the loss of all benefits provided or for the benefit of the Project in the Agency's sole discretion. In furtherance thereof, the Company shall execute the Labor Policy Certificate. A complete and fully executed copy of which is attached hereto as **Exhibit "D"**.

(b) The Agency hereby confirms the appointment of the Company as its true and lawful agent to perform the following in compliance with the terms, purposes, and intent of

this Leaseback Agreement, the Act and the other Company Documents, and the Company hereby accepts such appointment:

(1) To construct, equip and complete the Project Facility and to acquire the Equipment in accordance with the terms hereof;

(2) To make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions with any other Persons and, in general, to do all things which may be requisite or proper, all for the construction, equipping and completion of the Project Facility with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the Agency shall have no liability for the payment of any sums due thereunder;

(3) To pay all fees, costs and expenses incurred in the construction, equipping and completion of the Project Facility from funds made available therefore from the funds of the Company; and

(4) To ask, demand, sue for, levy, recover, and receive all such sums of money, debts, dues, and other demands whatsoever which may be due, owing, and payable to the Agency under the terms of any contract, order, receipt, or writing in connection with the construction, equipping and completion of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond, or other performance security.

(c) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1, provided, however, that the Agency shall have no liability for the payment of any sums due thereunder.

(d) The Company has given, or will give or cause to be given, all notices and have complied, or will comply or cause compliance with, all laws, ordinances, rules, regulations, and requirements of all Governmental Authorities applying to or affecting the conduct of work on the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility), and the Company will defend, indemnify, and save the Agency and its officers, members, agents, servants, and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(e) The Company understands and agrees that it is the preference of the Agency that the Company provide opportunities for the purchase of goods and services relative to the Project from: (i) business enterprises located in Orange County; (ii) certified minority and/or women-owned business enterprises; and (iii) business enterprises that employ residents of Orange County. Consideration will be given by the Agency to the Company's efforts to comply, and compliance with, this objective at any time an extension of benefits is requested, or further involvement by the Agency with the Project, is requested by the Company.

4.2 COMPLETION OF PROJECT FACILITY.

(a) The Company shall proceed with due diligence to acquire, construct, equip and complete the Project Facility on or before the Completion Date in accordance with the Plans and Specifications. Completion of the acquisition, construction and equipping of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of the Company and approved by the Agency, on or before the Completion Date, stating:

- (1) The date of such completion;
- (2) That all labor, services, materials, and supplies used therefor and all costs and expenses in connection therewith have been paid;
- (3) That the Company has good and valid title to all Property constituting the Project Facility subject to the interest of the Agency therein and to this Leaseback Agreement, the Lease Agreement and the Bill of Sale; and
- (4) That the Project Facility is ready for occupancy, use and operation for its intended purposes.

(b) Notwithstanding the foregoing, such certificate may state that (1) it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being; (2) it is given only for the purposes of this Section 4.2; and (3) no Person other than the Agency may benefit therefrom.

(c) Such certificate shall be accompanied by (1) copy of a certificate of occupancy, if required, and any and all permissions, licenses, or consents required of Governmental Authorities for the occupancy, operation, and use of the Project Facility for its intended purposes; and (2) Lien releases from the Company's contractor and any subcontractors under a contract with a price in excess of \$100,000.

4.3 COSTS OF COMPLETION PAID BY COMPANY.

(a) The Company agrees to complete the Project on or before the Completion Date and in accordance with the terms hereof and to pay in full all costs of the construction, equipping and completion of the Project Facility.

(b) No payment by the Company pursuant to this Section 4.3 shall entitle the Company to any diminution or abatement of any amounts payable by the Company under this Leaseback Agreement.

4.4 REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.

In the event of a default by any materialman or Additional Agent (as defined herein) under any contract made by them in connection with construction, equipping and completion of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company shall proceed,

either separately or in conjunction with others, to exhaust the remedies of the Company against the materialman or Additional Agent so in default and against each surety for the performance of such contract. The Company may prosecute or defend any action or proceeding or take any other action involving any such materialman or Additional Agent or surety which the Company deems reasonably necessary. The Company shall advise the Agency of any actions or proceedings taken hereunder. No such suit shall relieve the Company of any of its obligations under this Leaseback Agreement and the other Company Documents.

4.5 COOPERATION IN EXECUTION OF ADDITIONAL MORTGAGES AND MODIFICATIONS OF MORTGAGES.

The Agency agrees, upon written request of an Authorized Representative of the Company and subject to the provisions of the Act, to use its commercially reasonable efforts to execute and deliver one or more Mortgages and such additional instruments and documents may be requested by the Company and approved by counsel to the Agency and as may be required in connection with the Company's financing or refinancing for the costs of construction and equipping of the Project Facility, provided that:

(a) No Event of Default under this Leaseback Agreement, the Lease Agreement, the Tax Agreement, the Project Agreement or the Mortgage shall have occurred and be continuing; and

(b) The execution and delivery of such documents by the Agency (i) is permitted by law in effect at the time; and (ii) will serve the public purposes of the Act; and

(c) The Company will be responsible for and shall pay, from the proceeds thereof or otherwise, the Agency's fee and the costs and expenses of the Agency incidental to such additional financing, refinancing or modification thereof, including without limitation the reasonable attorneys' fees of the Agency; and

(d) The documents to be signed by the Agency shall contain the provisions set forth in Sections 8.2 and 11.11 hereof, and shall not impose any duties or obligations upon the Agency except as may be acceptable to the Agency.

(e) Any and all Mortgages, shall, by its terms, be subordinate to the Agency's right to receive payments under the Tax Agreement.

ARTICLE V AGREEMENT TO LEASE PROJECT FACILITY; RENTAL PAYMENTS

5.1 AGREEMENT TO LEASE PROJECT FACILITY.

In consideration of the Company's covenant herein to construct, equip and complete the Project Facility, to make rental payments, and the other covenants of the Company contained herein, including the covenant to make additional rent and other payments required hereby, the Agency hereby agrees to lease to the Company, for the Company's quiet and peaceable possession and enjoyment and the Company hereby agrees to lease from the Agency, sole and

exclusive possession of the Project Facility for and during the term provided herein and upon and subject to the terms and conditions herein set forth and subject to Permitted Encumbrances.

The Agency's acceptance of the leasehold interest in and to the Land and Facility pursuant to the Lease Agreement, and its acquisition of an interest in the Equipment pursuant to the Bill of Sale, and the holding of said interests were effected and performed solely at the request of the Company pursuant to the requirements of the Act. The Agency hereby transfers and conveys all of its beneficial and equitable interests, if any, in the Project Facility to the Company, except for its Unassigned Rights. As a result, the parties hereby acknowledge and agree that subject to the terms and conditions of this Leaseback Agreement, the Company has all of the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), and will have all the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), such that the Company, and not the Agency, shall have an:

- (a) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Project Facility due to obsolescence or exhaustion, and shall bear the risk of loss if the Project Facility is destroyed or damaged;
- (b) unconditional obligation to keep the Project Facility in good condition and repair;
- (c) unconditional and exclusive right to the possession of the Project Facility, and shall have sole control of and responsibility for the Project Facility;
- (d) unconditional obligation to maintain insurance coverage on the Project Facility as may be required by the Company, the Agency and the Mortgagee with respect to the Project;
- (e) unconditional obligation to pay all taxes levied on, or payments in lieu thereof, and assessments made with respect to, the Project Facility;
- (f) subject to the Unassigned Rights, unconditional and exclusive right to receive rental and any other income and other benefits of the Project Facility and from the operation of the Project;
- (g) unconditional obligation to pay for all of the capital investment in the Project Facility;
- (h) unconditional obligation to bear all expenses and burdens of the Project Facility and to pay for all maintenance and operating costs in connection with the Project Facility; and
- (i) unconditional and exclusive right to include all income earned from the operation of the Project Facility and claim all deductions and credits generated with respect to the Project Facility on its annual federal, state and local tax returns.

5.2 TERM OF LEASE; EARLY TERMINATION; SURVIVAL.

(a) The term of this Leaseback Agreement shall commence on the date hereof and continue in full force and effect until 11:59 p.m. on **December 31, 2039** (the "**Term**"), unless early terminated as provided herein. Notwithstanding anything herein to the contrary, the obligations of the Company to report hereunder and the Agency's rights to recapture the Recapture Amount shall continue during the Term of this Leaseback Agreement, but in the event of an early termination as provided for herein, the Company's obligation to report and the Agency's right to recapture shall not be less than the Reporting Period (as defined herein). As a condition to the termination of this Leaseback Agreement, the Company shall be obligated to execute and deliver the certification attached hereto at **Schedule "1"** regarding the Company's ongoing obligations.

(b) The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations of the Leaseback Agreement, the Lease Agreement, preparing a bill of sale together with any other documents therewith and to take such other and further actions reasonably necessary to confirm the termination date of the Agency's interest in the Project.

(c) The Company shall have the option, at any time during the Term of this Leaseback Agreement, to terminate this Leaseback Agreement. In the event that the Company shall exercise its option to terminate this Leaseback Agreement pursuant to this Section 5.2(c), the Company shall file with the Agency a certificate stating the Company's intention to do so pursuant to this Section 5.2(c) and to comply with the requirements set forth in Section 5.2(d) hereof.

(d) As a condition to the effectiveness of the Company's exercise of its right to early termination, the following payments shall be made:

(1) **To the Agency:** an amount certified by the Agency as sufficient to pay all unpaid fees and expenses of the Agency incurred under this Leaseback Agreement, the Lease Agreement and the Tax Agreement (including, but not limited to those in connection with the early termination of this Leaseback Agreement); and

(2) **To the Appropriate Person:** an amount sufficient to pay all reasonable fees, expenses or charges, if any, then due and payable under this Leaseback Agreement and the other Agency Documents.

(e) The certificate required to be filed pursuant to Section 5.2(c), setting forth the provision thereof permitting early termination of this Leaseback Agreement shall also specify the date upon which the payments pursuant to subdivision (d) of this Section 5.2 shall be made, which date shall not be less than thirty (30) nor more than sixty (60) days from the date such certificate is filed with the Agency. The effectiveness of the termination shall require full payment hereunder and compliance with the terms of this Article V.

(f) Contemporaneously with the termination of this Leaseback Agreement in accordance with Sections 5.1 or 5.2 hereof, the Agency shall transfer, and the Company shall accept, all of the Agency's right, title and interest in the Project Facility, including the

Equipment, for a purchase price of One Dollar (\$1.00) plus the payment of all other sums due hereunder and all legal fees and costs associated therewith. Contemporaneously with the termination of this Leaseback Agreement, the Lease Agreement and the Tax Agreement shall terminate; however, the Project Agreement shall survive in accordance with its terms.

(g) The Agency shall, upon payment by the Company of the amounts pursuant hereto and to Sections 5.2(d) above and Section 5.3, deliver to the Company all documents furnished to the Agency by the Company, or prepared by the Agency at the sole expense of the Company, and reasonably necessary to evidence termination of the Lease Agreement and the Leaseback Agreement, including, but not limited to, lease terminations and a bill of sale from the Agency with respect to its interest in the Equipment, without representation or warranty, subject to the following: (1) any Liens to which such Project Facility was subject when conveyed to the Agency, (2) any Liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced, (3) any Permitted Encumbrances, and (4) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Leaseback Agreement.

(h) The obligation of the Agency under this Section 5.2 to convey the Project Facility to the Company will be subject to: (i) there being no uncured Event of Default existing hereunder or under any payment in lieu of tax agreement now or hereafter entered into with respect to all or any portion of the Project Facility or under any other Company Documents, or any other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default; (ii) the Company's payment of all expenses, fees and taxes, if any, applicable to or arising from such transfer; and (iii) receipt of the certification provided for in Section 5.2(a).

5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.

(a) The Company shall pay basic rental payments for the Project Facility consisting of: (i) One and No/100 Dollar (\$1.00) for the period commencing on the date hereof and ending on **December 31, 2039**, and on January 1 of each calendar year thereafter for the term hereof; (ii) to the Agency an amount sufficient to pay the sums due under the Tax Agreement at the times and in the manner provides for therein, and an amount sufficient to pay any and all other amounts due hereunder; and (iii) to the Mortgagee, an amount equal to the debt service and amounts becoming due and payable under the Mortgage, if any, and the indebtedness secured thereby on the due date thereof.

(b) The Company shall pay to the Agency, as additional rent, within ten (10) days after the receipt of a demand therefor from the Agency, any annual administrative fees of the Agency, the sum of the reasonable and documented fees, costs and expenses of the Agency and the officers, members, agents, and employees thereof incurred by the reason of the Agency's lease or sublease of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Leaseback Agreement, the Lease Agreement or any of the other Agency Documents and any other fee or expense of the Agency with respect to the Project Facility, or any of the other Agency Documents, the payment of which is not otherwise provided for under this Leaseback Agreement, including, without limitation, reasonable and documented fees and disbursements of Agency counsel, including fees and expenses incurred in connection

with the Agency's enforcement of any rights hereunder or incurred after the occurrence and during the continuance of an Event of Default, in connection with any waiver, consent, modification or amendment to this Leaseback Agreement or any other Agency Document that may be requested by the Company, or, in connection with any action by the Agency at the request of or on behalf of the Company hereunder or under any other Agency Document. Any additional rent not received within ten (10) business days after demand shall accrue interest after the expiration of such ten days at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

(c) The administrative fee payable by the Company to the Agency in conjunction with this Project and the Agency's granting of Financial Assistance and all outstanding counsel fees and costs shall be paid at closing. In addition, the Company acknowledges that to the extent there are any post-closing legal fees incurred by the Agency in conjunction with this Project, same are the obligation of the Company and shall constitute additional rent hereunder.

(d) The Company agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event that the Company shall fail to make or cause to be made any of the payments required under this Leaseback Agreement, the item or installment not so paid shall continue as an obligation of the Company until such item or installment is paid in full.

5.4 NATURE OF OBLIGATIONS OF COMPANY HEREUNDER.

(a) The obligations of the Company to make the payments required by this Leaseback Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein are general obligations of the Company and are absolute and unconditional irrespective of any defense or any rights of set-off, recoupment, or counterclaim it may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue, or abate any payment required by, or fail to observe any of its other covenants or agreements contained in this Leaseback Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the construction and equipping of the Project Facility, any defect in the title, design, operation, merchantability, fitness, or condition of the Project Facility, or any part thereof, or in the suitability of the Project Facility, or any part thereof, for the Company's purposes or needs, or failure of consideration for, destruction of or damage to, or condemnation of title to, or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State of New York, or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Leaseback Agreement or the Lease Agreement.

(b) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Leaseback Agreement or the Lease Agreement, and in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance (subject to the provisions of Section 11.11).

(c) The Company at its own expense from time to time may make any structural addition, modifications or improvements to the Facility or any addition, modifications or improvements to the Facility or any part thereof which it may deem desirable for its business purposes and uses. All such structural additions, modifications or improvements so made by the Company shall become a part of the Facility; provided, however, the Company shall not be qualified for real property tax exemptions or a sales and use tax exemption when making said additions, modifications or improvements except to the extent (i) with respect to the sale and use tax exemption, the Company is acting as agent for the Agency under an agreement between the Agency and the Company which specifically contemplates said additions, modifications or improvements or (ii) with respect to the real property tax exemption, the Company is acting under a payment in lieu of taxes agreement which specifically contemplates said additions, modifications or improvements; or (iii) as otherwise provided by law.

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

6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY.

The Company shall:

(a) Keep the Project Facility in good condition and repair and preserve the same against waste, loss and damage, ordinary wear and tear excepted;

(b) Make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural, or non-structural, foreseen or unforeseen) which is damaged, destroyed, or condemned; and

(c) Operate the Project Facility in a sound and economic manner in general accordance with the Project description as set forth herein and as set forth in the Application and the Plans and Specifications the Company previously provided to the Agency, and to ensure that the Facility continues to qualify as a "project" under the Act and pursuant to the terms contained herein.

6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES.

(a) The Company shall pay as the same respectively become due:

(1) Any and all taxes and governmental charges of any kind, whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility, including without limitation the generality of the foregoing any taxes levied upon or with respect to the income or revenues of the Agency from the Facility;

(2) All utility and other charges, including "service charges," incurred or imposed for the operation, maintenance, use, occupancy, upkeep, and improvement of the Project Facility, the non-payment of which would create, or entitle the obligee to impose, a Lien on the Project Facility;

(3) All assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements, provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Leaseback Agreement to pay only such installments as are required to be paid during the Lease Term; and

(4) Any and all payments of taxes, if applicable, and all payments in lieu of taxes, if any, required to be made to the Agency under the terms of the Tax Agreement or any other agreement with respect thereto.

(b) Subject to the terms of the Tax Agreement, the Company may in good faith actively contest any such taxes, assessments, and other charges, provided that (1) the Company shall have first notified the Agency of such contest; (2) no Event of Default under this Leaseback Agreement or any of the other Company Documents shall have occurred and be continuing; and (3) the Company shall have set aside adequate reserves for any such taxes, assessments and other charges. If the Company demonstrates to the reasonable satisfaction of the Agency and certifies to the Agency by delivery of a written certificate, that the non-payment of any such items will not endanger any part of the Project Facility or subject the Project Facility, or any part thereof, to loss or forfeiture, the Company may permit the taxes, assessments, and other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. Otherwise, such taxes, assessments, or charges shall be paid promptly by the Company or secured by the Company's posting a bond in form and substance satisfactory to the Agency.

6.3 INSURANCE REQUIRED.

During the Term of this Leaseback Agreement, the Company shall maintain or cause to be maintained insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type and as required of the Agency, paying (as the same becomes 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 Project Facility, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company.

(b) Workers' compensation insurance, disability benefits' insurance, and each other form of insurance which the Company is required by law to provide covering loss resulting from injury, sickness, disability, or death of employees of the Company who are located at or assigned to the Project Facility;

(c) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per accident or occurrence on an "occurrence" basis and \$2,000,000 in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Leaseback Agreement and personal injury, with blanket

excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

(d) Flood insurance in an amount at least equal to the lesser of (i) the cash replacement value of the Facility, or (ii) the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1974, as amended. In the alternative, a letter from the appropriate office of the municipality in which the Facility is located to the effect that the Facility is not located in an area designated as a flood hazard area by the Federal Insurance Administration or the Department of Housing and Urban Development.

6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE.

All insurance required by Section 6.3 shall be with insurance companies of recognized financial standing selected by the Company and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the Company are engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the Company as insured and the Agency as an additional insured, as its interests may appear, and shall provide: (i) for payment of the losses of the Company and the Agency as their respective interest may appear; (ii) that such coverage with respect to the Agency be primary and non-contributory with any insurance secured by the Agency; and (3) require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof.

Prior to the Closing Date, the Company shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the Company covering the Project Facility; and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In addition, the Company shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the Closing Date.

The Company shall deliver or cause to be delivered to the Agency on or before the first business day of each January (or, for a policy renewing on a date other than January 1, the first business day on or after such renewal) thereafter each of the items set forth in the immediately preceding paragraph, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4. The Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Leaseback Agreement each year throughout the Term of this Leaseback Agreement.

All premiums with respect to the insurance required by Section 6.3 shall be paid by the Company, provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

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

6.5 APPLICATION OF NET PROCEEDS OF INSURANCE.

The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 shall be applied as follows:

(a) The Net Proceeds of the insurance required by subsection 6.3(a) shall be paid and applied as provided in Section 7.1 hereof; and

(b) The Net Proceeds of the insurance required by subsections 6.3(b) and 6.3(c) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

6.6 PAYMENTS IN LIEU OF REAL ESTATE TAXES.

Goshen and the Agency have entered into a Tax Agreement with respect to payments in lieu of real estate taxes for the Project Facility.

ARTICLE VII DAMAGE, DESTRUCTION, AND CONDEMNATION

7.1 DAMAGE OR DESTRUCTION.

(a) If the Mortgage shall be in effect or the Mortgagee shall have any interest in the Project Facility arising under or related to the Mortgage, whether by foreclosure or otherwise and the Project Facility shall be damaged or destroyed, in whole or in part, then insurance proceeds shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such insurance proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and the Project Facility shall be damaged or destroyed, in whole or in part:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement or otherwise (whether or not the Project Facility is replaced, repaired, rebuilt, or restored); and

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

(3) Except as otherwise provided in subsections 7.1(b) and 7.1(c) hereof, upon receipt of the insurance proceeds, the Company shall promptly replace, repair, rebuild, or restore the Project Facility to substantially the same condition as existed prior to such damage or destruction, with such changes, alterations, and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations, or modifications do not change the nature of any material component the Project Facility, such that it does not constitute a "project" (as such quoted term is defined in the Act); and in the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility, then notwithstanding anything to the contrary contained in subsection 7.1(a), the Company shall not be obligated to replace, repair, rebuild, or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection 7.1(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to replace, repair, rebuild, or restore the Project Facility. In such event, the Company shall exercise its right to terminate this Leaseback Agreement in accordance with Section 5.2 hereof, and the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) any other sums due and payable to the Agency pursuant to this Leaseback Agreement and the other Agency and Company Documents, shall be applied to the repayment of all amounts due to the Agency under this Leaseback Agreement, the Lease Agreement, the Tax Agreement and other Agency Documents. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of all such insurance settlements so that any and all amounts then due and payable under this Leaseback Agreement, the Lease Agreement, the Tax Agreement and the other Agency Documents to the Agency shall be paid in full. If all amounts due under this Leaseback Agreement, the Lease Agreement, the Mortgage, the Tax Agreement and the other Agency Documents are paid in full, all such Net Proceeds, or the balance thereof, shall be paid to the Company for its purposes.

(c) The Company and the Mortgagee may adjust all claims under any policies of insurance required by subsections 6.3(a) and 6.3(c) hereof with the prior written consent of the Agency, which consent shall not be unreasonably withheld.

7.2 CONDEMNATION.

(a) If the Mortgage shall be in effect or the Mortgagee shall have any interest in the Project Facility arising under or related to the Mortgage, whether by foreclosure or otherwise and title to, or the use of, all, substantially all or less than substantially all of the Project Facility shall be taken by Condemnation, then Condemnation proceeds shall be paid in accordance with the relevant provisions of the Mortgage regarding the distribution of such Condemnation proceeds, provided that there shall be no abatement or reduction in amounts payable to the Agency hereunder. If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of

the Project Facility shall be taken (or rendered unusable for the use in effect prior to such taking) by Condemnation:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement or otherwise (whether or not the Project Facility is restored); and

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

(3) Except as otherwise provided in subsections 7.2(b) and 7.2(c) hereof, upon receipt of the Condemnation proceeds, the Company shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) to substantially the condition and value as an operating entity as existed prior to such Condemnation; and the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) If the Mortgage shall not be in effect and the Mortgagee shall have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation, then notwithstanding anything to the contrary contained in subsection 7.2(a), the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection 7.2(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to restore the Project Facility. In such event, and provided the restoration is necessary for the Project Facility to be constructed and operated materially in accordance with the first phase as described in the Application, the Company shall exercise its right to terminate this Leaseback Agreement in accordance with Section 5.2 hereof, and the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to pay the Agency pursuant to this Leaseback Agreement, the Lease Agreement, the Tax Agreement and the other Agency Documents, shall be applied to payment of all amounts then due and payable to the Agency under this Leaseback Agreement, the Lease Agreement, the Tax Agreement and other Agency Documents. If the Net Proceeds of any Condemnation award are less than the amount necessary to pay any and all amounts then due and payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of such Condemnation award so that any and all amounts then due and payable under this Leaseback Agreement, the Lease Agreement, the Tax Agreement and other Agency Documents to the Agency shall be paid in full. If all amounts due under this Leaseback Agreement, the Lease Agreement, the Tax Agreement, the Mortgage and the other Agency Documents have been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(c) The Company and the Mortgagee with the prior written consent of the Agency (which consent shall not be unreasonably withheld), shall have sole control of any Condemnation proceeding with respect to the Project Facility, or any part thereof, and may negotiate the settlement of any such proceeding.

7.3 ADDITIONS TO PROJECT FACILITY.

All replacements, repairs, rebuilding, or restoration made pursuant to Sections 7.1 or 7.2 hereof, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Project Facility as if the same were specifically described herein.

ARTICLE VIII SPECIAL COVENANTS

8.1 NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS."

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY, OR FITNESS OF THE PROJECT FACILITY, OR ANY PART THEREOF, OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

8.2 HOLD HARMLESS PROVISIONS.

(a) The Company hereby releases the Agency and its members, officers, agents and employees from, agrees that the Agency and its members, officers, agents and employees shall not be liable for, and agrees to indemnify, defend, and hold the Agency and its members, officers, agents and employees harmless from and against any and all claims arising as a result of the Agency's undertaking the Project, including, but not limited to:

(1) Liability for loss or damage to Project Facility or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the subleasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under this Leaseback Agreement, the Lease Agreement, the Mortgage or any other documents executed by the Agency at the direction of the Company in conjunction with the Project Facility;

(3) All claims arising from the exercise by the Company, and or its Additional Agents (as defined herein) of the authority conferred upon it and performance of the obligations assumed under Section 4.1 hereof;

(4) Any and all claims arising from the non-disclosure of information, if any, requested by the Company in accordance with Section 11.14 hereof;

(5) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents or employees.

To the fullest extent permitted by law, the foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct) on the part of the Agency or any of its officers, members, agents, servants or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportioned liability.

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

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

(d) Notwithstanding any other provisions of this Leaseback Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Leaseback Agreement and the Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents or employees relating thereto.

(e) For purposes of this Section 8.2 and Section 11.11 hereof, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

8.3 RIGHT OF ACCESS TO PROJECT FACILITY.

During the Term of this Leaseback Agreement, the Company agrees that the Agency and its duly authorized agents shall have the right to enter upon and to examine and inspect the Project Facility upon reasonable notice to the Company and with the least disturbance of Project Facility construction and/or tenants as reasonably possible.

8.4 MAINTENANCE OF EXISTENCE.

During the Term of this Leaseback Agreement, the Company will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets.

8.5 AGREEMENT TO PROVIDE INFORMATION.

The Company shall have an obligation to report and provide information, as set forth herein during the Term hereof. However, in the event this Leaseback Agreement is terminated early in accordance with Section 5.2 hereof, the Company's obligation to report shall be for a period of five (5) years from the termination date, unless the early termination occurs less than five years from the expiration of the original Term hereof, in which case the Company shall continue to provide the required information for the remaining Term hereof (the "*Reporting Period*"), and no less frequently than annually, the Company agrees, whenever reasonably requested by the Agency or the Agency's auditor, to provide and certify, or cause to be certified, such information concerning the Project and/or the Company, its finances, and for itself and each of its Additional Agents, information regarding job creation¹, Local Labor Requirements, exemptions from State and local sales and use tax, real property and mortgage recording taxes and other topics as the Agency from time to time reasonably considers necessary or appropriate including, but not limited to those reports, in substantially the form as set forth in **Exhibit "E"** attached hereto, those reports set forth in Section 8.12 hereof, and such other information necessary as to enable the Agency to monitor and/or make any reports required by law or governmental regulation, including but not limited to §875 of the Act (all of the foregoing collectively, the "*Reporting Requirements*").

Notwithstanding anything herein to the contrary, the Agency's ability to recapture benefits in accordance with its policy and the terms hereof, shall be for a period of time no less than the Reporting Period.

8.6 BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS.

During the Term of this Leaseback Agreement, the Company agrees to maintain proper accounts, records, and books, in which full and correct entries shall be made in accordance with generally accepted accounting principles, of all business and affairs of the Company.

8.7 COMPLIANCE WITH ORDERS, ORDINANCES, ETC.

(a) The Company agrees that it will, during any period in which the amounts due under this Leaseback Agreement remain unpaid, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter affect the

¹ To the extent the Project includes commercial space and/or tenants for which the Company calculated job creation as part of its projections in its Application, the Company is obligated, through its lease or other rental agreement with those commercial tenants, to require that such tenants report to the Company, in accordance with the terms of Section 8.5 hereof, the number of full and part time jobs created and maintained by each such tenant for inclusion in the Company's reporting to or at the request of the Agency.

Company's obligations hereunder or be applicable to the Project Facility, or any part thereof, or to any use, manner of use, or condition of the Project Facility, or any part thereof, the applicability of the same to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility.

(b) Notwithstanding the provisions of subsection 8.7(a), the Company may, in good faith, actively contest the validity or the applicability of any requirement of the nature referred to in said subsection 8.7(a), provided that the Company shall have first notified the Agency of such contest, no Event of Default shall be continuing under this Leaseback Agreement, or any of the other Company Documents; and such contest and failure to comply with such requirement shall not subject the Project Facility to loss or forfeiture. 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 unless the Agency or its members, officers, agents, or employees may be liable for prosecution for failure to comply therewith, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

8.8 DISCHARGE OF LIENS AND ENCUMBRANCES.

During the Term of this Leaseback Agreement, the Company hereby covenants that, except for Permitted Encumbrances, the Company agrees not to create, or suffer to be created, any Lien on the Project Facility, or any part thereof without the prior written consent of the Agency. The Company shall promptly notify the Agency of any Permitted Encumbrances created, or suffered to be created, on the Project Facility.

8.9 PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS.

Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, upon ten (10) days' prior written notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company, or the Agency and paying all expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so expended by the Agency under the authority hereof, together with the interest thereon at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is greater.

8.10 DEPRECIATION DEDUCTIONS AND TAX CREDITS.

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

8.11 EMPLOYMENT OPPORTUNITIES.

The Company shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination².

8.12 SALES AND USE TAX EXEMPTION.

(a) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain State and local sales use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of State or local sales or use taxes. Any exemption from the payment of State or local sales or use taxes resulting from the involvement of the Agency with the Project shall be subject to Section 875 of the Act and shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of State sales or use tax. It is the intention of the parties hereto that the Company will receive a State and local sales and use tax exemption with respect to the Project, said sales tax exemption to be evidenced by a letter to be issued by the Agency on the date of the execution of this Leaseback Agreement. The Company acknowledges that as an agent of the Agency, it must complete and provide to each vendor Form ST-123 for purchases. The failure to furnish a completed Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate) with each purchase will result in loss of the exemption for that purchase.

(b) The Company may use and appoint a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, "**Additional Agents**") in furtherance of the completion of the Project. However, for each Additional Agent, the Company must first: (i) cause each such appointed Additional Agent to execute and deliver a sub-agent agreement, in the form attached hereto at **Exhibit "F"**, and provide a fully executed copy to the Agency; and (ii) submit a completed Form ST-60 to the Agency for execution and filing with the New York State Department of Taxation and Finance.

(c) The Company acknowledges and agrees that an Additional Agent must be appointed as an agent of the Agency in order to avail itself of the Agency's sales and use tax exemption for purchases or rentals of equipment, tools and supplies with respect to the Project Facility.

(d) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause each Additional Agent or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, and provide the Agency with a copy of

² Notwithstanding anything herein to the contrary, solely with respect to production, the use of personnel required under rabbinical law to ensure the production of kosher products is permitted.

same, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "*Annual Sales Tax Report*"), a statement of the value of all sales and use tax exemptions claimed by the Company and all other Additional Agents under the authority granted to the Company pursuant to Section 4.1(b) of this Leaseback Agreement. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Therefore, if the Company shall fail to comply with the requirements of this subsection (d), irrespective of any notice and cure period afforded, the Company and each Additional Agent shall immediately cease to be the agent of the Agency in connection with the Project. The Company is responsible for obtaining from the New York State Department of Taxation and Finance the current version of such Annual Sales Tax Report.

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

(f) Pursuant to Section 874(9) of the Act, the Agency agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "*Thirty-Day Sales Tax Report*"), a statement identifying the Company, or 30 days from the appointment of any Additional Agent appointed in accordance with the terms herein, as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating the estimated value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(g) Pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, the Agency shall and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company the portion of the Financial Assistance consisting of State and local sales and use tax exemption (the "*Sales Tax Recapture Amount*") in accordance with the Agency's recapture policy, as currently set forth in the Agency's Uniform Tax Exemption Policy (the "*Recapture Policy*"), a copy of which is attached hereto at **Exhibit "G"**, this Leaseback Agreement and the Project Agreement.

8.13 IDENTIFICATION OF THE EQUIPMENT.

All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

8.14 REMOVAL OF EQUIPMENT.

(a) The Agency 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 the Company determines that any item of Equipment has become

inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of Equipment from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part. The Company shall be obligated to replace such Equipment as necessary to maintain the Project Facility in accordance with the terms hereof.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including reasonable attorneys' fees) incurred in transferring title to and releasing any item of Equipment removed pursuant to this Section.

(c) The removal of any item of Equipment pursuant to this Section shall not entitle the Company to any abatement of or diminution of the rents payable hereunder.

ARTICLE IX ASSIGNMENTS; TRANSFERS; MERGER OF AGENCY

9.1 ASSIGNMENT OF LEASEBACK AGREEMENT.

This Leaseback Agreement may not be assigned by the Company, in whole or in part, nor all or any part of the Project Facility subleased, nor any part of the Project Facility sold, leased, transferred, conveyed or otherwise disposed of without the prior written consent of the Agency, which consent shall be in the Agency's sole and absolute discretion; provided however, that the Company may enter into subleases with its affiliates as permitted under the Operating Lease and the Company may enter into leases for individual rental units that are part of the Project Facility without the consent of the Agency. Notwithstanding anything herein to the contrary, under no circumstances shall the Agency be required to mortgage, grant a security interest in or assign its rights to receive the rents hereunder or its rights to be indemnified in accordance with the terms of this Leaseback Agreement; or assign its Unassigned Rights. Any assignment or sublease of this Leaseback Agreement shall not effect a release of the Company from its obligations hereunder. Any assignment or sublease of this Leaseback Agreement shall not effect a release of the Company from its obligations hereunder or under the Tax Agreement.

9.2 TRANSFERS OF INTERESTS.

Company shall not assign or otherwise transfer or allow an assignment or transfer, of a controlling interest in the Company, whether by operation of law or otherwise (including, without limitation, by way of a merger, consolidation or a change of control whereby the current existing equity holders of the Company, as of the date of the application to the Agency, would own, in the aggregate, less than a majority of the total combined voting power of all classes of equity interest of the Company or any surviving entity), without the prior written consent of Agency, which consent shall be in the Agency's sole and absolute discretion. Notwithstanding anything herein to the contrary, the Company may transfer a majority interest in the Company to a Related Person.

9.3 MERGER OF AGENCY.

(a) Nothing contained in this Leaseback Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of

its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Leaseback Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

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

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT DEFINED.

The following shall be "Events of Default" under this Leaseback Agreement, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Leaseback Agreement, any one or more of the following events:

(a) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to subsection 5.3 or 8.12(g) and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to the Company; or

(b) Failure by the Company to exercise its option to extend the Operating Lease, if and to the extent necessary for the Operating Lease, as so extended, to be coterminous with (or terminate later than) the term of this Leaseback Agreement; or

(c) Failure by the Company to maintain the insurance required by Section 6.3;
or

(d) A failure of the Company to remain current on all taxes owed including but not limited to real property taxes; or

(e) A default in the performance or the observance of any other of the covenants, conditions, or agreements on the part of the Company in this Leaseback Agreement and the continuance thereof for a period of thirty (30) days after written notice is given by the Agency or, if such covenant, condition, or agreement is capable of cure but cannot reasonably be cured within such thirty-day period, the failure of the Company to commence to cure within such thirty-day period and to prosecute the same with due diligence and cure the same within an additional thirty (30) days; or

(f) A transfer in contravention of Article 9 hereof;

(g) The occurrence of an "Event of Default" under the Mortgage, the Tax Agreement, the Lease Agreement, the Project Agreement or any of the other Company Documents which is not timely cured as provided therein; or

(h) The Company shall generally not pay its debts as such debts become due or is unable to pay its debts as they become due.

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

(j) By order of a court of competent jurisdiction, a trustee, receiver, or liquidator of the Project Facility, or any part thereof, or of the Company shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment; or

(k) The filing by the Company of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute; the failure by the Company within sixty (60) days to lift any execution, garnishment, or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder; the commencement of a case under Title 11 of the United States Code against the Company as the debtor, or commencement under any other federal or state bankruptcy statute of a case, action, or proceeding against the Company, and continuation of such case, action, or proceeding without dismissal for a period of sixty (60) days; the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company; or in connection with any insolvency or bankruptcy case, action, or proceeding, appointment by final order, judgment, or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company unless such order, judgment, or decree is vacated, dismissed, or dissolved within sixty (60) days of its issuance.

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

(m) The failure to complete Phase Two of the project, and to the extent necessary, Phase Three within six (6) months of the time frames set forth in the Application.

10.2 REMEDIES ON DEFAULT.

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

(1) Declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable; (i) all unpaid installments of rent payable pursuant to Section 5.3 hereof and (ii) all other payments due under this Leaseback Agreement.

(2) Terminate this Leaseback Agreement;

(3) Terminate the Lease Agreement;

(4) Terminate the Tax Agreement;

(5) Terminate the Company's appointment as agent of the Agency; or

(6) Take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder or under the Lease Agreement, the Project Agreement, or the Tax Agreement, and/or to enforce the Company's obligations and duties under the Company Documents and the Agency's rights under the Agency Documents, including but not limited to, specific performance; or

(7) Seek to recover all or some of the Recapture Amount in accordance with the Agency's Recapture Policy, this Leaseback Agreement and the Project Agreement.

(b) Take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such action shall not be deemed to constitute a waiver of such Event of Default.

(c) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligations to make all payments required by Sections 5.3(b) and 8.2 hereof.

10.3 REMEDIES CUMULATIVE.

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Leaseback Agreement, the Lease Agreement and the other Company Documents or the Tax Agreement now or hereafter existing at law or in equity to collect any amounts then due, or thereafter to become due, hereunder and thereunder and to enforce the Agency's right to terminate this Leaseback Agreement, the Tax Agreement and the Lease Agreement. 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 10, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Leaseback Agreement.

10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.

The Company shall remit, upon the execution and delivery of this Leaseback Agreement, all legal fees and costs incurred by the Agency in conjunction with the Project Facility, its approval, and the Financial Assistance. In the event the Company should Default under any of the provisions of this Leaseback Agreement, or a dispute arises hereunder, and the Agency should employ attorneys, or incur other expenses, to preserve or enforce its rights hereunder or 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 and costs of such attorneys and such other expenses so incurred. In addition, the Company acknowledges that to the extent there are any post-closing legal fees incurred by the Agency in conjunction with this Project, same are the obligation of the Company and as set forth herein.

10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.

In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE XI
MISCELLANEOUS**

11.1 NOTICES.

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

If to the Agency:

Orange County Industrial Development Agency
Orange County Business Accelerator
4 Crotty Lane, Suite 100
New Windsor, New York 12553
Attn: William Fioravanti, Chief Executive Officer

With a copy to:

Bousquet Holstein PLLC
One Lincoln Center, Suite 1000
110 West Fayette Street
Syracuse, New York 13202
Attn: Susan R. Katzoff, Esq.

If to Goshen Developer JV, LLC: Goshen Developer JV, LLC
133 Pearl Street
Boston, Massachusetts 02110
Attn: Steven Goodman

With a copy to: Goshen Developer JV, LLC
63 Lefante Way
Bayonne, New Jersey 07002
Attn: Sheldon Ginsberg

With a copy to: Bleakley Platt & Schmidt LLC
One Blue Hill Plaza, 3rd Floor
P.O. Box 1613
Pearl River, New York 10965
Attn: Brian J. Quinn, Esq.

If to Royal Wine Corporation: Royal Wine Corporation
63 Lefante Drive
Bayonne, New Jersey, 07002
Attn: Mordechai Herzog

With a copy to: Bleakley Platt & Schmidt LLC
One Blue Hill Plaza, 3rd Floor
P.O. Box 1613
Pearl River, New York 10965
Attn: Brian J. Quinn, Esq.

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

11.2 BINDING EFFECT.

This Leaseback Agreement shall inure to the benefit of and shall be binding upon the Agency and the Company and, as permitted by this Leaseback Agreement, upon their respective heirs, successors and assigns.

11.3 SEVERABILITY.

If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall for any reason be held, or shall in fact be, inoperative, unenforceable, or contrary to law in any particular circumstance; such circumstance shall not render the provision in question inoperative or unenforceable in any other circumstance. Further, if any one or more of the sentences, clauses, paragraphs, or sections herein is contrary to law, then such covenant(s) or agreement(s) shall be deemed severable of remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Leaseback Agreement.

11.4 AMENDMENTS, CHANGES AND MODIFICATIONS.

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

11.5 EXECUTION OF COUNTERPARTS.

This Leaseback 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.

11.6 APPLICABLE LAW.

This Leaseback Agreement shall be governed exclusively by the applicable laws of the State of New York.

11.7 WAIVER OF TRIAL BY JURY.

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS LEASEBACK AGREEMENT, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS LEASEBACK AGREEMENT.

11.8 SUBORDINATION.

This Leaseback Agreement shall be subject and subordinate to the Lease Agreement and the Mortgage and all Permitted Encumbrances in all respects. The Lease Agreement is deemed to be effective immediately prior to this Leaseback Agreement.

11.9 SURVIVAL OF OBLIGATIONS.

(a) The obligations of the Company to repay, defend and/or provide the indemnity or information required by Sections 8.2, 8.5 and 8.12 hereof shall survive the termination of this Leaseback Agreement and all such payments and obligations after such termination shall be made upon demand of the party to whom such payment and/or obligation is due.

(b) The obligations of the Company to repay, defend and/or provide the indemnity required by Sections 8.2 and 8.12 shall survive the termination of this Leaseback Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency or its officers, members, agents (other than the Company) or employees relating thereto.

(c) The obligations of the Company required by Articles 4 and 5 and Sections 2.2, 6.2, 8.4, 8.5, 10.4 and 11.14 hereof shall similarly survive the termination of this Leaseback Agreement.

11.10 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.

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

11.11 NO RECOURSE; SPECIAL OBLIGATION.

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity; and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State New York or of Orange County, and neither the State of New York nor Orange County shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and

its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

(d) For purposes of this Section 11.11, neither the Company nor any Additional Agent shall be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 11.11 shall not alter the full force and effect of any Event of Default under this Leaseback Agreement.

11.12 OBLIGATION TO SELL AND PURCHASE THE EQUIPMENT.

(a) Contemporaneously with the termination of this Leaseback Agreement in accordance with Section 5.2 hereof, the Agency shall sell and the Company shall purchase all the Agency's right, title and interest in and to all of the Equipment for a purchase price equal to the sum of One Dollar (\$1.00), plus payment of all sums due and payable to the Agency or any other Person pursuant to this Leaseback Agreement and the other Company Documents. The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing and delivering the bill of sale together with any other documents therewith, including lease terminations in accordance with Section 5.2 hereof, and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Equipment.

(b) The sale and conveyance of the Agency's right, title and interest in and to the Equipment shall be effected by the execution and delivery by the Agency to the Company of a bill of sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such transfer of title.

(c) The Company agrees to prepare the bill of sale to Company and all schedules thereto, together with all necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that title to the Equipment is to be conveyed to the Company.

11.13 ENTIRE AGREEMENT.

This Leaseback Agreement and the Lease Agreement contain the entire agreement between the parties and all prior negotiations and agreements are merged therein.

11.14 DISCLOSURE.

Section 875(7) of the New York General Municipal Law ("*GML*") requires that the Agency post on its website all resolutions and agreements relating to the Company's appointment as an agent of the Agency or otherwise related to the Project; and Article 6 of the New York Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Company feels that there are elements of the Project or information about the Company in the Agency's possession which are in the nature of trade secrets or information, the nature

of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Company's competitive position, the Company must identify such elements in writing, supply same to the Agency on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.

11.15 RECORDING AND FILING.

This Leaseback Agreement or a memorandum thereof, shall be recorded or filed, as the case may be, in the Office of the Clerk of Orange County, New York, or in such other office as may at the time be provided by law as the proper place for recordation or filing thereof.

11.16 NO JOINT VENTURE CREATED.

The Agency and the Company mutually agree that by entering into this Leaseback Agreement the parties hereto are not entering into a joint venture.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
William Fioravanti, Chief Executive Officer

GOSHEN DEVELOPER JV, LLC

By: _____
Steven Goodman, Manager

GOSHEN DEVELOPER JV, LLC

By: _____
Mordechai Herzog, Manager

ROYAL WINE CORPORATION

By: _____
Mordechai Herzog, Chief Executive Officer

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

**ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
William Fioravanti, Chief Executive Officer

GOSHEN DEVELOPER JV, LLC

By: _____
Steven Goodman, Manager

GOSHEN DEVELOPER JV, LLC

By: _____
Mordechai Herzog, Manager

ROYAL WINE CORPORATION

By: _____
Mordechai Herzog, Chief Executive Officer

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

**ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
William Fioravanti, Chief Executive Officer

GOSHEN DEVELOPER JV, LLC

By: _____
Steven Goodman, Manager

GOSHEN DEVELOPER JV, LLC

By:  _____
Mordechai Herzog, Manager

ROYAL WINE CORPORATION

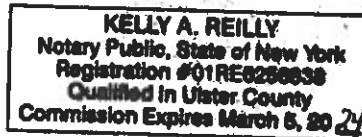
By:  _____
Mordechai Herzog, Chief Executive Officer

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

On this 28th day of December, 2022 before me, the undersigned, a Notary Public in and for said State, personally appeared **WILLIAM FIORAVANTI**, 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.

Kelly A Reilly
Notary Public

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



On the ___ day of _____, 20___, before me, the undersigned, a Notary Public in and for said State, personally appeared **STEVEN GOODMAN**, 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

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

On this ___ day of _____, 20___, before me, the undersigned, a Notary Public in and for said State, personally appeared **MORDECHAI HERZOG**, 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

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

On this _____ day of _____, 20 __, before me, the undersigned, a Notary Public in and for said State, personally appeared **WILLIAM FIORAVANTI**, 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

COMMONWEALTH OF MASSACHUSETTS)
) SS.:
COUNTY OF SUFFOLK)

On the 20 day of December, in the year 2022, before me the undersigned, personally appeared **STEVEN GOODMAN**, personally known to me or proved to me on the basis of satisfactory evidence, to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that (he) (she) (they) executed the same in (his) (her) (their) capacity(ies), and that by (his) (her) (their) signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public



STATE OF NEW JERSEY)
) SS.:
COUNTY OF HUDSON)

On the __ day of _____, in the year 20 _____, before me the undersigned, personally appeared **MORDECHAI HERZOG**, personally known to me or proved to me on the basis of satisfactory evidence, to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that (he) (she) (they) executed the same in (his) (her) (their) capacity(ies), and that by (his) (her) (their) signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

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

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared **WILLIAM FIORAVANTI**, 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

COMMONWEALTH OF MASSACHUSETTS)
) SS.:
COUNTY OF SUFFOLK)

On the __ day of _____, in the year 20____, before me the undersigned, personally appeared **STEVEN GOODMAN**, personally known to me or proved to me on the basis of satisfactory evidence, to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that (he) (she) (they) executed the same in (his) (her) (their) capacity(ies), and that by (his) (her) (their) signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW JERSEY)
) SS.:
COUNTY OF HUDSON)

On the 6th day of January in the year 2023, before me the undersigned, personally appeared **MORDECHAI MERZOG**, personally known to me or proved to me on the basis of satisfactory evidence, to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that (he) (she) (they) executed the same in (his) (her) (their) capacity(ies), and that by (his) (her) (their) signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Sheldon L. Ginsberg
Notary Public, State of New Jersey
My Commission Expires
April 1, 2026
Registration # 2406869

Notary Public