

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), dated the 22nd day of April, 2016, by and between the COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal office at One Cablevision Center, Ferndale, New York 12734 ("Agency") and BRR BROTHERS III, LLC, a New York limited liability company, having a mailing address of P.O. Box 368, 510 Wild Turnpike, Mountindale, New York 12763 ("Company").

RECITALS

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

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

WHEREAS, pursuant to and in connection with the provisions of the Enabling Act, Chapter 560 of the Laws of 1970 of the State (collectively referred to as the "Act") created the Agency which is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, on January 28, 2016, the Company and its affiliate, Sullivan County Fabrication, Inc. presented an application ("Application") to the Agency, a copy of which is on file with the Agency, requesting the Agency's assistance with respect to a certain project consisting of the: (i) acquisition, construction, reconstruction, renovation, rehabilitation, installation and equipping of six (6) buildings aggregating approximately 180,000± square feet intended to be used to accommodate a metal fabrication factory and storage of manufactured products (collectively, "Existing Buildings") situate on two (2) parcels of real estate consisting of approximately 138.26± acres located along Glen Wild Road, Town of Fallsburg ("Town"), Woodridge, County of Sullivan ("County"), State of New York and identified on the Town tax map as Section 62, Block 1, Lot 20.1 and Section 63, Block 1, Lot 4 ("Land"); (ii) acquisition, construction and equipping of the Existing Buildings; (iii) acquisition, construction and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools ("Equipment"); (iv) construction of

improvements to the Existing Buildings, the Land and the Equipment (collectively, the Existing Buildings, the Land and the Equipment are referred to as the "Facility" or the "Project"); and (v) lease of the Facility from the Agency to the Company; and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to take title to the land, improvements and personal property constituting the Facility and lease said land, improvements and personal property back to the Company; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct, reconstruct, renovate, rehabilitate, install and equip the Facility in accordance with the plans and specifications presented to the Agency; and

WHEREAS, the Agency proposes to lease the Facility to the Company and the Company desires to rent the Facility from the Agency, upon the terms and conditions hereinafter set forth in this Lease.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual terms, conditions, limitations and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

ARTICLE I

REPRESENTATIONS AND COVENANTS

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

(a) The Agency is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Lease and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Facility, the Agency has the authority to take the actions contemplated herein under the Act.

(b) The Agency has been duly authorized to execute and deliver this Lease.

(c) The Agency will take title to the Facility, lease the Facility to the Company pursuant to this Lease and designate the Company as its agent for purpose of acquiring, constructing, installing and equipping of the Project, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the County and improving their standard of living.

(d) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Lease will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute default under any of

the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.

(e) The Agency has been induced to enter into this Lease by the undertaking of the Company to acquire, construct, install and equip the Facility and the related jobs resulting therefrom in the County.

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

(a) BRR is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, has the authority to enter into this Lease and has duly authorized the execution and delivery of this Lease.

(b) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The acquisition, construction, reconstruction, renovation, rehabilitation, installation and equipping of the Facility and the leasing thereof by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity from one area of the State to another area of the State nor result in the abandonment of one or more commercial or manufacturing plants or facilities located within the State.

(d) The acquisition, construction, reconstruction, renovation, rehabilitation, installation and equipping of the Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (f) and subsection (g) below.

(e) The Company has caused to be transferred to the Agency a fee interest in all those properties and assets contemplated by this Lease and all documents related hereto.

(f) There is no 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 in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Lease.

(g) The Company covenants (i) that the Facility will comply in all respects with all environmental laws and regulations, (ii) that no pollutants, contaminants, 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 applicable laws, (iii) that 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, (iv) that no asbestos will be incorporated into or disposed of on the Facility, (v) that no underground storage tanks will be located on the Facility except in full compliance at all times with all applicable laws, rules, and regulations, and (vi) 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 (g) 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 directors, officers, employees, members, agents (except the Company), representatives, and their respective successors and assigns and personal representatives 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 (g). 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.

(h) The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by the collective bargaining contracts to which it is a party, cause any new employment opportunities created in connection with the Facility to be listed with the State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Workforce Investment Act of 1998 (P.L. 105-220 (formerly, the Federal Job Training Partnership Act (PL 97-300)) in which the Facility is located (collectively referred to as the "Referral Agencies"). The Company also agrees that it will, except as otherwise provided by the collective bargaining contracts to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership (P.L. 105-220) programs who shall be referred by the Referral Agencies.

ARTICLE II

FACILITY SITE, DEMISING CLAUSES AND RENTAL PROVISIONS

- 2.1. Agreement to Convey to Agency. The Company has conveyed or has caused to be conveyed to the Agency a fee interest in the real property, including any buildings, structures or improvements thereon, described in Schedule A attached hereto, and the Company has or will convey all of its interest in the furniture, fixtures, machinery and equipment described in Schedule B. The Company agrees the Agency's interest in the

Facility resulting from said conveyances will be sufficient for the purposes intended by this Lease and agrees that it will defend, indemnify and hold the Agency harmless from any expense or liability or loss or damage arising out of a defect in title or a lien adversely affecting the Facility and will pay all reasonable expenses incurred by the Agency in defending any action respecting title to or a lien affecting the Facility.

- 2.2. Construction and Equipping of the Facility. The Company, as agent for the Agency, will acquire, construct, reconstruct, renovate, rehabilitate, install and equip the Facility. The Company shall operate the Facility as agent of Agency under the terms of that certain Agent Agreement, dated April 22, 2016 ("Agent Agreement"). The Company hereby covenants and agrees to annually file with the State Department of Taxation and Finance the statement required by General Municipal Law Section 874(8) concerning the value of sales tax exemptions claimed.
- 2.3. Demise of Facility. The Agency hereby demises and leases the Facility to the Company and the Company hereby rents and leases the Facility from the Agency upon the terms and conditions of this Lease.
- 2.4. Remedies to be Pursued Against Contractors and Subcontractors and Their Sureties. In the event of a default by any contractor, subcontractor or any other person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance, or guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to them and the Agency, as appropriate, against the contractor, subcontractor, manufacturer, supplier or other person so in default and against such surety for the performance of such contract. The Company in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which is reasonably necessary, and in such events the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency (including, but not limited to reasonable attorneys' fees) in any such action or proceeding.
- 2.5. Duration of Lease Term; Quiet Enjoyment.
 - (a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to the provisions hereof) and the leasehold estate created hereby shall commence on the date hereof.
 - (b) The leasehold estate created hereby shall terminate at 11:59 P.M. on February 1, 2037, or on such earlier date as may be permitted by Section 8.1 hereof.
 - (c) The period commencing on the date described in Section 2.5(a) herein through the date described in Section 2.5(b) herein shall be herein defined as the "Lease Term."
 - (d) The Agency shall, subject to the provisions hereof, neither take nor suffer nor

permit any action, other than pursuant to Articles VII or VIII of this Lease, to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

2.6. Rents and Other Consideration. The rental obligations during the Lease Term are hereby reserved and the Company shall pay rent for the Facility as follows:

(a) Upon execution of this Lease, THREE THOUSAND FOUR HUNDRED SIXTY-SIX AND 10/100 (\$3,466.10) Dollars and on or before February 1, 2017, and on February 1st of each calendar year thereafter FIVE THOUSAND AND 00/100 (\$5,000.00) Dollars annually.

(b) In addition to the payments of rent pursuant to Section 2.6(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof incurred (i) for the reason of the Agency's ownership or leasing of the Facility and (ii) in connection with the carrying out of the Agency's duties and obligations under this Lease.

(c) The Company agrees to make the above mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public or private debts. In the event the Company shall fail to timely make any payment required in this Section 2.6, the Company shall pay the same together with interest from the date said payment is due at the rate of twelve percent (12%) per annum.

2.7. Obligations of the Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 2.6 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required by Section 2.6 hereof or (ii) fail to observe any of its other covenants or agreements in this Lease or (iii) except as provided in Section 8.1 hereof, terminate this Lease for any cause whatsoever including, without limiting the generality of the foregoing, failure to complete the Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for the Company's purposes and needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by condemnation of title to or the use of all or any part of the Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative actions by the State or any political subdivision of either, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease, or otherwise. Subject to the foregoing provisions, nothing

contained in this Section 2.7 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for nonperformance, and the Agency covenants that it will not, subject to the provisions of Section 5.2, take any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights of estates of the Company hereunder, except upon written consent of the Company. None of the foregoing shall relieve the Company of its obligations under Section 5.2 hereof.

ARTICLE III

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

3.1. Maintenance and Modifications of Facility By the Company.

(a) The Company shall not abandon the Facility or cause or permit any waste to the Facility. The Company agrees that during the Lease Term it will (i) keep the Facility in reasonably safe condition; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) operate the Facility in a sound and prudent manner; (iv) operate the Facility such that it continues to qualify under the Act and pursuant to the terms contained herein; and (v) the Company will indemnify, defend and hold the Agency harmless from any liability or expenses from the failure by the Company to comply with this subsection (a).

(b) The Company, at its own expense, and with the prior written approval of the Agency (which shall not be unreasonably withheld) from time to time may make any structural additions, 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 that do not adversely affect the structural integrity or impair the operating efficiency of the Facility or substantially change the nature of the Facility. 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 a sales and use tax exemption when making said additions, modifications or improvements except to the extent (i) the Company is acting as agent for the Agency under an agent agreement between the Agency and the Company which contemplates said additions, modifications or improvements or (ii) as otherwise provided by law. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to or other satisfactory interest in, such property.

3.2. Installation of Additional Equipment. The Company from time to time may install additional furniture, fixtures, machinery, and equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such furniture, fixtures, machinery, and equipment or other personal property shall not become, or be deemed to

become, a part of the Facility. The Company from time to time may remove or permit the removal of such furniture, fixtures, machinery and equipment or other personal property; provided that any such removal of such furniture, fixtures, machinery, equipment or other personal property shall not adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended and provided further that if any damage is occasioned to the Facility by such removal, the Company agrees to promptly repair such damage at its own expense.

3.3. Taxes, Assessments and Utility Charges.

(a) The Company agrees to pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or any machinery, equipment or other property installed or brought by the Company therein or thereon, including without limiting the generality of the foregoing any taxes levied upon or with respect to the income or revenues of the Agency from the Facility; (ii) all payments under that certain Payment in Lieu of Taxation Agreement, of even date herewith by and between the Agency and the Company ("PILOT Agreement"); (iii) all utility and other charges, including "service charges," incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; and (iv) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease to pay only such installments as are required to be paid during the Lease Term.

(b) The Company, at its own expense and in its own name or in the name of the Agency, but only with prior written notice to the Agency, may in good faith contest any such taxes, assessments and other charges. In the event of any such contest, the Company may, with prior written notice to the Agency, permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, unless the Agency reasonably requests payment prior to settlement.

3.4. Insurance Required. At all times throughout the Lease Term, including without limitation during any period of construction of the Facility, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

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

(b) Worker's compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide,

covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 5.2 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable Worker's Compensation Law; and a blanket excess liability policy in the amount not less than \$2,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

3.5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 3.4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 3.4 shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company (and reasonably satisfactory to the Agency) and authorized to write such insurance in the State. Such insurance may be written with deductible amounts not exceeding \$10,000. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days written notice of the cancellation thereof to the Company and the Agency.

(b) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of the Lease Term. Prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease.

3.6. Application of Net Proceeds of Insurance. The net proceeds of the insurance carried pursuant to the provisions of Section 3.4 hereof shall be applied as follows:

(a) the net proceeds of the insurance required by Section 3.4(a) hereof shall be applied as provided in Section 4.1 hereof; and

(b) the net proceeds of the insurance required by Section 3.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

3.7. Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 3.3 hereof or (ii) to maintain any insurance required to be maintained by Section 3.4 hereof, the Agency may pay such tax, assessment or other governmental charge or the

premium for such insurance. The Company shall, on demand, reimburse the Agency for any amount so paid together with interest thereon from the date of payment at twelve percent (12%) per annum.

ARTICLE IV

DAMAGE, DESTRUCTION AND CONDEMNATION

4.1. Damage or Destruction.

- (a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the Lease Term:
- (i) the Agency shall have no obligation to replace, repair, rebuild or restore the Facility;
 - (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease; and
 - (iii) except as otherwise provided in subsection (b) of this Section 4.1, the Company shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and may use insurance proceeds for all such purposes.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 4.1, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

(b) The Company shall not be obligated to replace, repair, rebuild or restore the Facility, and the net proceeds of the insurance shall not be applied as provided in subsection (a) of this Section 4.1, if the Company shall exercise its option to terminate this Lease pursuant to Section 8.1 hereof.

(c) The Company may adjust all claims under any policies of insurance required by Section 3.4(a) hereof.

4.2. Condemnation.

(a) If at any time during the Lease Term the whole or any part of title to, or the use of, the Facility shall be taken by condemnation, the Agency shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by the Company under this Lease. The Agency shall not have any interest whatsoever in any condemnation award, and the Company shall have the exclusive right to same.

Except as otherwise provided in subsection (b) of this Section 4.2, the Company shall promptly:

- (i) restore the Facility (excluding any Land taken by condemnation) to substantially the same condition and value as an operating entity as existed prior to such condemnation; or
- (ii) acquire, by construction or otherwise, facilities of substantially the same nature and value as existed prior to the condemnation, subject to Agency consent.

The Facility, as so restored, or the substitute facility, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

(b) The Company shall not be obligated to restore the Facility or acquire a substitute facility, and the net proceeds of any condemnation award shall not be applied as provided in Section 4.2(a), if the Company shall exercise its option to terminate this Agreement pursuant to Section 8.1 hereof.

(c) The Agency shall cooperate fully with the Company in the handling and conduct of any condemnation proceeding with respect to the Facility. In no event shall the Agency voluntarily settle, or consent to the settlement of, any condemnation proceeding with respect to the Facility without the written consent of the Company.

(d) The Company hereby waives the provisions of Real Property Law Section 227 or any law of like import now or hereafter in effect.

4.3. Condemnation of the Company-Owned Property. The Company shall be entitled to the proceeds of any condemnation award or portion thereof made for damage to or taking of any property which, at the time of such damage or taking, is not part of the Facility.

ARTICLE V

SPECIAL COVENANTS

5.1. No Warranty of Condition or Suitability by the Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

5.2. Hold Harmless Provisions. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold harmless the Agency, its directors, officers, employees, members, agents (except the Company), representatives, and their respective successors and assigns and personal representatives from and against any and all (i) liability for loss or damage to property or injury to or death

of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or (ii) liability arising from or expense incurred by the Agency's acquiring, owning, leasing, constructing, installing and equipping the Facility, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or its directors, officers, employees, members, agents (except the Company), representatives, and their respective successors and assigns and personal representatives and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing obligations of the Company shall remain in full force and effect after the termination of this Lease.

- 5.3. Right to Inspect the Facility. The Agency and its duly authorized agents shall have the right at all reasonable times and upon reasonable notice to inspect the Facility. The Agency shall honor and comply with any reasonable restricted access policy of the Company relating to the Facility.
- 5.4. Agreement to Provide Information. The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified, without delay, such information concerning the Company, the Facility and other topics necessary to enable the Agency to make any report required by law or governmental regulation.
- 5.5. Books of Record and Account; Financial Statements. The Company at all times 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 relating to the Facility.
- 5.6. Compliance With Orders, Ordinances, Etc.
 - (a) The Company agrees that it will, throughout the Lease Term, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.
 - (b) Notwithstanding the provisions of subsection (a) of this Section 5.6, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom. The Company shall give prompt notice of the foregoing to the Agency.

5.7. Discharge of Liens and Encumbrances.

(a) The Company shall not permit or create or suffer to be permitted or created any lien upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.7, the Company may in good faith contest any such lien. In such event, the Company, with the prior written notice to the Agency may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company to promptly secure payment of all such unpaid items by filing the requisite bond, in form and substance satisfactory to the Agency thereby causing a lien to be removed.

5.8. Depreciation, Deductions and Investment Tax Credit. The Company shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to Section 167 of the Internal Revenue Code and to any investment credit pursuant to Section 38 of the Internal Revenue Code with respect to any portion of the Facility which constitutes "Section 38 Property".

ARTICLE VI

RESTRICTION ON SALE; ASSIGNMENTS AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS

6.1. Restriction on Sale of Facility.

(a) Except as otherwise specifically provided in this Article VI and except for the granting of a mortgage interest and security interests to lenders designated by the Company ("Lender") under a mortgage, security agreement and/or assignment of leases and rents in a form acceptable to the Agency, Lender and the Company, for purposes of financing the acquisition, construction, reconstruction, renovation, rehabilitation, installation and equipping of the Facility along with all modifications, substitutions and/or restatements thereof with the Lender or its successors and/or assigns the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Lease, without the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Under no circumstances shall the Agency be required to mortgage, grant a security interest in or assign its rights to receive the rentals described in Section 2.6 or its rights to be indemnified under Sections 1.2(e), 1.2(h), 2.1, 3.1(a) and 5.2 herein (collectively referred to as "Unassigned Rights").

6.2. 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.