

## AMENDED AND RESTATED LEASEBACK TO COMPANY

*THIS AMENDED AND RESTATED LEASEBACK TO COMPANY* ("Leaseback Agreement"), made as of the [29]<sup>th</sup> day of December, 2016, by and between the COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY ("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 offices at One Cablevision Center, Ferndale, New York 12734 and SPT IVEY 61 EMERALD MOB LLC, a Delaware limited liability company having a mailing address of 591 West Putnam Avenue, Greenwich, Connecticut 06830 ("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 or about June 1, 2003, CRH Realty I, LLC ("CRH Realty") presented an application to the Agency, a copy of which is on file at the office of the Agency, whereby the Agency undertook a project which consisted of the (i) acquisition, construction, equipping and installation of a medical office complex intended to house a multi-specialty practice consisting of approximately 80,784 square feet ("Building") situate on two (2) parcels of real estate consisting of approximately 17.34 acres located in the Emerald Corporate Center along Rock Hill Drive in the Town of Thompson, County of Sullivan, State of New York and identified on the Town of Thompson tax map as Section 35, Block 1, Lot 9.2 and Section 35, Block 1, Lot 9.3 ("Land") and related facilities; (ii) acquired and installed thereon and therein certain furniture, fixtures, machinery, equipment and tools ("Equipment"); (iii) constructed improvements to the Building, the Land and the Equipment (collectively, the Building and the Land are referred to as either the

“Facility” or the “Project”); and

*WHEREAS*, in order to induce CRH Realty to develop the Facility, effective June 1, 2003, the Agency at the request of CRH Realty acquired title to the Land from Emerald Corporate Center Economic Development Corporation and entered into a leaseback of the Land from the Agency to CRH Realty; and

*WHEREAS*, CRH Realty, on behalf of the Agency and as the Agency's agent, acquired, constructed, equipped and installed the Facility in accordance with the plans and specifications presented to the Agency; and

*WHEREAS*, on or about September 5, 2013, CRH Realty (via its affiliate) requested the Agency consent to the transfer of fee title to the Facility to CRH Realty and that the existing sale/leaseback between the Agency and CRH Realty be restructured to a lease/leaseback between the Agency and GA HC REIT II 61 Emerald NY MOB LLC (“REIT 61”) with the understanding that REIT 61 simultaneously enter into a new twenty (20) year lease with Crystal Run Healthcare LLP (“CR Healthcare”) (collectively, the “2013 Transaction Restructure”); and

*WHEREAS*, by Termination of Lease entered into on or about September 19, 2013, the Lease from the Agency to CRH Realty was terminated and contemporaneously with the termination of the Lease, the Agency transferred fee title to the Facility to CRH Realty by Quitclaim Deed dated September 19, 2013, which deed was recorded in the Office of the Clerk of Sullivan County as Instrument No. 2013-7413; and

*WHEREAS*, by Bargain and Sale Deed dated September 20, 2013, CRH Realty transferred fee title to the Facility to REIT 61, which deed was recorded in the Office of the Clerk of Sullivan County as Instrument No. 2013-7414; and

*WHEREAS*, on September 20, 2013, pursuant to a Lease to Agency, REIT 61 leased the Facility to the Agency, which lease was memorialized of record by a Memorandum of Lease to Agency dated September 20, 2013, which memorandum was recorded in the Office of the Clerk of Sullivan County as Instrument No. 2013-7415 (“Lease”); and

*WHEREAS*, on September 20, 2013, pursuant to a Leaseback to Company, the Agency leased back the Facility to REIT 61, which leaseback was memorialized of record by a Memorandum of Leaseback to Company dated September 20, 2013, which memorandum was recorded in the Office of the Clerk of Sullivan County as Instrument No. 2013-7416 (“Leaseback”); and

*WHEREAS*, on or about September 20, 2013, REIT 61 and the Agency entered into a Payment in Lieu of Tax Agreement (“Existing PILOT Agreement” together with the Lease and Leaseback collectively, the “Agency Documents”) which shall become effective on February 15, 2018, it being contemplated that for all tax periods from and after the date of the 2013 Transaction Restructure and before those tax periods controlled by the taxable status of March 1, 2018, that the Project would be taxable for ad valorem real property tax levies; and

**WHEREAS**, the transaction documents entered into by the Agency and REIT 61 at the time of the 2013 Transaction Restructure (collectively, the "2013 Transaction Documents") required the Agency to consent to the transfer of in excess of fifty (50%) percent of the voting interests in REIT 61; and

**WHEREAS**, at the time of the 2013 Transaction Restructure, the sole member of REIT 61 was GA HC REIT II Tiger Eye NY MOB Portfolio, LLC ("REIT Tiger Eye"); the sole member of REIT Tiger Eye was Griffin-American Healthcare REIT II Holdings, LP ("REIT Holdings LP"); and the general partner of REIT Holdings LP was Griffin-American Healthcare REIT II, Inc. "Griffin-American"); and

**WHEREAS**, on or about November 25, 2014, the Agency consented to the transfer of in excess of fifty (50%) percent of the voting interest in REIT 61 as contemplated by the merger of Griffin-American and North Star Realty Finance Corp. ("NorthStar Realty"); and

**WHEREAS**, contemporaneously with the merger of Griffin-American and NorthStar Realty, the Agency joined in the execution of a mortgage of the Facility in favor of Citigroup Global Markets Realty Corp., JPMorgan Chase Bank, National Association, Barclays Bank PLC and Column Financial, Inc. (collectively, the "Existing Lenders") securing a loan in the original principal amount of Thirty-Three Million Two Hundred Eighteen Thousand Five Hundred and 00/100 (\$33,218,500.00) Dollars ("REIT 61 to Citigroup Mortgage"); and

**WHEREAS**, at the time of recording of the REIT 61 to Citigroup Mortgage, mortgage recording tax in the amount of Three Hundred Thirty-Two Thousand One Hundred Eighty-Five and 00/100 (\$332,185.00) Dollars was paid to the Sullivan County Clerk; and

**WHEREAS**, by letter dated October 18, 2016, REIT 61 requested the Agency consent to the transfer of the Facility to the Company; and

**WHEREAS**, by Resolution No. 33-16 duly adopted on November 2, 2016, the Agency consented to the transfer; and

**WHEREAS**, by Application for Financial Assistance received November 16, 2016, the Company has requested that the existing lease/leaseback transaction between REIT 61 and the Agency be restructured to a lease/leaseback between the Company and the Agency ("2016 Transaction Restructure"); and

**WHEREAS**, by Resolution No. 38-16 duly adopted on November 28, 2016, the Agency consented to and authorized the transfer of fee title and partially granting and partially denying the request for a mortgage recording tax abatement; and

**WHEREAS**, by Lease to Agency, dated December [27], 2016, the Company leased the Facility 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 Leaseback Agreement subject to the terms of that certain Payment In Lieu of Tax Agreement, of even date herewith ("PILOT Agreement"); and

**WHEREAS**, in connection with the 2016 Transaction Restructure, the Company will enter into that Loan Agreement (as the same may be hereafter amended, assigned, restated, modified, supplemented, extended, renewed or replaced from time to time, the "Loan Agreement") dated as of December [29], 2016 by and among the Company, certain affiliates of the Company, the Lenders (as defined in the Loan Agreement) and Capital One, National Association, as administrative agent for its benefit and the benefit of the other Lenders (in such capacity, the "Administrative Agent"), pursuant to which the Company and certain of its affiliates will borrow funds (the "Loan") from the Lenders to refinance the loan from the Existing Lenders; and

**WHEREAS**, in order to evidence its obligation to repay the Loan made by the Lenders, the Company and certain of its affiliates simultaneously with the execution and delivery thereof, will execute and deliver to each Lender a promissory note (as each may be hereafter amended, assigned, restated, modified, supplemented, extended, renewed or replaced from time to time, collectively referred to herein as the "Note") in the aggregate principal amount of the Loan; and

**WHEREAS**, in order to secure its obligations to the Administrative Agent and the other Lenders under the Note, the Company and the Agency will execute and deliver (i) that certain Fee, Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, (ii) that certain Fee, Leasehold and Subleasehold Gap Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing and (iii) that certain Consolidated Fee, Leasehold and Subleasehold Mortgage, Assignment of Lease and Rents, Security Agreement and Fixture Filing, Spreader and Modification Agreement, each dated as of December [29], 2016 and each in favor of Administrative Agent, for its benefit and the benefit of the other Lenders (as each may be hereafter amended, restated, modified, supplemented, extended, renewed or replaced from time to time, collectively referred to herein as the "Mortgage").

**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 Leaseback Agreement and to carry out its obligations hereunder. Based upon the representations of CR Healthcare 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 Leaseback Agreement.
- (c) The Agency will take or has taken a leasehold interest in the Facility, lease the Facility to the Company pursuant to this Leaseback Agreement and may designate the Company as its agent for purposes 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 of Sullivan and improving their standard of living.
- (d) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Leaseback Agreement 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 Leaseback Agreement by the undertaking of the Company to operate or cause CR Healthcare to operate 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) The Company is a limited liability company duly organized, existing and in good standing under the laws of the State of Delaware and, subject to completion of the publication requirements set forth in NY CLS LLC § 206 authorized to do business in the State of New York, has the authority to enter into this Leaseback Agreement and has duly authorized the execution and delivery of this Leaseback Agreement.
- (b) Neither the execution and delivery of this Leaseback Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Leaseback Agreement 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 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 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 (d) and subsection (f) below.
- (e) The Company has caused to be transferred to the Agency a leasehold interest in all those properties and assets contemplated by this Leaseback Agreement 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 Leaseback Agreement.
- (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) 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) to Company's knowledge, 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 chief

executive officer, executive director, 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 or it shall cause CR Healthcare to list, except as otherwise provided by the collective bargaining contracts to which it or CR Healthcare is a party, any new employment opportunities created in connection with the Facility with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively referred to as the "Referral Agencies"). The Company also agrees that it will or shall cause CR Healthcare, except as otherwise provided by the collective bargaining contracts to which it or CR Healthcare is a party, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership (PL 97-300) programs who shall be referred by the Referral Agencies.

## ARTICLE II

### DEMISING CLAUSES AND RENTAL PROVISIONS

- 2.1. Agreement to Transfer Leasehold Interest to Agency. The Company has leased and demised or has caused to be leased and demised to the Agency a leasehold interest in the Land as more particularly described on Schedule A attached hereto, including any buildings, structures or improvements thereon. The Company agrees the Agency's interest in the Facility resulting from said transfers and/or conveyances will be sufficient for the purposes intended by this Leaseback Agreement 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. INTENTIONALLY OMITTED.
- 2.3. Demise of Facility. The Agency hereby transfers, leases and demises to the Company all its right, title and interest in and to a certain Lease to Agency, dated as of December

[29], 2016 by and between the Company and the Agency, a copy of which is attached hereto as Exhibit A, whereby the Company granted to the Agency a leasehold interest in the Land as more particularly described in Schedule A hereto, including any buildings, structures or improvements thereon constituting the Facility and the Company hereby rents and leases the Facility from the Agency upon the terms and conditions of this Leaseback Agreement.

2.4. Remedies to be Pursued Against Contractors and Subcontractors and its 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 15, 2024, 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 Leaseback Agreement, 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) The Agency acknowledges that all rent due through December 31, 2016 has been paid to the Agency by REIT 61. On or before January 1, 2017 and on January 1<sup>st</sup> of each calendar year thereafter during the Lease Term, the Company shall pay annual rent in the sum of NINE THOUSAND ONE HUNDRED SIXTY-SEVEN AND 00/100 (\$9,167.00) Dollars. Notwithstanding anything to the contrary set forth in this Leaseback Agreement, the Agency and the Company covenant and agree not to increase the amount of annual rent due under this Section 2.6(a) without Administrative Agent's prior written consent.
- (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 leasehold interest in the Facility or its leasing of the Facility to the Company and (ii) in connection with the carrying out of the Agency's duties and obligations under this Leaseback Agreement.
- (c) The Company agrees to make the above mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public 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, (ii) fail to observe any of its other covenants or agreements in this Leaseback Agreement or (iii) except as provided in Section 8.1 hereof, terminate this Leaseback Agreement for any cause whatsoever including, without limiting the generality of the foregoing, failure to complete the Facility, or any defect in the design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for the Company's purposes and needs, or failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by condemnation of 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 Leaseback Agreement, 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 Leaseback Agreement 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 hereof, take any action that will adversely affect the Facility or that 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, or will cause CR Healthcare to, (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) use and maintain the Facility in a sound and prudent manner; and (iv) operate the Facility such that it continues to qualify under the Act and pursuant to the terms contained herein. 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 without the prior written approval of the Agency 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 that contemplates said additions, modifications or improvements or (ii) as otherwise provided by law. The Company agrees to deliver to the Agency all documents that may be necessary or appropriate to transfer to the Agency a leasehold interest in the Facility.

##### 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 or cause to be paid, 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 with respect to the Facility and 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 the 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 Leaseback Agreement to pay only such installments as are required to be paid during the Lease Term.
- (b) The Company, at its own expense, 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 hereof 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 Five Hundred Thousand (\$500,000.00) Dollars. 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 term of this Leaseback Agreement. 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 Leaseback Agreement.

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. Notwithstanding the foregoing, the Agency shall not pay any tax, assessment or other governmental charge, the premium for insurance or any other payment required to be paid pursuant to Section 3.3 or Section 3.4 hereof without Administrative Agent's prior written consent.

#### 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 Leaseback Agreement; 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 Leaseback Agreement 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 Leaseback Agreement. 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 an operating entity as the Facility 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 Leaseback 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 chief executive officer, executive director, 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 financing, constructing, equipping and leasing of the Facility to the Company, 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 that may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding 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 Leaseback Agreement.
- 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 or cause compliance 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 TRANSFER; ASSIGNMENTS AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS

#### 6.1. Restriction on Transfer 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 Administrative Agent, for its benefit and the benefit of the other Lenders under the Mortgage (along with all modifications, substitutions and/or restatements thereof entered into with the Administrative Agent or its successors and/or assigns), the Agency shall not transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Leaseback Agreement, 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 hereof 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. 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 (provided the Company shall not do any damage to the Facility) and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part.
- (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 6.2.
- (c) The removal of any item of Equipment pursuant to this Section 6.2 shall not entitle the Company to any abatement of or diminution of the rents payable under Section 2.6 hereof.

#### 6.3. Maintaining Existence and Assignment and Subleasing.

- (a) The Company agrees during the Lease Term, it will maintain its existence, will not dissolve, liquidate or otherwise dispose of all or substantially all of its assets

and will not consolidate with or merge into another entity or permit one or more entities to consolidate with or merge into it, without the prior written consent of the Agency which consent will not be unreasonably withheld or delayed in each instance.

- (b) This Leaseback Agreement may not be assigned in whole or in part, and more than fifty percent (50%) of the Facility may not be subleased, without the prior written consent of the Agency in each instance. A transfer in excess of fifty (50%) percent of the equity voting interests of the Company shall be deemed an assignment and require the prior written consent of the Agency. Any assignment or subleases shall be on the following conditions, as of the time of each assignment and sublease:
- (i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder;
  - (ii) the assignee shall assume the obligations of the Company hereunder to the extent of the interest assigned;
  - (iii) the subleasee shall take its interest subject to this Leaseback Agreement, however the subleasee shall not be required to assume the obligations of the Company hereunder;
  - (iv) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption; and
  - (v) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act.
- (c) If the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 6.3, the Company at its cost shall furnish to the Agency with an opinion, in form and substance satisfactory to the Agency as to items (i), (ii) and (iv) above.

6.4 Approval of Lease to CR Healthcare. The Agency hereby consents to the Lease of the Facility by the Company to CR Healthcare.

## ARTICLE VII

### DEFAULT

#### 7.1. Events of Default Defined.

- (a) Each of the following shall be an "Event of Default" under this Leaseback Agreement:
- (i) If the Company fails to pay the amounts required to be paid pursuant to Sections 2.6, 3.3 or 3.7 hereof 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;
  - (ii) If there is any purposeful, willful and knowing breach by the Company of any of its other agreements or covenants set forth in this Leaseback Agreement that shall have continued for a period of ten (10) days after the Agency gives written notice of such breach to the Company;
  - (iii) If there is any failure by the Company to observe or perform any other covenant, condition or agreement required by this Leaseback Agreement to be observed or performed and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice to the Company, specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such thirty (30) day period, the Company's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence;
  - (iv) If any representation or warranty of the Company contained in this Leaseback Agreement is incorrect in any material respect; or
  - (v) Any default by the Company under the PILOT Agreement that shall have continued for a period of time beyond the cure period(s) provided for in the PILOT Agreement. For clarification, a default by CR Healthcare under Section 8 of the PILOT Agreement shall not constitute a default or Event of Default under this Leaseback Agreement.
- (b) Notwithstanding the provisions of 7.1 (a), if by reason of *force majeure* either party hereto shall be unable in whole or in part to carry out its obligations under this Leaseback Agreement and if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Leaseback Agreement of the party giving such notice, so far as it is affected by

such *force majeure*, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 7.1. Notwithstanding anything to the contrary in this subsection (b), an event of *force majeure* shall not excuse, delay or in any way diminish the obligations of the Company to or make the payments required by Sections 2.6, 3.3 and 3.7 hereof, to obtain and continue in full force and effect the insurance required by Section 3.4 hereof, to provide the indemnity required by Section 5.2 hereof and to comply with the terms of Sections 5.2, 5.4, 5.5, 5.6 and 5.7 hereof. The term "*force majeure*" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of its departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lock-outs and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

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

- (a) 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 2.6 hereof and (ii) the sums under Sections 3.3 and 3.7 hereof; and (iii) all other payments due under this Leaseback 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) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements or covenants of the Company under this Leaseback Agreement.
- (d) Terminate this Leaseback Agreement. Such termination is in addition to all other

rights and remedies available to the Agency hereunder and without mitigation of such rights and remedies. Such termination may be accomplished by terminating this Leaseback Agreement and, to the extent not already accomplished by the Bill of Sale, conveying title to the Equipment from the Agency to the Company, all as determined by the Agency. The Company hereby appoints the Executive Director or Chief Executive Officer of the Agency as its attorney-in-fact for the limited purpose of signing any forms which are necessary to accomplish such termination or conveyance. The Company acknowledges that the foregoing appointment is coupled with an interest and is irrevocable.

- 7.3. 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 or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.
- 7.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Leaseback Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, or for obtaining other relief, the Company shall, on demand therefor, pay to the Agency, the reasonable fees of such attorneys and such other expenses so incurred.
- 7.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE VIII

### EARLY TERMINATION OF AGREEMENT: OBLIGATIONS OF COMPANY

- 8.1. Early Termination of Agreement.
- (a) The Company shall have the option at any time to terminate this Leaseback Agreement upon filing with the Agency a certificate signed by an authorized representative of the Company stating the Company's intention to do so pursuant to this Section 8.1 and upon compliance with the requirements set forth in Section 8.2 hereof.
- (b) The Agency shall have the option at any time to terminate this Leaseback Agreement and to demand immediate payment in full of the rental reserved and

unpaid as described in Section 2.6 hereof, the sums due under Sections 3.3 or 3.7 hereof, and all other payments due under this Leaseback Agreement, upon written notice to the Company of the occurrence of an Event of Default hereunder.

8.2. Option to Terminate Agency's Leasehold Interest in the Facility. Upon termination of this Leaseback Agreement in accordance with Section 2.5, 7.2 or Section 8.1 hereof, the Company shall pay all sums due under Sections 2.6, 3.3 and 3.7 hereof and all other sums due under this Leaseback Agreement ("Termination Payment").

8.3. Termination of Leaseback.

(a) Pursuant to Section 8.2 hereof, the Agency shall, within thirty (30) days of (i) written notice from the Company as required by Section 8.1 hereof; and (ii) receipt of the Termination Payment, deliver to the Company all necessary documents to reflect termination of this Leaseback Agreement, subject only to the following:

(i) any liens to which the Facility was subject when leased to the Agency;

(ii) 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; and

(iii) 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.

(b) The Agency shall release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance or condemnation awards with respect to the Facility (specifically excluding all rights of the Agency hereunder including its rights to indemnification hereunder).

(c) The Lease Agreement between the Company as landlord and the Agency as tenant shall terminate upon the termination of this Leaseback Agreement, and the Agency agrees to execute any documents reasonably necessary to effectuate such termination.

## ARTICLE IX

### GENERAL PROVISIONS

9.1. Notices. All notices provided for by this Leaseback Agreement shall be made in writing, and shall be deemed to have been given on the date of delivery if personally served on the party to whom notice is to be given, or on the next day after mailing if mailed to the party to whom notice is to be given by overnight courier of national reputation providing evidence of receipt and properly addressed, or on the third day after mailing if mailed to the party to whom notice shall be given by First Class, Certified mail, postage prepaid

and properly addressed to the following:

If to the Agency:

County of Sullivan Industrial Development Agency  
One Cablevision Center  
Ferndale, New York 12734  
Attn: Chief Executive Officer

With a copy to:

GARIGLIANO LAW OFFICES, LLP  
449 Broadway  
P.O. Drawer 1069  
Monticello, New York 12701-1069  
Attn: Agency Counsel

To the Company:

SPT IVEY 61 EMERALD MOB LLC  
591 West Putnam Avenue  
Greenwich, Connecticut 06830

with a copy to:

SPT IVEY 61 EMERALD MOB LLC  
c/o Starwood Property Trust  
591 West Putnam Avenue  
Greenwich, Connecticut 06830  
Attention: Andrew J. Sossen

and

Kirkland & Ellis LLP  
601 Lexington Ave.  
New York, New York 10022  
Attn: Travis Fleming, Esq.

To the Administrative  
Agent:

CAPITAL ONE, NATIONAL ASSOCIATION  
500 West Monroe Street  
Chicago, Illinois 60661  
Attention: Jeffrey M. Muchmore  
Loan Ref: Project Ivey

or to such other addresses or addressees as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section 9.1. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section 9.1.

9.2. Binding Effect. This Leaseback Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and its respective permitted successors and

assigns.

- 9.3. Waiver. No waiver of any of the provisions of this Leaseback Agreement shall be deemed to or shall constitute a waiver or any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
- 9.4. Severability. If any provision of this Leaseback Agreement shall be determined to be illegal and unenforceable by any court of law or any competent governmental or other authority, the remaining provisions shall be severable and enforceable in accordance with its terms so long as this Leaseback Agreement without such terms or provisions does not fail of its essential purpose or purposes. The parties will negotiate in good faith to replace any such illegal or unenforceable provision or provisions with suitable substitute provisions which will maintain the economic purposes and intentions of this Leaseback Agreement.
- 9.5. Governing Law, Venue. This Leaseback Agreement shall be governed, construed and enforced in accordance with the laws of the State for contracts to be wholly performed therein. The parties hereby designate a court of proper jurisdiction located in the County as the exclusive venue for resolution of any disputes which may arise under or by reason of this Leaseback Agreement.
- 9.6. Survival of Obligations. The obligations of the Company to make payments required by Sections 2.6, 3.3, 3.7 hereof, all other payments due under this Leaseback Agreement and all indemnities shall survive any termination or expiration of this Leaseback Agreement.
- 9.7. Section Headings Not Controlling. The headings of the several sections in this Leaseback Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Leaseback Agreement.
- 9.8. 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 the County, in the State or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.
- 9.9. Merger of Agency.
- (a) Notwithstanding anything to the contrary or otherwise contained in this Leaseback Agreement, nothing contained in this Leaseback Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of its leasehold interest in the entire Facility to any other public benefit corporation or political subdivision which has the legal authority to lease the Facility, provided that upon any such consolidation, merger or transfer, 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 benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred.

- (b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of its leasehold interest, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall furnish such additional information with respect to any such transaction as the Company may reasonably request.

9.10. No Recourse; Special Obligation.

- (a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not any director, officer, employee, member, agent (other than the Company) or representative of the Agency in his individual capacity, and the directors, officers, employees, members, agents (other than the Company) or representatives 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.
- (b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State or of the County and neither the State nor the County shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).
- (c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) 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 (iii) 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 directors, officers, employees, members, agents (other than the Company) or representatives of the Agency shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its directors, officers, employees, members, agents (other than the Company) and representatives of the Agency against all liability expected to be incurred as a result of compliance with such request.

- (d) The obligations and agreements of the Company contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Company, and not of any member, direct or indirect beneficial owners, affiliates, partners, shareholders, officers, directors, agents, employees or representatives of the Company in his or their individual capacity, and the members, direct or indirect beneficial owners, affiliates, partners, shareholders, officers, directors, agents and employees or representatives of the Company 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.

9.11. Entire Agreement. This Leaseback Agreement together with the Lease to Agency and the PILOT Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior discussions and negotiations between them. This Leaseback Agreement may not be amended in any respect except by a written amendment expressly referring to this Leaseback Agreement and executed by the parties to be bound thereby.

9.12. Counterparts. This Leaseback Agreement may be executed in any number of counterparts and it shall be sufficient that the signature of each party appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement.

## ARTICLE X

### MORTGAGEE PROVISIONS

10.1. Mortgagee Provisions. In the event of any inconsistencies between this Article X and any of the other terms and provisions of this Leaseback Agreement, the terms and provisions of this Article X shall control and be binding.

10.2. Priority. Pursuant to the Mortgage, the Agency and the Company will grant to the Administrative Agent, for its benefit and the benefit of Lenders, a mortgage lien on and a security interest in the Facility as security for the payment of amounts due under the Loan. This Leaseback Agreement shall be subject and subordinate to the terms and provisions of the Mortgage, and to such mortgage lien and security interest so created thereby. Notwithstanding the foregoing, as between the Agency and the Company, the Agency shall have the ability to enforce the remedies in Section 7.2 hereof against the Company. Neither Administrative Agent nor any Lender shall have any liability or

obligation with respect to the Termination Payments under Article VIII hereof. References herein to "Administrative Agent" shall include any future administrative agent or lender for the Loan (or any replacement loan) providing mortgage loans to the Company the proceeds of which are used to finance or refinance the Facility. References herein to "Loan" shall include any such mortgage loans provided to the Company the proceeds of which are used to finance or refinance the Facility. References herein to "Mortgage" shall include any mortgage or security agreement granted by the Agency and/or the Company to Administrative Agent or its successors and assigns, which grants a mortgage lien on or security interest in the Facility in favor of the Administrative Agent as security for the Loan to the Company, in connection with the financing or refinancing of the Facility.

- 10.3 Liability of Administrative Agent. Administrative Agent has not, and shall not, become liable under the terms of this Leaseback Agreement unless and until Administrative Agent acquires all rights of the Company under this Leaseback Agreement through foreclosure, an assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or by the Mortgage.
- 10.4 Receipt of Mortgage. The Agency and the Company acknowledge receipt of a copy of the Mortgage and such other related documents as it considers necessary or appropriate for purposes hereof. The Agency has been informed that the Lenders will be making the Loan to the Company and certain of its affiliates. The Note, Mortgage, Loan Agreement and all other documents executed in connection with the Loan are collectively referred to herein as the "Loan Documents."
- 10.5 Insurance Proceeds; Restoration or Replacement. The Agency acknowledges that the lien of each Mortgage attaches to insurance proceeds and notwithstanding the provisions of this Leaseback Agreement to the contrary, if any, Administrative Agent and/or any Lender may, subject to the terms of the Loan Documents, require that such insurance proceeds be applied to reduce the unpaid balance of the Company's obligations under the Note and the other Loan Documents. Also, notwithstanding any of the provisions of this Leaseback Agreement to the contrary, under no circumstances shall Administrative Agent and/or any Lender, or their respective successors or assigns, have any obligation under this Leaseback Agreement to repair, restore or replace the improvements or the clean-up and removal of Hazardous Materials, reimburse the Agency and/or the Company for such repair, restoration, replacement, clean-up or removal, except to the extent that any obligation to clean-up and remove Hazardous Materials arises, commences or occurs as a result of actions taken by Administrative Agent and/or any Lender after the actual dispossession from the entire Facility of the Agency and the Company and all entities which control, are controlled by, or are under common control with the Agency and the Company following acquisition of the Facility by Administrative Agent through foreclosure of the Mortgage or a deed in lieu of foreclosure.
- 10.6 Assignment of Leaseback Agreement. The consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed, shall be required for any assignment of this Leaseback Agreement by Administrative Agent following

Administrative Agent's acquisition of the Agency's and/or the Company's interest in the Facility through foreclosure or exercise of remedies in lieu of foreclosure. The consent of the Company shall not be required for any assignment of this Leaseback Agreement by Administrative Agent following Administrative Agent's acquisition of the Agency's and/or the Company's interest in the Facility through foreclosure or exercise of remedies in lieu of foreclosure.

- 10.7 Eminent Domain. In the event of a taking of the Facility through the exercise of eminent domain or similar proceedings, all proceeds shall, subject to the terms of the Loan Documents, be applied first to reduce the unpaid balance of the Company's obligations to Administrative Agent and/or the Lenders pursuant to the terms and conditions of the Note and the other Loan Documents. The Agency and the Company confirm that in the event of a taking of the Facility or any portion thereof, Administrative Agent shall, subject to the terms of the Loan Documents, have the right to participate in proceedings with respect to the determination of value as provided for under the terms of the Mortgage and the other Loan Documents.
- 10.8 Rights and Obligations under the Loan Documents. Subject to the terms of the Loan Documents, Administrative Agent may terminate, sell, transfer or assign its rights and obligations under the Loan Documents, or modify or amend any of the terms of the Loan Documents at any time without the Agency's or the Company's consent. Subject to the terms of the Loan Documents, failure to give notice of any such termination, sale, transfer, assignment, modification or amendment shall not affect the validity of such action, Administrative Agent's rights to exercise remedies under the Mortgage or any of the other Loan Documents, nor Administrative Agent's rights hereunder.
- 10.9 Cure Rights. All cure rights to which Administrative Agent is entitled pursuant to this Leaseback Agreement may be exercised by Administrative Agent or its assignees, as Administrative Agent in its discretion so determines.
- 10.10 Notices of Breach or Default. The Agency and the Company shall provide Administrative Agent with copies of all notices of breach or default under this Leaseback Agreement that are delivered to the Agency or the Company contemporaneously with the furnishing of such notices to the other party. Each of the Agency and the Company agrees that no notice given under this Leaseback Agreement shall be effective against Administrative Agent unless a copy has been delivered to Administrative Agent in accordance with the terms of this Section 10.10. The Agency shall not take any action to terminate this Leaseback Agreement for any reason including, without limitation, as a result of a default by the Company hereunder, provided (a) Administrative Agent commences action (within the greater of: (x) thirty (30) days of the receipt of such notice and (y) the time period provided under this Leaseback Agreement) (i) to cure (or cause the cure) of the default or (ii) to foreclose upon the Facility and (b) Administrative Agent diligently pursues with continuity such cure or foreclosure. The Agency acknowledges and agrees that the cure of certain defaults may require possession or control of the Facility, and the exercise of rights and remedies under the Mortgage to obtain possession of the Facility shall constitute diligent action by Administrative Agent to cure the default. Any notice, demand, request, or other instrument given by the Agency or the Company to

Administrative Agent shall be delivered to Administrative Agent as specified in Section 9.1 (as adjusted from time to time upon notice to the Agency and the Company).


- 10.11 Leaseback Agreement Following Termination. If this Leaseback Agreement shall terminate for any reason, including, but not limited to, as a result of a rejection of the Leaseback Agreement in connection with a bankruptcy of the Company, the Agency shall, at Administrative Agent's request, enter into a new lease, substantially similar to this Leaseback Agreement, with Administrative Agent or its designee, and Administrative Agent or its designee shall assume the obligations of the Company as if this Leaseback Agreement had not been terminated.
- 10.12 Amendments or Modifications. This Leaseback Agreement shall not be amended or modified without Administrative Agent's prior written consent.
- 10.13 Estoppel Certificates. The Agency and/or the Company shall provide, at the Company's sole cost and expense, estoppel certificates regarding this Leaseback Agreement following request therefor by Administrative Agent.

60330-021v3

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IN WITNESS WHEREOF, the Agency and the Company have caused this Leaseback Agreement to be executed in its respective names, all as of the date first above written.

COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY

  
\_\_\_\_\_

By: Edward T. Sykes, Executive Director

SPT IVEY 61 EMERALD MOB LLC

By: Starwood Property Trust, Inc., Sole Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*IN WITNESS WHEREOF*, the Agency and the Company have caused this Leaseback Agreement to be executed in its respective names, all as of the date first above written.

COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY

\_\_\_\_\_  
By: Edward T. Sykes, Executive Director

SPT IVEY 61 EMERALD MOB LLC  
By: Starwood Property Trust, Inc., Sole Member

By: \_\_\_\_\_  


Name: \_\_\_\_\_  
Andrew Sossen  
Vice President

Title: \_\_\_\_\_

## AMENDED AND RESTATED LEASE TO AGENCY

*THIS AMENDED AND RESTATED LEASE TO AGENCY* ("Lease Agreement"), made as of the [29]<sup>th</sup> day of December, 2016 by and between SPT IVEY 61 EMERALD MOB LLC, a Delaware limited liability company having a mailing address of 591 West Putnam Avenue, Greenwich, Connecticut 06830 ("Company") and 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 offices at One Cablevision Center, Ferndale, New York 12734 ("Agency").

## 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 or about June 1, 2003, CRH Realty I, LLC ("CRH Realty") presented an application to the Agency, a copy of which is on file at the office of the Agency, whereby the Agency undertook a project which consisted of the (i) acquisition, construction, equipping and installation of a medical office complex intended to house a multi-specialty practice consisting of approximately 80,784 square feet ("Building") situate on two (2) parcels of real estate consisting of approximately 17.34 acres located in the Emerald Corporate Center along Rock Hill Drive in the Town of Thompson, County of Sullivan, State of New York and identified on the Town of Thompson tax map as Section 35, Block 1, Lot 9.2 and Section 35, Block 1, Lot 9.3 ("Land") and related facilities; (ii) acquired and installed thereon and therein certain furniture, fixtures, machinery, equipment and tools ("Equipment"); (iii) constructed improvements to the Building, the Land and the Equipment (collectively, the Building and the Land are referred to as either the



“Facility” or the “Project”); and

*WHEREAS*, in order to induce CRH Realty to develop the Facility, effective June 1, 2003, the Agency at the request of CRH Realty acquired title to the Land from Emerald Corporate Center Economic Development Corporation and entered into a leaseback of the Land from the Agency to CRH Realty; and

*WHEREAS*, CRH Realty, on behalf of the Agency and as the Agency's agent, acquired, constructed, equipped and installed the Facility in accordance with the plans and specifications presented to the Agency; and

*WHEREAS*, on or about September 5, 2013, CRH Realty (via its affiliate) requested the Agency consent to the transfer of fee title to the Facility to CRH Realty and that the existing sale/leaseback between the Agency and CRH Realty be restructured to a lease/leaseback between the Agency and GA HC REIT II 61 Emerald NY MOB LLC (“REIT 61”) with the understanding that REIT 61 simultaneously enter into a new twenty (20) year lease with Crystal Run Healthcare LLP (“CR Healthcare”) (collectively, the “2013 Transaction Restructure”); and

*WHEREAS*, by Termination of Lease entered into on or about September 19, 2013, the Lease from the Agency to CRH Realty was terminated and contemporaneously with the termination of the Lease, the Agency transferred fee title to the Facility to CRH Realty by Quitclaim Deed dated September 19, 2013, which deed was recorded in the Office of the Clerk of Sullivan County as Instrument No. 2013-7413; and

*WHEREAS*, by Bargain and Sale Deed dated September 20, 2013, CRH Realty transferred fee title to the Facility to REIT 61, which deed was recorded in the Office of the Clerk of Sullivan County as Instrument No. 2013-7414; and

*WHEREAS*, on September 20, 2013, pursuant to a Lease to Agency, REIT 61 leased the Facility to the Agency, which lease was memorialized of record by a Memorandum of Lease to Agency dated September 20, 2013, which memorandum was recorded in the Office of the Clerk of Sullivan County as Instrument No. 2013-7415; and

*WHEREAS*, on September 20, 2013, pursuant to a Leaseback to Company, the Agency leased back the Facility to REIT 61, which leaseback was memorialized of record by a Memorandum of Leaseback to Company dated September 20, 2013, which memorandum was recorded in the Office of the Clerk of Sullivan County as Instrument No. 2013-7416; and

*WHEREAS*, on or about September 20, 2013, REIT 61 and the Agency entered into a Payment in Lieu of Tax Agreement (“PILOT Agreement”) which shall become effective on February 15, 2018, it being contemplated that for all tax periods from and after the date of the 2013 Transaction Restructure and before those tax periods controlled by the taxable status of March 1, 2018, that the Project would be taxable for ad valorem real property tax levies; and

*WHEREAS*, the transaction documents entered into by the Agency and REIT 61 at the

time of the 2013 Transaction Restructure (collectively, the "2013 Transaction Documents") required the Agency to consent to the transfer of in excess of fifty (50%) percent of the voting interests in REIT 61; and

*WHEREAS*, at the time of the 2013 Transaction Restructure, the sole member of REIT 61 was GA HC REIT II Tiger Eye NY MOB Portfolio, LLC ("REIT Tiger Eye"); the sole member of REIT Tiger Eye was Griffin-American Healthcare REIT II Holdings, LP ("REIT Holdings LP"); and the general partner of REIT Holdings LP was Griffin-American Healthcare REIT II, Inc. "Griffin-American"); and

*WHEREAS*, on or about November 25, 2014, the Agency consented to the transfer of in excess of fifty (50%) percent of the voting interest in REIT 61 as contemplated by the merger of Griffin-American and North Star Realty Finance Corp. ("NorthStar Realty"); and

*WHEREAS*, contemporaneously with the merger of Griffin-American and NorthStar Realty, the Agency joined in the execution of a mortgage of the Facility in favor of Citigroup Global Markets Realty Corp., JPMorgan Chase Bank, National Association, Barclays Bank PLC and Column Financial, Inc. (collectively, the "Existing Lenders") securing a loan in the original principal amount of Thirty-Three Million Two Hundred Eighteen Thousand Five Hundred and 00/100 (\$33,218,500.00) Dollars ("REIT 61 to Citigroup Mortgage"); and

*WHEREAS*, at the time of recording of the REIT 61 to Citigroup Mortgage, mortgage recording tax in the amount of Three Hundred Thirty-Two Thousand One Hundred Eighty-Five and 00/100 (\$332,185.00) Dollars was paid to the Sullivan County Clerk; and

*WHEREAS*, by letter dated October 18, 2016, REIT 61 requested the Agency consent to the transfer of the Facility to the Company; and

*WHEREAS*, by Resolution No. 33-16 duly adopted on November 2, 2016, the Agency consented to the transfer; and

*WHEREAS*, by Application for Financial Assistance received November 16, 2016, the Company has requested that the existing lease/leaseback transaction between REIT 61 and the Agency be restructured to a lease/leaseback between the Company and the Agency ("2016 Transaction Restructure"); and

*WHEREAS*, by Resolution No. 38-16 duly adopted on November 28, 2016, the Agency consented to and authorized the transfer of fee title and partially granting and partially denying the request for a mortgage recording tax abatement;

*WHEREAS*, in furtherance of the foregoing the Company proposes to lease the Facility to the Agency, upon the terms and conditions hereinafter set forth in this Lease Agreement;

*WHEREAS*, in connection with the 2016 Transaction Restructure, the Company will enter into that Loan Agreement (as the same may be hereafter amended, assigned, restated,

modified, supplemented, extended, renewed or replaced from time to time, the "Loan Agreement") dated as of December [27], 2016 by and among the Company, certain affiliates of the Company, the Lenders (as defined in the Loan Agreement) and Capital One, National Association, as administrative agent for its benefit and the benefit of the other Lenders (in such capacity, the "Administrative Agent"), pursuant to which the Company and certain of its affiliates will borrow funds (the "Loan") from the Lenders to refinance the loan from the Existing Lenders; and

*WHEREAS*, in order to evidence its obligation to repay the Loan made by the Lenders, the Company and certain of its affiliates simultaneously with the execution and delivery thereof, will execute and deliver to each Lender a promissory note (as each may be hereafter amended, assigned, restated, modified, supplemented, extended, renewed or replaced from time to time, collectively referred to herein as the "Note") in the aggregate principal amount of the Loan; and

*WHEREAS*, in order to secure its obligations to the Administrative Agent and the other Lenders under the Note, the Company and the Agency will execute and deliver (i) that certain Fee, Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, (ii) that certain Fee, Leasehold and Subleasehold Gap Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing and (iii) that certain Consolidated Fee, Leasehold and Subleasehold Mortgage, Assignment of Lease and Rents, Security Agreement and Fixture Filing, Spreader and Modification Agreement, each dated as of December [27], 2016 and each in favor of Administrative Agent, for its benefit and the benefit of the other Lenders (as each may be hereafter amended, assigned, restated, modified, supplemented, extended, renewed or replaced from time to time, collectively referred to herein as the "Mortgage").

*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 Agreement and to carry out its obligations hereunder. Based upon the representations of CR Healthcare 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 Agreement.
- (c) The Agency will lease the Facility from the Company pursuant to this Lease Agreement, lease the Facility back to the Company pursuant to the Leaseback Agreement of even date herewith ("Leaseback Agreement") and designate the Company as its agent for purposes 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 of Sullivan and improving their standard of living.
- (d) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Lease Agreement 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 Agreement to facilitate the 2016 Transaction Restructure.

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) The Company is a limited liability company duly organized, existing and in good standing under the laws of the State of Delaware and, subject to completion of the publication requirements set forth in NY CLS LLC § 206, authorized to do business in the State, has the authority to enter into this Lease Agreement and has duly authorized the execution and delivery of this Lease Agreement.
- (b) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease Agreement 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.

## ARTICLE II

### DEMISING CLAUSES AND RENTAL PROVISIONS

- 2.1. Agreement to Transfer to Agency. The Company has leased and demised or has caused to be leased and demised to the Agency a leasehold interest in the real property, including any buildings, structures or improvements thereon, described in Schedule A attached hereto. The Company agrees the Agency's interest in the Facility resulting from said conveyance will be sufficient for the purposes intended by this Lease Agreement and agrees that it will defend, indemnify and hold the Agency harmless from any expense or liability or loss or damage arising out of the lease or 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 the lease or title to or a lien affecting the Facility.
- 2.2. Demise of Facility. The Company hereby leases the Facility to the Agency and the Agency hereby rents and leases the Facility from the Company upon the terms and conditions of this Lease Agreement.
- 2.3. Remedies to be Pursued Against Contractors and Subcontractors and its 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.
- 2.4. Duration of Lease Term; Quiet Enjoyment.
- (a) The leasehold estate created hereby shall commence on December [29], 2016.
  - (b) The leasehold estate created hereby shall terminate at 11:59 P.M. on February 15, 2024.
  - (c) The period commencing on the date described in Section 2.4(a) herein through the date described in Section 2.4(b) herein shall be herein defined as the "Lease Term".
- 2.5. Rents. The rental under this Lease Agreement shall be One (\$1.00) Dollar and other good and valuable consideration, receipt of which is hereby acknowledged by the

Company.

2.6. Use: Lease Agreement.

- (a) The Agency shall hold and use the Land only for leaseback to the Company under the Leaseback Agreement and otherwise shall not sell or assign its rights hereunder nor the leasehold estate created thereby.
- (b) Contemporaneously with the execution and delivery of this Lease Agreement, the Agency shall enter into the Leaseback Agreement, pursuant to which the Company as agent of the Agency agrees to operate the Project or cause it to be operated. Pursuant to the Leaseback Agreement, the Company, as tenant of the Agency under the Leaseback Agreement, is required to perform all of the Agency's obligations under this Lease Agreement. Accordingly, and notwithstanding anything to the contrary contained in this Lease Agreement, the Company shall not be entitled to declare a default hereunder or exercise any rights or remedies hereunder, if any asserted default by the Agency hereunder relates to a failure by the Company, as tenant of the Agency under the Leaseback Agreement, to perform its corresponding obligations under the Leaseback Agreement.

**ARTICLE III**

DAMAGE, DESTRUCTION AND CONDEMNATION

3.1. Damage or Destruction.

- (a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the term of this Lease Agreement:
  - (i) the Agency shall have no obligation to replace, repair, rebuild or restore the Facility; and
  - (ii) there shall be no abatement or reduction in the amounts payable by the Company under the Leaseback Agreement.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 3.1, 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.

**ARTICLE IV**

SPECIAL COVENANTS

- 4.1. 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 chief executive officer, executive director, 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 and financing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable 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 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 Agreement.

## ARTICLE V

### ASSIGNMENTS AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS

- 5.1. Assignment and Subleasing. This Lease Agreement may not be assigned in whole or in part, and the Facility may not be leased, in whole or in part, except (i) that the Agency shall lease the leasehold interest created hereunder to the Company pursuant to the Leaseback Agreement and (ii) that the Company and the Agency shall enter into the Mortgage.

## ARTICLE VI

### TERMINATION

- 6.1. Early Termination of Lease Agreement. The Company shall have the option at any time to terminate this Lease Agreement upon filing with the Agency a certificate signed by an authorized representative of the Company stating the Company's intention to do so pursuant to this Section 6.1 and upon compliance with the requirements set forth in Section 6.2 hereof.
- 6.2. Option to Terminate. Upon termination of this Lease Agreement in accordance with Section 6.1 hereof, the Company shall pay to the Agency all sums due under Sections 2.6, 3.3 and 3.7 of the Leaseback Agreement and all other sums due under the Leaseback Agreement ("Termination Payment").
- 6.3. Termination of Lease Agreement.
- (a) Pursuant to Section 6.2 hereof, the Agency shall deliver to the Company all necessary documents to reflect termination of this Lease Agreement, subject only to the following:

- (i) any liens to which the Facility was subject when leased to the Agency;
  - (ii) 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; and
  - (iii) any liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement.
- (b) The Agency shall release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance or condemnation awards with respect to the Facility (specifically excluding all rights of the Agency hereunder including its rights to indemnification hereunder).

## ARTICLE VII

### GENERAL PROVISIONS

- 7.1. Notices. All notices provided for by this Agreement shall be made in writing, and shall be deemed to have been given on the date of delivery if personally served on the party to whom notice is to be given, or on the next day after mailing if mailed to the party to whom notice is to be given by overnight courier of national reputation providing evidence of receipt and properly addressed, or on the third day after mailing if mailed to the party to whom notice shall be given by First Class, Certified mail, postage prepaid and properly addressed to the following:

If to the Agency:

County of Sullivan Industrial Development Agency  
One Cablevision Center  
Ferndale, New York 12734  
Attn: Chief Executive Officer

with a copy to:

GARIGLIANO LAW OFFICES, LLP  
449 Broadway  
P.O. Drawer 1069  
Monticello, New York 12701-1069  
Attn: Agency Counsel

To the Company:

SPT IVEY 61 EMERALD MOB LLC  
591 West Putnam Avenue  
Greenwich, Connecticut 06830



with a copy to:

SPT IVEY 61 EMERALD MOB LLC  
c/o Starwood Property Trust  
391 West Putnam Avenue  
Greenwich, Connecticut 06830  
Attention: Andrew J. Sossen

and

Kirkland & Ellis LLP  
601 Lexington Ave.  
New York, New York 10022  
Attn: Travis Fleming, Esq.

To the Administrative Agent:

CAPITAL ONE, NATIONAL ASSOCIATION  
500 West Monroe Street  
Chicago, Illinois 60661  
Attention: Jeffrey M. Muchmore  
Loan Ref: Project Ivey

or at such other address and/or addresses as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

- 7.2. Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and its respective permitted successors and assigns.
- 7.3. Waiver. No waiver of any of the provisions of this Lease Agreement shall be deemed to or shall constitute a waiver or any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
- 7.4. Severability. If any provision of this Lease Agreement shall be determined to be illegal and unenforceable by any court of law or any competent governmental or other authority, the remaining provisions shall be severable and enforceable in accordance with its terms so long as this Lease Agreement without such terms or provisions does not fail of its essential purpose or purposes. The parties will negotiate in good faith to replace any such illegal or unenforceable provision or provisions with suitable substitute provisions which will maintain the economic purposes and intentions of this Lease Agreement.
- 7.5. Governing Law, Venue. This Lease Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York for contracts to be wholly performed therein. The parties hereby designate a court of proper jurisdiction in Sullivan County, New York as the exclusive venue for resolution of any disputes which may arise under or by reason of this Lease Agreement.

- 7.6. Section Headings Not Controlling. The headings of the several sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Lease Agreement.
- 7.7. Recording and Filing. This Lease Agreement, or a memorandum thereof, shall be recorded or filed, as the case may be, in the Office of the Clerk of Sullivan County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.
- 7.8. No Recourse: Special Obligation. Notwithstanding anything to the contrary contained herein, the obligations and agreements of the Agency contained herein and in any other agreement executed by the Agency and in any other instrument or document supplemental thereto executed in connection herewith or therewith shall be deemed the obligation and agreements of the Agency, and not of any chief executive officer, executive director, director, officer, employee, member, agent (except the Company), representative, or their respective successors and assigns and personal representatives in his or her individual capacity, and the chief executive officer, executive director, directors, officers, employees, members, agents (except the Company), representatives, and their respective successors and assigns and personal representatives of the Agency shall not be liable personally 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 of New York, the County of Sullivan, or any of the taxing jurisdictions and neither the State, the County, or any of the taxing jurisdictions shall be liable thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute a limited obligation of the Agency payable solely from revenues derived from the sale of the Agency's interest in the Facility.
- 7.9. Entire Agreement. This Lease Agreement together with the Leaseback Agreement and the Payment In Lieu of Tax Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior discussions and negotiations between them. This Lease Agreement may not be amended in any respect except by a written amendment expressly referring to this Lease Agreement and executed by the parties to be bound thereby.
- 7.10 Counterparts. This Lease Agreement may be executed in any number of counterparts and it shall be sufficient that the signature of each party appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement.

## ARTICLE VIII

### MORTGAGEE PROVISIONS

- 8.1 Mortgagee Provisions. In the event of any inconsistencies between this Article VIII and any of the other terms and provisions of this Lease Agreement, the terms and provisions of this Article VIII shall control and be binding.
- 8.2 Priority. Pursuant to the Mortgage, the Agency and the Company will grant to the Administrative Agent, for its benefit and the benefit of Lenders, a mortgage lien on and a security interest in the Facility as security for the payment of amounts due under the Loan. This Lease Agreement shall be subject and subordinate to the terms and provisions of the Mortgage, and to such mortgage lien and security interest so created thereby. Notwithstanding the foregoing, as between the Agency and the Company, the Agency shall have the ability to enforce the remedies in Section 7.2 of that certain Amended and Restated Leaseback to Company between the Agency and the Company (as the same may from time to time be extended, amended, restated, supplemented or otherwise modified, the "Leaseback Agreement"). References herein to "Administrative Agent" shall include any future administrative agent or lender for the Loan (or any replacement loan) providing mortgage loans to the Company the proceeds of which are used to finance or refinance the Facility. References herein to "Loan" shall include any such mortgage loans provided to the Company the proceeds of which are used to finance or refinance the Facility. References herein to "Mortgage" shall include any mortgage or security agreement granted by the Agency and/or the Company to Administrative Agent or its successors and assigns, which grants a mortgage lien on or security interest in the Facility in favor of the Administrative Agent as security for the Loan to the Company, in connection with the financing or refinancing of the Facility.
- 8.3 Liability of Administrative Agent. Administrative Agent has not, and shall not, become liable under the terms of this Lease Agreement unless and until Administrative Agent acquires all rights of the Company under the Lease Agreement through foreclosure, an assignment in lieu of foreclosure, or as a result of some other action or remedy provided by law or by the Mortgage.
- 8.4 Receipt of Mortgage. The Agency and the Company acknowledge receipt of a copy of the Mortgage and such other related documents as they considers necessary or appropriate for purposes hereof. The Agency has been informed that the Lenders will be making the Loan to the Company and certain of its affiliates. The Note, Mortgage, Loan Agreement and all other documents executed in connection with the Loan are collectively referred to herein as the "Loan Documents."
- 8.5 Restoration or Replacement of the Facility. Notwithstanding any of the provisions of this Lease Agreement to the contrary, under no circumstances shall Administrative Agent and/or any Lender, or their respective successors or assigns, have any obligation under this Lease Agreement to repair, restore or replace the improvements or the clean-up and

removal of Hazardous Materials, reimburse the Agency and/or the Company for such repair, restoration, replacement, clean-up or removal, except to the extent that any obligation to clean-up and remove Hazardous Materials arises, commences or occurs as a result of actions taken by Administrative Agent and/or any Lender after the actual dispossession from the entire Facility of the Agency and the Company and all entities which control, are controlled by, or are under common control with the Agency and Company following acquisition of the Facility by Administrative Agent through foreclosure of the Mortgage or a deed in lieu of foreclosure.

- 8.6 Assignment of Lease Agreement. The consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed, shall be required for any assignment of this Lease Agreement by Administrative Agent following Administrative Agent's acquisition of the Agency's and/or the Company's interest in the Facility through foreclosure or exercise of remedies in lieu of foreclosure. The consent of the Company shall not be required for any assignment of this Lease Agreement by Administrative Agent following Administrative Agent's acquisition of the Agency's and/or the Company's interest in the Facility through foreclosure or exercise of remedies in lieu of foreclosure.
- 8.7 Rights and Obligations under the Loan Documents. Subject to the terms of the Loan Documents, Administrative Agent may terminate, sell, transfer or assign its rights and obligations under the Mortgage and the other documents executed in connection therewith, or modify or amend any of the terms of the Mortgage and the other documents executed in connection therewith at any time without the Agency's or the Company's consent. Subject to the terms of the Loan Documents, failure to give notice of any such termination, sale, transfer, assignment, modification or amendment shall not affect the validity of such action, Administrative Agent's rights to exercise remedies under the Mortgage or any of the other documents executed in connection therewith, nor Administrative Agent's rights hereunder.
- 8.8 Eminent Domain. The Agency and the Company confirm that in the event of a taking of the Facility or any portion thereof through the exercise of eminent domain or similar proceedings, Administrative Agent shall, subject to the terms of the Loan Documents, have the right to participate in proceedings with respect to the determination of value as provided for under the terms of the Mortgage and of the other documents executed in connection therewith.
- 8.9 Cure Rights. All cure rights to which Administrative Agent is entitled pursuant to this Lease Agreement may be exercised by Administrative Agent or its assignees, as Administrative Agent in its discretion so determines.
- 8.10 Notices of Breach or Default. The Agency and the Company shall provide Administrative Agent with copies of all notices of breach or default that are delivered to the Agency or the Company contemporaneously with the furnishing of such notices to the other party and any other notices which are required to be sent by the Company to the Agency under this Lease Agreement. Each of the Agency and the Company agrees that

no notice given under this Lease Agreement shall be effective against Administrative Agent unless a copy has been delivered to Administrative Agent in accordance with the terms of this Section 8.10. The Agency shall not take any action to terminate this Lease Agreement for any reason including, without limitation, as a result of a default by the Company hereunder, provided (a) Administrative Agent commences action (within the greater of: (x) thirty (30) days of the receipt of such notice and (y) the time period provided under this Lease Agreement) (i) to cure (or cause the cure) of the default or (ii) to foreclose upon the Facility and (b) Administrative Agent diligently pursues with continuity such cure or foreclosure. The Agency acknowledges and agrees that the cure of certain defaults may require possession or control of the Facility, and the exercise of rights and remedies under the Mortgage to obtain possession of the Facility shall constitute diligent action by Administrative Agent to cure the default. Any notice, demand, request, or other instrument given by the Agency or the Company to Administrative Agent shall be delivered to Administrative Agent as specified in Section 7.1 (as adjusted from time to time upon notice to the Agency and the Company).

- 8.11 Lease Agreement Following Termination. If this Lease Agreement shall terminate for any reason, including, but not limited to, as a result of a rejection of this Lease Agreement in connection with a bankruptcy of the Company, the Agency shall, at Administrative Agent's request, enter into a new lease, substantially similar to this Lease Agreement, with Administrative Agent or its designee, and Administrative Agent or its designee shall assume the obligations of the Company as if this Lease Agreement had not been terminated.
- 8.12 Amendments or Modifications. This Lease Agreement shall not be amended or modified without Administrative Agent's prior written consent.
- 8.13 Estoppel Certificates. The Agency and/or the Company shall provide, at the Company's sole cost and expense, estoppel certificates regarding this Lease Agreement following request therefor by Administrative Agent.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

- *IN WITNESS WHEREOF*, the Company and the Agency have caused this Lease Agreement to be executed in their respective names, all as of the date first above written.

SPT IVEY 61 EMERALD MOB LLC  
By: Starwood Property Trust, Inc., Sole Member

By: \_\_\_\_\_

Name: Andrew Sossen

Title: Vice President

COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY

\_\_\_\_\_  
By: Edward T. Sykes, Executive Director

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

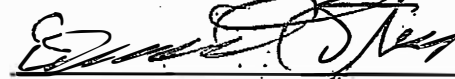
SPT IVEY 61 EMERALD MOB LLC  
By: Starwood Property Trust, Inc., Sole Member

By: \_\_\_\_\_

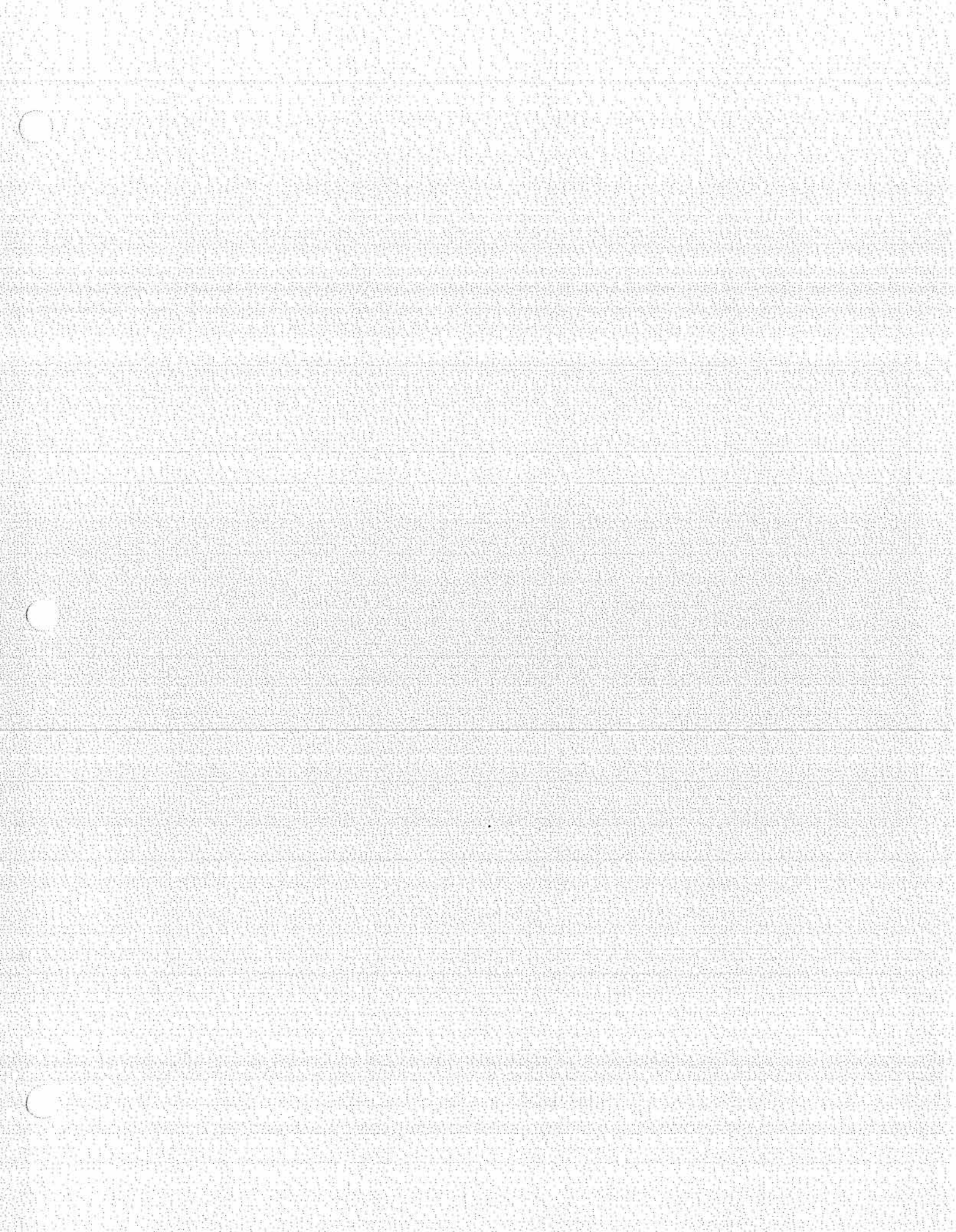
Name: \_\_\_\_\_

Title: \_\_\_\_\_

COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY



By: Edward T. Sykes, Executive Director





# SCHEDULE

A

## Legal Description

THO 35-1-9.3, LOT 1

ALL that tract or parcel of land situate in the Town of Thompson, County of Sullivan, State of New York being in Great Lot No. 12 of the Hardenburgh Patent, being Lot 1 as shown on an amended subdivision plat entitled "Emerald Corporate Center Subdivision II" dated May 1, 2003 and approved by the Town of Thompson Planning Board on June 25, 2003, said Lot 1 being more particularly bounded and described as follows:

BEGINNING at a point at the most northerly corner of Parcel 1 (a 1.60 acre parcel) as shown on a subdivision plat entitled "Emerald Corporate Center Subdivision" approved by the Town of Thompson Planning Board on March 13, 2001 and filed in the Sullivan County Clerk's Office on April 20, 2001 as Map No. 8-423 A & B, said Parcel 1 also being designated as Lot A on said amended subdivision plat, said point of beginning being on the southeast bounds of lands of the County of Sullivan Industrial Development Agency (See Land Record Liber 2244 at Page 617), said point of beginning being further described as North 38 degrees 17 minutes 18 seconds East 423.84 feet as measured along the northwest bounds of said 1.60 acre parcel from a point at the most northerly corner of lands of Calcam Associates, Inc. as described in Liber 1373 of Deeds at Page 33, and

RUNNING THENCE from said place of beginning South 34 degrees 00 minutes 00 seconds East 283.42 feet passing along the northerly bounds of said 1.60 acre parcel to a point on the northerly bounds of a multi-width right of way leading southwesterly to Rock Hill Drive-Town Road No. 51;

THENCE the following courses and distances and arcs passing along the northerly and westerly bounds of said multi-width right of way:

1. North 84 degrees 18 minutes 38 seconds East, 35.90 feet to a point;
2. South 84 degrees 35 minutes 09 seconds East, 206.21 feet to a point;
3. Thence on a curve to the left having a radius of 170.00 feet for an arc length of 57.98 feet to a point, the chord of said arc being defined by the course North 85 degrees 38 minutes 35 seconds East, 57.70 feet;
4. North 75 degrees 52 minutes 19 seconds East, 255.52 feet to a point;
5. Thence on a curve to the right having a radius of 230.00 feet for an arc length of 96.51 feet to a point, the chord of said arc being defined by the course North 87 degrees 53 minutes 36 seconds East, 95.81 feet;
6. South 80 degrees 05 minutes 07 seconds East, 284.98 feet to a point;
7. Thence on a curve to the left having a radius of 170.00 feet for an arc length of 240.91 feet to a point, the chord of said arc being defined by the course North 59 degrees 19 minutes 01 seconds East 221.25 feet;
8. North 18 degrees 43 minutes 09 seconds East 171.55 feet to a point;
9. Thence on a curve to the left having a radius of 170.00 feet for an arc length of 140.28 feet to a point, the chord of said arc being defined by the course North 4 degrees 55 minutes 16 seconds West, 136.34 West;
10. North 28 degrees 33 minutes 41 seconds West 148.29 feet to a point;

THENCE leaving said multi-width right of way and running North 54 degrees 13 minutes 20 seconds West 141.96 feet passing along a common line between Lots 1 and 4 as shown on said amended plat to a point;

THENCE continuing along said common boundary South 86 degrees 49 minutes 02 seconds West, 856.04 feet to a point on the southeast bounds of said lands of the County of Sullivan Industrial Development Agency;

THENCE South 38 degrees 17 minutes 18 seconds West, 442.44 feet passing along said southeast boundary to the point or place of beginning containing 15.74 acres of land. Bearings given are tied to the New York State Plane Coordinate System, East Zone.

Also granting the right to use in common with others so entitled said multi-width right of way as shown on said subdivision plats, said right of way passing along the easterly and southerly bounds of the above described 15.74 acre parcel and extending

westerly and southwesterly along the southerly bounds of said 1.60 acre parcel and continuing southerly along the southeasterly bounds of said Calcam Associates, Inc. parcel to Rock Hill Drive-Town Road No. 51, said right of way being for the purposes of ingress and egress and for extending utility lines, said right of way shall run with the land.

## THO 35-1-9.2, LOT A

ALL that tract or parcel of land situate in the Town of Thompson, County of Sullivan, State of New York being in Great Lot No. 12 of the Hardenburgh Patent, being Parcel 1 as shown on a subdivision plat entitled "Emerald Corporate Center Subdivision" approved by the Town of Thompson Planning Board on March 13, 2001, and filed in the Sullivan County Clerk's Office on April 20, 2001 as Map No. 8-423 A & B, said Parcel 1 also being designated as Lot A on an amended subdivision plat entitled "Emerald Corporate Center Subdivision II" dated May 1, 2003 and approved by the Town of Thompson Planning Board on June 25, 2003, said Parcel 1 being more particularly bounded and described as follows:

BEGINNING at a point at the most northerly corner of lands of Calcam Associates, Inc. as described in Liber 1373 of Deeds at Page 33, said point of beginning being on the southeast bounds of lands of the County of Sullivan Industrial Development Agency (See Land Record Liber 2244 at Page 617) and running thence from said place of beginning North 38 degrees 17 minutes 18 seconds East 423.84 feet passing along said southeast bounds to a point at the common westerly corner of said Parcel 1 (being Lot A on amended plat) and Lot 1 as shown on said amended plat;

THENCE South 34 degrees 00 minutes 00 seconds East 283.42 feet passing along the common line between Parcel 1 and Lot 1 to a point on the northerly bounds of a multi-width right of way as shown on said subdivision plat and on said amended plat, said right of way leading southwesterly to Rock Hill Drive-Town Road No. 51;

THENCE on a curve to the left having a radius of 325.00 feet for an arc length of 288.66 feet, the chord of said arc being defined by the course South 63 degrees 44 minutes 33 seconds West 279.27 feet, said arc passing along the bounds of said right of way to a point,

THENCE continuing along the bounds of said right of way South 38 degrees 17 minutes 18 seconds West 63.10 feet to a point;

THENCE North 60 degrees 10 minutes 49 seconds West 151.65 feet passing along said right of way bounds to and along the northerly bounds of said Calcam Associates, Inc. parcel to the point or place of beginning containing 1.60 acres of land.

Bearings given are tied to the New York State Plane Coordinate System, East Zone.

Subject to utility easements of record including the utility easement granted to Verizon New York Inc. in L.R.L. 2406 at Page 305.

Also granting the right to use in common with others so entitled said multi-width right of way as shown on said subdivision plats, said right of way passing along the southeasterly bounds of the above described 1.60 acre parcel and extending southwesterly along the southeasterly bounds of said Calcam Associates, Inc. parcel to Rock Hill Drive, said right of way being for the purposes of ingress and egress and for maintaining utility lines, said right of way shall run with the land.