

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

TO

INTERNATIONAL BUSINESS MACHINES CORPORATION

AMENDED AND RESTATED LEASE AGREEMENT

*This conveyance of leasehold interest concerns a certain 70-acre parcel of land located at 299
Long Meadow Road, in the Town of Warwick, Orange County, New York*

Dated as of January 1, 2018

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AMENDED AND RESTATED LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT, dated as of January 1, 2018 (as so amended and restated, the "Lease Agreement"), is by and between the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553 (the "Agency") and **INTERNATIONAL BUSINESS MACHINES CORPORATION**, a corporation duly existing under the laws of the State of New York with offices at New Orchard Road, Armonk, New York 10504 (the "Company") and amends and restates that certain Lease Agreement, dated as of December 1, 2007 (the "Original Lease Agreement"), by and between the Agency and the Company.

WITNESSETH:

WHEREAS, Title I of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "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 390 of the Laws of 1972 of the State (hereinafter collectively, the "Act") created the Agency which is empowered under the Act to undertake the leasing of the facility described below; and

WHEREAS, the Agency and the Company have previously entered into agreements with respect to the Company's existing facility located at 299 Long Meadow Road in the Town of Warwick, Orange County, New York (the "Facility") for the purpose of providing the Company with certain financial assistance in connection with certain projects previously undertaken by the Company at the Facility; and

WHEREAS, in order to provide stability to the Company's financial planning, the Company has submitted an application (the "Application") to the Agency requesting the

Agency's continued financial assistance with respect to a certain project (the "Project") consisting of the Company's continued operation of the Facility; and

WHEREAS, in order to induce the Company to continue operating the Facility, the Agency is willing to retain title to the land, improvements and personal property constituting the Facility and lease said land, improvements and personal property constituting the Facility to the Company pursuant to the terms and conditions contained herein; and

WHEREAS, the Agency and the Company desire to amend and restate the Original Lease Agreement in order to, among other things, extend the term of the lease; and

WHEREAS, the Agency has determined that continuing to provide the Facility will accomplish, in part, its public purposes; and

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

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby formally covenant and agree that the Original Lease Agreement is hereby amended and restated in its entirety as follows.

ARTICLE I REPRESENTATIONS AND COVENANTS

Section 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 the Company as to the utilization of the Facility, the Agency has the authority to take the actions contemplated herein under the Act.

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

(c) The Agency will retain fee title to the Facility, lease the Facility to the Company pursuant to this Lease 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 Orange County, New York 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 by the undertaking of the Company to equip, repair and maintain the Facility and related jobs in Orange County, New York.

Section 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 corporation formed and validly existing under the laws of the State of New York, 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 the Company is a party or by 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 providing of the Facility by the Agency 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 of the Company 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 of the Company located within the State; and the Agency has found that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(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). The Company shall operate the Facility in accordance with this Lease Agreement and as a qualified "project" under the Act.

(e) The Company has previously caused to be transferred to the Agency a fee interest in all those properties and assets contemplated by this Lease 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, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Lease Agreement.

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

(h) The Company has provided to the Agency a certificate or certificates of insurance containing all of the insurance provision requirements included under Sections 3.4 and 3.5 hereof. If the insurance is canceled for any reason whatsoever, or the same is allowed to lapse or expire, or there be any reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to any mortgagee, loss payee or additional insured until at least thirty (30) days after receipt by such party of written notice by the insurer or the Company of such cancellation, lapse, expiration, reduction or change.

Section 1.3. Public Authorities Law Representations.

The parties hereto hereby acknowledge that the Facility and the interest therein conveyed by the Agency to the Company pursuant to the terms of this Lease Agreement is not "property" as defined in Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the Company's obligations to the Agency under the Tax Agreement (as hereinafter defined) and this Lease Agreement, including (i) the Company's obligation to equip and maintain the Facility on behalf of the Agency and (ii) the performance by the Company of the Unassigned Rights.

ARTICLE II
FACILITY SITE, DEMISING CLAUSES AND RENTAL PROVISIONS

Section 2.1. Agreement to Convey to Agency.

The Company previously conveyed to the Agency fee title to real property, including any buildings, structures or improvements thereon, described in **Schedule A** attached hereto and the Company previously conveyed all of the interest in the equipment described in **Schedule B** attached hereto (the "Equipment"). The Company agrees that the Agency's interest in the Facility resulting from said conveyances 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 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.

Section 2.2. Construction and Equipping of the Facility.

(a) The Agency hereby confirms its appointment of the Company as the true and lawful agent of the Agency to undertake the Project. Such appointment was made by the Agency pursuant to a resolution duly adopted by the Agency on January 11, 2018 (the "Authorizing Resolution").

(b) The Company, as agent for the Agency, will undertake the Project. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Authorizing Resolution to acts reasonably related to the equipping and maintaining of the Facility.

(c) The Company hereby agrees to pay the Agency administrative fee referenced in Section 2.6(b) hereof, the reasonable fees of local counsel to Agency and/or the reasonable fees of transaction counsel, and any and all reasonable fees, costs and expenses incurred in the maintenance of the Facility, including recording fees and taxes and any other fees or expenses due hereunder.

(d) During the term of this Lease Agreement, the Company, as agent for the Agency, may execute, deliver and record instruments affecting title to the Facility, such as declarations, easements, covenants and restrictions as the Company, in its sole discretion, shall deem necessary or appropriate.

Section 2.3. Demise of Facility.

The Agency hereby continues to demise and lease the Facility to the Company and the Company hereby continues to rent and lease the Facility from the Agency upon the terms and conditions of this Lease Agreement.

Section 2.4. Remedies to be Pursued Against Contractors and Subcontractors and their Sureties.

In the event of a default by any contractor or any other person or subcontractor under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor or manufacturer or 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 the Company deems 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.

Section 2.5. Duration of Lease Term; Quiet Enjoyment.

(a) The Company shall continue to have sole and exclusive possession of the Facility (subject to the provisions of Sections 5.3 and 7.1 hereof) and the leasehold estate created under the Original Lease Agreement shall continue as of the date hereof.

(b) The leasehold estate created hereby shall, without any further action of the parties hereto, terminate at 11:59 P.M. on **December 31, 2027**, or on such earlier date as may be permitted by Section 8.1 hereof.

(c) The period continuing as of 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 of Sections 5.3 and 7.1 hereof neither take nor suffer nor permit any action, other than pursuant to Articles VII or VIII of this Lease 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.

(e) The Company hereby irrevocably appoints and designates the Agency as its attorney-in-fact for the purpose of executing and delivering and recording any necessary

terminations of lease together with any documents required in connection therewith and to take such other and further actions in accordance with this Lease Agreement as shall be reasonably necessary to terminate the Agency's interest in the Project upon the expiration or termination hereof. Notwithstanding any such expiration or termination of this Lease Agreement, the Company's obligations under Sections 3.3 and 5.2 hereof shall continue notwithstanding any such termination or expiration.

Section 2.6. Rents and Other Consideration.

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

(a) Upon execution of this Lease Agreement, One Dollar (\$1.00) for the period commencing on the date hereof and ending on December 31, 2018, and on January 1 of each calendar year thereafter an amount equal to One Dollar (\$1.00) annually.

(b) In addition to the payments of rent pursuant to Section 2.6(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within thirty (30) days of the receipt of demand therefor, an amount equal to the sum of the reasonable, actual expenses of the Agency and the members thereof incurred (i) for the reason of the Agency's ownership or leasing of the Facility and (ii) in connection with the carrying out of the Agency's duties and obligations under this Lease Agreement. The Company shall pay (1) the Agency an administrative fee hereunder plus and (2) the fees and expenses of Harris Beach PLLC, as transaction counsel to the Agency, all payable upon execution of this Lease 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.

Section 2.7. Obligations of Company Hereunder Unconditional.

The obligations of the Company to make the payments required in Section 2.6 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required by Section 2.6 hereof or (ii) fail to observe any of its other covenants or agreements in this Lease Agreement or (iii) except as provided in Section 8.1 hereof, terminate this Lease Agreement for any cause whatsoever including, without limiting the generality of the foregoing, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for the Company's purposes and needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by condemnation of title to or the use of all or any part the Facility, any change in the tax or other laws of the United States of America or administrative rulings of or administrative

actions by the State or any political subdivision of either, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease 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 Lease 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, take, suffer or permit any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights or 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

Section 3.1. Maintenance and Modifications of Facility By Company.

(a) The Company agrees that during the Lease Term it or its operator will (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) operate the Facility in a sound and prudent manner; (iv) operate the Facility such that it continues to qualify as a "project" under the Act and pursuant to the terms contained herein; and (v) indemnify and hold the Agency harmless from any liability or expenses from the failure by the Company to comply with (i), (ii), (iii) or (iv) above.

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

Section 3.2. Installation of Additional Equipment.

The Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. The Company from time to time may remove or permit the removal of such machinery, equipment or other personal property.

Section 3.3. Taxes, Assessments and Utility Charges.

(a) The Company agrees to pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility, subject to the terms of the Tax Agreement, 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) effective with the 2018 assessment roll, all payments under a certain Third Amendment to Agreement on Payments In Lieu Of Taxes, dated as of the date hereof by and between the Agency and the Company (as amended, the "Tax Agreement"); (iii) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (iv) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

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

Section 3.4. Insurance Required.

At all times throughout the Lease Term, 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; or as an alternative to the foregoing the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well, provided a periodic appraisal is performed and provided to the Agency.

(b) Workers' 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 workers' compensation law; and a blanket excess liability policy in the amount not less than **\$3,000,000**, protecting the Company against any loss or liability or damage for personal injury or property damage.

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

(e) Any contractor or subcontractor renovating the Facility shall be required to carry workers' compensation and general comprehensive liability insurance with limits reasonably acceptable to the Agency and containing coverages for premises operations, owner's protective, contractor's protective, contractual liability, personal injury liability, broad form property damage, explosion hazard, collapse hazard and underground property damage hazard and coverage for all owned, non-owned and hired vehicles with non-ownership protection for the contractor's or subcontractor's employees.

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

Section 3.5. Additional Provisions Respecting Insurance.

(a) At the Company's election, as exercised from time to time, the Company may self-insure with respect to the insurance requirements set forth in Section 3.4 hereof. Except to the extent the Company has elected to self-insure, all insurance required by Section 3.4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 3.4 shall name the Agency as an additional insured. Except to the extent the Company has elected to self-insure, all insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. 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 execution of this Lease 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 Lease Agreement.

(c) Within one hundred twenty (120) days after the end of each of its fiscal years, the Company shall file with the Agency a certificate of the Company to the effect that the insurance it maintains with respect to the Project complies with the provisions of this Article III and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect.

Section 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:

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

(ii) 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.

Section 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 reimburse the Agency for any amount so paid together with interest thereon from the date of payment at twelve percent (12%) per annum.

ARTICLE IV DAMAGE, DESTRUCTION AND CONDEMNATION

Section 4.1. Damage or Destruction.

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

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease 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 Lease 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.

Section 4.2. Condemnation.

(a) If at any time during the Lease Term the whole or any part of title to, or the use of, the Facility shall be taken by condemnation, the Agency shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by the Company under this Lease 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 Lease 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.

Section 4.3. Condemnation of 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

Section 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.

Section 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 the Agency and its executive director, officers, members, directors and employees, and their respective successors, assigns or personal representatives, harmless 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, renovating, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the indemnified party to the extent that such an indemnity would be prohibited by law.

Section 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 restricted access policy of the Company relating to the Facility.

Section 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 Company's employment history and statistics related thereto, the Facility and other topics necessary to enable the Agency to make any report required by law or governmental regulation or as otherwise reasonably requested by the Agency.

Section 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.

Section 5.6. Compliance With Orders, Ordinances, Etc.

(a) The Company agrees that it will, throughout the Lease Term, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 5.6, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom. The Company will endeavor to give notice of the foregoing to the Agency but failure to do so shall not be a breach of this Lease Agreement.

Section 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 except any liens existing on the date hereof. This provision shall not prohibit the Approved Liens as they are defined in Section 6.1(a) below.

(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 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.

Section 5.8. Depreciation Deductions and Investment Tax Credit.

The parties agree that 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
RELEASE OF CERTAIN LAND; REMOVAL OF EQUIPMENT,
ASSIGNMENT AND SUBLEASING

Section 6.1. Restriction on Sale of Facility; Release of Certain Land.

Except as otherwise specifically provided in this Article VI and except for the granting of a mortgage interest and security interests to lenders designated by the Company (the "Lender") under a mortgage, security agreement and/or assignment of leases and rents in a form acceptable to the Agency, the Lender and the Company, for purposes of financing any renovation or improvement of the Facility along with all modifications, substitutions and/or restatements thereof with the Lender or its successors and/or assigns (the "Approved Liens"), the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any material part thereof or any of its rights under this Lease Agreement, without the prior written consent of the Company. The Agency agrees to subject its interest to, and to execute, any Approved Liens, provided, that 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(d), 1.2(g), 2.1, 3.1(a) and 5.2 herein or (i) the right of the Agency on its own behalf to receive all opinions of counsel, reports, financial information, certificates, insurance policies or binders or certificates, or other notices or communications required to be delivered to the Agency hereunder or otherwise reasonably requested by the Agency; (ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency hereunder; (iii) the right of the Agency in its own behalf to enforce the obligation of the Company to complete the Project and to confirm the qualification of the Project as a "project" under the Act; (iv) the right of the Agency to amend with the Company this Lease Agreement, and the right of the Agency to exercise its rights and remedies hereunder; (v) the right of the Agency in its own behalf to declare an Event of Default under Section 7.1 hereof; and (vi) the right of the Agency as to any of the foregoing, exercisable with respect to any sublessees or subtenants (collectively, the "Unassigned Rights").

Section 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 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.

Section 6.3. Assignment and Subleasing.

(a) This Lease Agreement may not be assigned in whole or in part except to a Related Person of the Company (as that term is defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the Internal Revenue Code of 1986, as amended, hereinafter "Related Person"), and the Facility may not be subleased, in whole or in part, by the Company except to a Related Person of the Company without the prior written consent of the Agency. A transfer in excess of fifty percent (50%) of the equity voting interests of the Company, other than to a Related Person of the Company, shall be deemed an assignment and require the prior written consent of the Agency. Any assignment or sublease shall be on the following conditions, as of the time of each assignment or sublease:

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

(ii) the assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

(iii) 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;

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

(v) 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.

(b) Any such assignment or sublease is subject to the review and approval by the Agency and its counsel (at no cost to the Agency; any such cost to be paid by the Company, including reasonable attorneys' fees), and shall contain such terms and conditions as reasonably required by the Agency and its counsel. Any such approval shall not be unreasonably withheld, conditioned or delayed.

ARTICLE VII DEFAULT

Section 7.1. Events of Default Defined.

(a) Each of the following shall be an "Event of Default" under this Lease Agreement:

(1) If the Company fails to pay the amounts required to be paid pursuant to Section 2.6 of this Lease Agreement and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to the Company; or

(2) If there is any purposeful, willful and knowing breach by the Company of any of its other agreements or covenants set forth in this Lease Agreement and such breach shall have continued for a period of thirty (30) days after the Agency gives written notice to the Company, specifying that breach 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; or; or

(3) If there is any failure by the Company to observe or perform any other covenant, condition or agreement required by this Lease 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; or

(4) If any representation or warranty of the Company contained in this Lease Agreement is incorrect in any material respect and the Company shall have failed to correct the facts or circumstances attendant upon such misrepresentation within thirty (30) days after the Agency gives written notice of such misrepresentation 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; or

(5) If there exists and continues any Event of Default under the Tax Agreement.

(b) Notwithstanding the provisions of 7.1(a) hereof, if by reason of force majeure either party hereto shall be unable in whole or in part to carry out its obligations under this Lease 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 Lease Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The 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 and 3.3 hereof, to obtain and continue in full force and effect the insurance required by Section 3.4 hereof, and to provide the indemnity required by Section 5.2 hereof and to comply with the terms of Sections 5.2, 5.3, 5.6, 5.7 and 7.1(a)(1) 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 their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, 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.

Section 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;

(1) Declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (i) all unpaid installments of rent payable pursuant to Section 2.6(a) hereof and (ii) all other payments due under this Lease Agreement.

(2) 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.

(3) 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, including payments in lieu of taxes due and payable to the date of termination and to enforce the obligations, agreements or covenants of the Company under this Lease Agreement.

(4) Terminate this Lease Agreement and reconvey the Facility to the Company.

Section 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 Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.4. Agreement to Pay Attorneys' Fees and Expenses.

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

Section 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 LEASE AGREEMENT;
OBLIGATIONS OF COMPANY

Section 8.1. Early Termination of Lease Agreement.

(a) 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 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 Lease Agreement and to demand immediate payment in full of the rental reserved and unpaid as described in Section 2.6 hereof upon written notice to the Company of the occurrence of an Event of Default hereunder.

Section 8.2. Obligation to Purchase Facility.

Upon termination of this Lease Agreement in accordance with Sections 2.5, 7.2 or 8.1 hereof, the Company shall purchase the Facility from the Agency for One Dollar (\$1.00) plus all rental reserved and unpaid as described in Section 2.6 hereof (the "Purchase Payment"). The Company shall exercise its obligation to purchase or option to have the Agency's leasehold

interest terminated by giving written notice to the Agency and paying said amount to the Agency.

Section 8.3. Conveyance on Purchase.

At the termination of the Company's leasehold interest in the Facility pursuant to Section 8.2 hereof, the Agency shall, upon receipt of the Purchase Payment, deliver to the Company all necessary documents to reflect a transfer by quitclaim deed of a fee interest.

ARTICLE IX
MISCELLANEOUS

Section 9.1. Notices.

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

To the Agency:

Orange County Industrial Development Agency
Orange County Business Accelerator
4 Crotty Lane, Suite 100
New Windsor, New York 12553
Attn: Laurie Villasuso, Chief Operating Officer
& Executive Vice President

With Copy To:

Kevin T. Dowd, Esq.
Attorney - Orange County IDA
46 Daisy Lane
Montgomery, New York 12549

And To:

Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Russell E. Gaenzle, Esq.

To the Company:

Internal Business Machines Corporation
New Orchard Road
Armonk, New York 10504
Attn.: Wayne Spinei, Program Manager,
Economic Development

With Copy To:

Internal Business Machines Corporation
New Orchard Road
Armonk, New York 10504
Attn.: Ann McEvily, Esq.

or at such other address 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.

Section 9.2. Binding Effect.

This Lease Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and their respective successors and assigns.

Section 9.3. Severability.

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

Section 9.4. Amendments, Changes and Modifications.

This Lease Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

Section 9.5. Execution of Counterparts.

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

Section 9.6. Applicable Law.

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.

Section 9.7. Recording and Filing.

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

(b) The Company agrees that in the event any taxes are deemed to be due and payable on or subsequent to the recordation of any mortgage to which the Company and the Agency are a party, any such tax shall be the sole and exclusive responsibility of the Company and shall be paid on demand.

Section 9.8. Survival of Obligations.

This Lease Agreement shall survive the performance of the obligations of the Company payments required by Section 2.6 and all indemnities shall survive any termination or expiration of this Lease Agreement.

Section 9.9. 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.

Section 9.10. No Broker.

Agency and Company represent and warrant to the other that neither Agency nor Company has dealt with any broker or finder entitled to any commission, fee, or other compensation by reason of the execution of this Lease Agreement, and each party agrees to indemnify and hold the other harmless from any charge, liability or expense (including attorneys' fees) the other may suffer, sustain, or incur with respect to any claim for a commission, fee or other compensation by a broker or finder claiming by, through or under the other party.

Section 9.11. 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 of any member, officer, agent (other than the Company) or employee of the Agency in his/her individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State or of Orange County, New York, and neither the State nor Orange County, New York, 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 place, 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 members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless the Agency and its members, officers, agents

(other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Section 9.12. No Joint Venture Created.

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

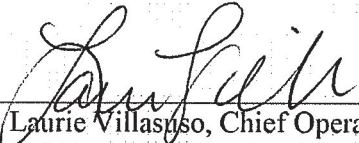
Section 9.13. Additional Events of Default.

In the event that (i) the Company closes or sells/transfers the Facility without the consent of the Agency; (ii) the use of the Facility or contemplated business activities at the Facility are materially changed or modified; (iii) there is a material non-compliance by the Company with the Lease Agreement, the Tax Agreement or any other agreement with the Agency or any state or federal law or regulation, the Agency shall have the right to require the Company pay to the Agency for the benefit of the Affected Tax Jurisdictions an amount equal to the benefits provided hereunder and any sales, real property tax and mortgage tax exemptions, if any, provided by the Agency to the Company in connection with the Project.

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

**ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Laurie Villasuso, Chief Operating Officer
and Executive Vice President

**INTERNATIONAL BUSINESS MACHINES
CORPORATION**

By: _____
Bruce Sargent, Director, North America R/E
Strategy and Operations

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

**ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Laurie Villasuso, Chief Operating Officer
and Executive Vice President

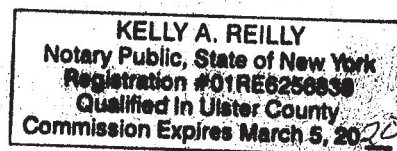
**INTERNATIONAL BUSINESS MACHINES
CORPORATION**

By:  _____
Bruce Sargent, Director, North America R/E
Strategy and Operations

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

On the 5th day of February in the year 2018, before me, the undersigned, personally appeared **Laurie Villasuso**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Kelly A. Reilly
Notary Public



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

On the ____ day of February in the year 2018, before me, the undersigned, personally appeared **Bruce Sargent** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the ____ day of February in the year 2018, before me, the undersigned, personally appeared **Laurie Villasuso**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF ~~NEW YORK~~ ^{NC})
COUNTY OF Durham) SS.:

On the 6th day of February in the year 2018, before me, the undersigned, personally appeared **Bruce Sargent** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

SCHEDULE A-DESCRIPTION

ALL that certain tract, piece or parcel of land situate in the Town of Warwick, County of Orange, and State of New York, and abutting Sterling Forest Lake (formerly Blue Lake) and also lying on the westerly side or right of way line for County Road No. 84, Sterling Lake Road, and being more particularly bounded and described as follows:

BEGINNING at a concrete highway monument, marking the most northerly corner of the hereinafter described tract, the southerly bounds of lands now or formerly Sterling Forest Corp. (formerly Spruce Lake Corp.) (deed referenced Liber 1321 of deeds at page 321, recorded in the Orange County Clerk's Office), said monument having coordinates North 3,506.37 feet and East 6,388.40 feet;

THENCE from the above described point of beginning and along the westerly side or right of way line for County Road No. 84 (Sterling Lake Road), on following eleven (11) courses and distances:

- (1) South 20 degrees 05 minutes 55 seconds East 387.16 feet to a concrete monument;
- (2) South 19 degrees 57 minutes 25 seconds East 300.01 feet to a concrete monument;
- (3) South 23 degrees 12 minutes 05 seconds East 300.37 feet to a concrete monument;
- (4) South 33 degrees 50 minutes 05 seconds East 102.84 feet to a concrete monument;
- (5) South 21 degrees 06 minutes 40 seconds East 245.14 feet to a copperweld monument;
- (6) South 42 degrees 47 minutes 40 seconds East 112.50 feet to a concrete monument;
- (7) South 29 degrees 29 minutes 25 seconds East 283.19 feet to a copperweld monument;
- (8) South 9 degrees 34 minutes 35 seconds East 266.53 feet to a point;
- (9) South 14 degrees 37 minutes 45 seconds West passing through a concrete monument at 358.84 feet for a total distance of 518.06 feet to a concrete monument;
- (10) South 3 degrees 56 minutes 35 seconds West 250.45 feet to a point;
- (11) South 5 degrees 11 minutes 55 seconds East passing through an iron pipe on line at 324.83 feet, a railroad spike at 349.93 feet, for a total distance of 409.93 feet to a point, said point marking the northerly line of lands now or formerly Sterling Forest Corp. (formerly Blue Lake Corp.);

THENCE South 42 degrees 37 minutes 40 seconds West 114.83 feet to a point marking the 642.00 foot elevation contour on the northerly side of the outlet spillway of Sterling Forest Lake (formerly Blue Lake);

THENCE along the 642.00 foot contour elevation as it marks the northerly, northeasterly and easterly edges of Sterling Forest Corp. (formerly Blue Lake Corp.) on the following Thirty-two (32) courses and distances:

- (1) South 58 degrees 26 minutes 55 seconds West 20.89 feet to a point;
- (2) South 71 degrees 02 minutes 20 seconds West 68.67 feet to a point;
- (3) South 85 degrees 02 minutes 50 seconds West 150.56 feet to a point;
- (4) South 75 degrees 14 minutes 00 seconds West 133.41 feet to a point;
- (5) North 62 degrees 07 minutes 10 seconds West 175.36 feet to a point;
- (6) South 78 degrees 00 minutes 30 seconds West 115.52 feet to a point;
- (7) South 39 degrees 48 minutes 20 seconds West 54.67 feet to a point;
- (8) South 79 degrees 32 minutes 20 seconds West 66.10 feet to a point;
- (9) North 42 degrees 20 minutes 10 seconds West 121.75 feet to a point;
- (10) North 59 degrees 02 minutes 10 seconds West 139.94 feet to a point;

- (11) North 53 degrees 29 minutes 20 seconds West 95.80 feet to a point;
- (12) North 78 degrees 08 minutes 20 seconds West 30.85 feet to a point;
- (13) North 80 degrees 45 minutes 50 seconds West 35.27 feet to a point;
- (14) North 58 degrees 19 minutes 25 seconds West 72.78 feet to a point;
- (15) North 34 degrees 49 minutes 10 seconds West 72.37 feet to a point;
- (16) North 23 degrees 42 minutes 20 seconds West 63.30 feet to a point;
- (17) North 7 degrees 38 minutes 40 seconds West 61.72 feet to a point;
- (18) North 10 degrees 02 minutes 40 seconds West 64.10 feet to a point;
- (19) North 8 degrees 23 minutes 10 seconds West 94.56 feet to a point;
- (20) North 23 degrees 13 minutes 50 seconds West 54.51 feet to a point;
- (21) North 19 degrees 55 minutes 40 seconds West 35.33 feet to a point;
- (22) North 21 degrees 08 minutes 30 seconds East 125.49 feet to a point;
- (23) North 8 degrees 58 minutes 50 seconds East 78.61 feet to a point;
- (24) North 16 degrees 51 minutes 10 seconds West 66.72 feet to a point;
- (25) North 4 degrees 47 minutes 00 seconds East 65.48 feet to a point;
- (26) North 7 degrees 24 minutes 30 seconds West 43.97 feet to a point;
- (27) North 5 degrees 26 minutes 30 seconds East 104.82 feet to a point;
- (28) North 12 degrees 58 minutes 20 seconds East 51.55 feet to a point;
- (29) North 4 degrees 05 minutes 20 seconds East 57.49 feet to a point;
- (30) North 5 degrees 40 minutes 10 seconds East 46.97 feet to a point;
- (31) North 33 degrees 17 minutes 50 seconds West 28.41 feet to a point;
- (32) North 62 degrees 15 minutes 20 seconds West 31.92 feet to a copperweld monument;

THENCE leaving the edge of Blue Lake and along other lands of Sterling Forest Corp, on the northwest, North 17 degrees 45 minutes 24 seconds East passing through copperweld monument at 460.00 feet, another copperweld monument on line at 920.00 feet, another copperweld monument at 1,380.00 feet, for a total distance of 1,827.91 feet to a copperweld monument marking the southerly bounds of other lands of Sterling Forest Corp. (formerly Spruce Lake Corp. previously recited);

THENCE along the line of lands last mentioned North 65 degrees 09 minutes 55 seconds East 128.90 feet to the point and place of **BEGINNING**.

Coordinates and bearings herein given refer to Monumented New York- New Jersey State Line between Milestones Nos. 23 and 24. The bearings of said lines are North 62 degrees 14 minutes 46 seconds West. The coordinates of said Milestones are: Milestone No. 23, North 0, East 0; Milestone No. 24, North 2, 420.14, West 4,599.23.

PARCEL II

TOGETHER with an easement for construction and maintenance of an underground pipe for the purpose of discharging cooling tower overflow and discharge water all as more particularly set forth and granted in the Agreement between Blue Lake Corporation, Sterling Forest Management Corp., and International Business Machines Corporation dated November 9, 1970 and recorded January 29, 1971 in Liber 1865 cp 974.

PARCEL III

TOGETHER with an easement for construction and maintenance of an underground pipe for the purpose of discharging cooling tower overflow and discharge water all as more particularly set forth

Title No: CW07203631

and granted in the Easement Agreement between Sterling Forest Corporation and International Business Machines Corporation dated November 15, 1984 and recorded May 9, 1985 in Liber 2359 cp 241.

Being and intended to be the same premises described in deed from International Business Machines Corporation to Orange County Industrial Development Agency, dated 12/30/1992 and recorded 01/07/1993 in L. 3739 cp 44.

Schedule B

Equipment

All machinery, apparatus, appliances, equipment, fittings, fixtures and furnishings and other property of every kind and nature whatsoever now or hereafter affixed to, located upon, appurtenant thereto or usable in connection with the present or future operation and occupancy of the Facility together with any replacements therefore to the extent acquired in the name of the Agency by the Company pursuant to the Agency appointment described in Section 2.2 herein or to the extent the Company conveys title to the Agency.