

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

WEST WARWICK ENERGY STORAGE 1 LLC

SUBLEASEBACK AGREEMENT

DATED AS OF JULY 1, 2022

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SUBLEASEBACK AGREEMENT

THIS SUBLEASEBACK AGREEMENT, dated as of July 1, 2022 (the “**Subleaseback Agreement**”), is by and between the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation existing under the laws of the State of New York, with offices at the Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553. (the “**Agency**”), and **WEST WARWICK ENERGY STORAGE 1 LLC** (the “**Company**”), a Delaware limited liability company authorized and in good standing under the laws of the State of New York with an office at 7 Times Square Tower, Suite 3504, New York, New York 10036 (the “**Company**”).

WITNESSETH:

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

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

WHEREAS, the Agency, by resolution adopted on April 20, 2022, agreed, at the request of the Company to undertake a project (the “**Project**”) consisting of: (A)(i) the acquisition of a (sub)leasehold interest in approximately 12,982.6 sq.ft of vacant land located at 63 County Highway 1, Warwick, New York (the “**Land**”) which is a portion of a larger approximately 31.5 acre vacant parcel (bearing tax map no. 42-1-35.1); (ii) the construction of an approximate 10,000 sq.ft. 4MW/22.4MWh battery storage system, including an auxiliary switchboard and a metal enclosed switchgear located on the Land to service the local distribution grid, and provide improvements to the distribution systems' reliability and resiliency, as well as providing emission free energy to the residents of Orange County (collectively, the “**Facility**”); and (iii) the acquisition and installation in and on the Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and real property tax (collectively, the “**Financial Assistance**”); (C) the appointment of the Company or its designee as

an agent of the Agency in connection with the acquisition, construction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a subleaseback agreement. The stored energy from the Project Facility will be utilized by Orange and Rockland Utilities, Inc.; and

WHEREAS, Warwick Valley Central School District 1 (the "**Owner**") is the current fee owner of the Land. The Company leases the Land from the Owner pursuant to a long-term Energy Storage Lease Agreement, dated May 18, 2020, as amended by First Amendment of Energy Storage Lease Agreement, dated May 5, 2022, with an initial term of 10 years with the option of two renewal terms of 10 years each (the "**Ground Lease**") and upon construction will be the fee owner of the Facility and the operator of the Project Facility; and

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

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

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

ARTICLE I RECITALS AND DEFINITIONS

1.1 RECITALS.

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

1.2 DEFINITIONS.

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

1.3 INTERPRETATION.

In this Subleaseback Agreement, unless the context otherwise requires:

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

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

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

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

ARTICLE II

REPRESENTATIONS AND COVENANTS

2.1 REPRESENTATIONS OF THE AGENCY.

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

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

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

(c) The Agency will take a subleasehold interest in the Project Facility, an ownership interest in the Equipment and personal property constituting the Project Facility, (sub)sublease the Project Facility to the Company pursuant to this Subleaseback Agreement and designate the Company as its agent for purposes of completing the Project, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and County of Orange, New York and improving their standard of living.

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

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

2.2 REPRESENTATIONS AND COVENANTS OF THE COMPANY.

The Company acknowledges, represents, warrants and covenants to the Agency as follows:

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

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

(c) The Owner is the present fee owner of the Project Facility and shall remain the fee owner of the Project Facility for the term of this Subleaseback Agreement unless otherwise consented to in writing by the Agency. The Company is the operator of the Project Facility and leases the Project Facility from the Owner pursuant to the Ground Lease.

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

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

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

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

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

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

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

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

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

(2) Will not result in the removal of an industrial or manufacturing plant or commercial activity of any Project Facility occupant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of any user, occupant, or proposed user or occupant of the Project Facility located within the State, except as permitted by the Act; and

(3) Will help advance prosperity, and standard of living and help prevent economic deterioration.

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

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

(k) The Project will not have a "significant effect on the environment" (within the meaning of such term as used in SEQRA) and the Company hereby covenants to comply

with all mitigating measures, requirements and conditions, if any, enumerated in the SEQR Resolution under SEQRA applicable to the acquisition, construction and installation of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project. No material changes with respect to any aspect of the Project Facility have arisen from the date of the issuance of such negative declaration which would cause the determination contained therein to be untrue.

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

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

(n) The acquisition, construction, equipping and completion of the Project Facility will help advance prosperity, and standard of living and help prevent economic deterioration.

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

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

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

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

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

to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the Department of Labor for such new employment opportunities.

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

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

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

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

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

(v) The amount of State and local sales and use tax benefits comprising the Financial Assistance approved by the Agency shall not exceed **\$613,407.43**. The Company shall not request, obtain nor claim State and local sales and use tax exemptions in excess of this amount.

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

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

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

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

2.3 PUBLIC AUTHORITIES LAW REPRESENTATIONS.

The parties hereto acknowledge that the Facility and the interest therein conveyed to the Agency under the Sublease Agreement, dated as of the date hereof, by and between the Company and the Agency (the "*Sublease Agreement*") and conveyed by the Agency back to the Company pursuant to the terms of this Subleaseback Agreement are not "property" as defined in Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold

interests therein are securing the Company's obligations to the Agency under the Tax Agreement (as herein defined), the Environmental Compliance and Indemnification Agreement and this Subleaseback Agreement, including (i) the Company's obligation to acquire, construct, renovate, equip and maintain the Facility on behalf of the Agency and (ii) the performance by the Company of the Unassigned Rights.

ARTICLE III CONVEYANCE OF LEASEHOLD INTEREST IN PROJECT FACILITY

3.1 AGREEMENT TO CONVEY LEASEHOLD INTEREST TO COMPANY.

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

3.2 USE OF PROJECT FACILITY.

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

ARTICLE IV RECONSTRUCTION, RENOVATION, CONSTRUCTION AND EQUIPPING OF THE PROJECT

4.1 RECONSTRUCTION, RENOVATION, CONSTRUCTION AND EQUIPPING OF THE PROJECT FACILITY.

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

(b) The Agency hereby confirms the appointment of the Company as its true and lawful agent to perform the following in compliance with the terms, purposes, and intent of this Subleaseback Agreement, the Act and the other Company Documents, and the Company hereby accepts such appointment:

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

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

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

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

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

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

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

4.2 COMPLETION OF PROJECT FACILITY.

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

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

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

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

4.3 COSTS OF COMPLETION PAID BY COMPANY.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V AGREEMENT TO LEASE PROJECT FACILITY; RENTAL PAYMENTS

5.1 AGREEMENT TO LEASE PROJECT FACILITY.

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

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

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

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

5.2 TERM OF LEASE; EARLY TERMINATION; SURVIVAL.

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

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

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

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

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

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

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

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

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

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

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

5.3 RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.

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

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

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

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

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

5.4 NATURE OF OBLIGATIONS OF COMPANY HEREUNDER.

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

(b) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Subleaseback Agreement or the Sublease Agreement, and in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the

Company may deem necessary to compel performance (subject to the provisions of Section 11.11).

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

ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

6.1 MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY.

The Company shall:

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

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

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

6.2 TAXES, ASSESSMENTS AND UTILITY CHARGES.

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

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

(2) All utility and other charges, including "service charges," incurred or imposed for the operation, maintenance, use, occupancy, upkeep, and improvement of the

Project Facility, the non-payment of which would create, or entitle the obligee to impose, a Lien on the Project Facility;

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

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

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

6.3 INSURANCE REQUIRED.

During the Term of this Subleaseback Agreement, the Company shall maintain or cause to be maintained insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type and as required of the Agency, paying (as the same becomes due and payable) all premiums with respect thereto, including but not necessarily limited to:

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

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

(c) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per accident or occurrence on an "occurrence" basis and \$2,000,000

in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Subleaseback Agreement and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

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

6.4 ADDITIONAL PROVISIONS RESPECTING INSURANCE.

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

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

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

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

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

6.5 APPLICATION OF NET PROCEEDS OF INSURANCE.

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

- (a) The Net Proceeds of the insurance required by subsection 6.3(a) shall be paid and applied as provided in Section 7.1 hereof; and
- (b) The Net Proceeds of the insurance required by subsections 6.3(b) and 6.3(c) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

6.6 PAYMENTS IN LIEU OF REAL ESTATE TAXES.

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

ARTICLE VII DAMAGE, DESTRUCTION, AND CONDEMNATION

7.1 DAMAGE OR DESTRUCTION.

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

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

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

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

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

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

7.2 CONDEMNATION.

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

have no interest in the Project Facility and if title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation:

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

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

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

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

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

7.3 ADDITIONS TO PROJECT FACILITY.

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

ARTICLE VIII

SPECIAL COVENANTS

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

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

8.2 HOLD HARMLESS PROVISIONS.

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

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

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

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

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

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

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

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

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

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

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

8.3 RIGHT OF ACCESS TO PROJECT FACILITY.

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

8.4 MAINTENANCE OF EXISTENCE.

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

8.5 AGREEMENT TO PROVIDE INFORMATION.

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

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

8.6 BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS.

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

8.7 COMPLIANCE WITH ORDERS, ORDINANCES, ETC.

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

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

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

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

8.8 DISCHARGE OF LIENS AND ENCUMBRANCES.

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

8.9 PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS.

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

8.10 DEPRECIATION DEDUCTIONS AND TAX CREDITS.

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

8.11 EMPLOYMENT OPPORTUNITIES.

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

8.12 SALES AND USE TAX EXEMPTION.

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

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

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

(d) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause each Additional Agent or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, and provide the Agency with a copy of same, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "**Annual Sales Tax Report**"), a statement of the value of all sales and use tax exemptions claimed by the Company and all other Additional Agents under the authority granted to the Company pursuant to Section 4.1(b) of this Subleaseback Agreement. Pursuant to

Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Therefore, if the Company shall fail to comply with the requirements of this subsection (d), irrespective of any notice and cure period afforded, the Company and each Additional Agent shall immediately cease to be the agent of the Agency in connection with the Project. The Company is responsible for obtaining from the New York State Department of Taxation and Finance the current version of such Annual Sales Tax Report.

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

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

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

8.13 IDENTIFICATION OF THE EQUIPMENT.

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

8.14 REMOVAL OF EQUIPMENT.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of Equipment from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part. The Company shall be obligated to replace such Equipment as necessary to maintain the Project Facility in accordance with the terms hereof.

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

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

ARTICLE IX ASSIGNMENTS; TRANSFERS; MERGER OF AGENCY

9.1 ASSIGNMENT OF LEASEBACK AGREEMENT.

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

9.2 TRANSFERS OF INTERESTS.

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

9.3 MERGER OF AGENCY.

(a) Nothing contained in this Subleaseback Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Subleaseback Agreement to be kept and performed by the

Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

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

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT DEFINED.

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

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

(b) Failure by the Company to exercise its option to extend the Ground Lease for a term at least coterminous with the term of this Subleaseback Agreement; or

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

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

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

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

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

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

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

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

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

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

10.2 REMEDIES ON DEFAULT.

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

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

(2) Terminate this Subleaseback Agreement;

(3) Terminate the Sublease Agreement;

(4) Terminate the Tax Agreement;

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

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

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

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

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

10.3 REMEDIES CUMULATIVE.

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Subleaseback Agreement, the Sublease Agreement and the other Company Documents or the Tax Agreement now or hereafter existing at law or in equity to collect any amounts then due, or thereafter to become due, hereunder and thereunder and to enforce the Agency's right to terminate this Subleaseback Agreement, the Tax Agreement and the Sublease Agreement. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article 10, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Subleaseback Agreement.

10.4 AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.

The Company shall remit, upon the execution and delivery of this Subleaseback Agreement, all legal fees and costs incurred by the Agency in conjunction with the Project Facility, its approval, and the Financial Assistance. In the event the Company should Default under any of the provisions of this Subleaseback Agreement, or a dispute arises hereunder, and the Agency should employ attorneys, or incur other expenses, to preserve or enforce its rights hereunder or for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees and costs of such attorneys and such other expenses so incurred. In addition, the Company acknowledges that to the extent there are any post-closing legal fees incurred by the Agency in conjunction with this Project, same are the obligation of the Company and as set forth herein.

10.5 NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.

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

ARTICLE XI MISCELLANEOUS

11.1 NOTICES.

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

- | | | |
|-----|------------------------|---|
| (a) | If to the Agency, to: | Orange County Industrial Development Agency
Orange County Business Accelerator
4 Crotty Lane, Suite 100
New Windsor, New York 12553
Attn: William Fioravanti, Chief Executive Officer |
| | With a copy to: | Bousquet Holstein PLLC
One Lincoln Center, Suite 1000
110 West Fayette Street
Syracuse, New York 13202
Attn: Susan R. Katzoff, Esq. |
| | If to the Company, to: | West Warwick Energy Storage 1 LLC
7 Times Square Tower, Suite 3504
New York, New York 10036
Attn: Frank Genova |
| (b) | With a copy to: | Hodgson Russ LLP
140 Pearl Street, Suite 100
Buffalo, New York 14202
Attn: Daniel Spitzer, Esq. |

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

11.2 BINDING EFFECT.

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

11.3 SEVERABILITY.

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

11.4 AMENDMENTS, CHANGES AND MODIFICATIONS.

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

11.5 EXECUTION OF COUNTERPARTS.

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

11.6 APPLICABLE LAW.

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

11.7 WAIVER OF TRIAL BY JURY.

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

11.8 SUBORDINATION.

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

11.9 SURVIVAL OF OBLIGATIONS.

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

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

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

11.10 TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.

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

11.11 NO RECOURSE; SPECIAL OBLIGATION.

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

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

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

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

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

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

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

11.12 OBLIGATION TO SELL AND PURCHASE THE EQUIPMENT.

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

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

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

11.13 ENTIRE AGREEMENT.

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

11.14 DISCLOSURE.

Section 875(7) of the New York General Municipal Law (“GML”) requires that the Agency post on its website all resolutions and agreements relating to the Company’s appointment as an agent of the Agency or otherwise related to the Project; and Article 6 of the New York Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Company feels that there are elements of the Project or information about the Company in the Agency’s possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Company’s competitive position, the Company must identify such elements in writing, supply same to the Agency on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.

11.15 RECORDING AND FILING.

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


11.16 NO JOINT VENTURE CREATED.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
William Fioravanti, Chief Executive Officer

WEST WARWICK ENERGY STORAGE 1 LLC

By: Convergent West Warwick LLC
its sole member

By: Convergent Energy and Power LP,
its sole member

By: _____
Frank Genova, President

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

**ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
William Fioravanti, Chief Executive Officer

WEST WARWICK ENERGY STORAGE 1 LLC

By: Convergent West Warwick LLC
its sole member

By: Convergent Energy and Power LP,
its sole member

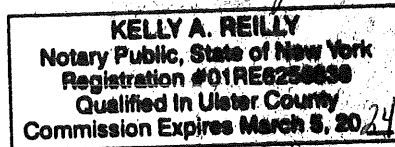
By: _____
Frank Genova, President

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

On this 7th day of July, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared **WILLIAM FIORAVANTI**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Kelly A. Reilly
Notary Public

STATE OF)
) SS.:
COUNTY OF)



On the ____ day of July, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared **FRANK GENOVA**, 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/she executed the same in his/her capacity, and that by his/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)
) SS.:
COUNTY OF ORANGE)

On this _____ day of July, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared **WILLIAM FIORAVANTI**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

COMMONWEALTH OF PENNSYLVANIA)
) SS.:
COUNTY OF LEBANON)

On the 14th day of July, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared **FRANK GENOVA**, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

Commonwealth of Pennsylvania - Notary Seal Tonika M Stenson, Notary Public Lebanon County My Commission Expires March 24, 2023

EXHIBIT "A"

**LEGAL DESCRIPTION
FOR PROPOSED LEASE AREA
TAX NO. 42-1-35.1
TOWN OF WARWICK, COUNTY OF ORANGE, STATE OF NEW YORK
WARWICK CENTRAL SCHOOL DISTRICT No. 1
(REPUTED OWNERS)**

LEASE AREA – ES1

All that certain tract or piece of land situate in the Town of Warwick, County of Orange, State of New York, intended to describe the perimeter of a proposed lease area on the lands now or formerly of Warwick Central School District No. 1 (reputed owner) by deed recorded on May 17, 1965 in Liber 1712 of deeds at Page 378, designated as Tax No. 42-1-35.1, bounded and described as follows:

Commencing at a point in the south line of lands belonging to said Warwick Central School District No. 1 (reputed owner) at a found 1" iron pipe marking the northwest corner of lands belonging to Nicholas DeVries III & Karen Watkins (reputed owners) (L.4450, P.15) (Tax No. 52-1-2.1), also being the northeast corner of lands belonging to Tunis Sweetman, Jr., & Sharon A. Sweetman (reputed owners) (L.4817, P.53) (Tax No. 52-1-2.2);

Thence North 54°03'53" West through the lands of said Warwick Central School District No. 1 (reputed owner), a distance of 340.31 feet to the point of beginning of proposed lease area ES1;

Thence through the lands of said Warwick Central School District No. 1 (reputed owner) the following two (2) courses and distances:

1. South 71°19'59" West, a distance of 151.57 feet to a point;
2. North 18°40'01" West, a distance of 85.65 feet to a point on the south line of proposed lease area ES2;

Thence North 71°19'59" East, along the south line of proposed lease area ES2, a distance of 151.57 feet to a point;

Thence South 18°40'01" East through the lands of said Warwick Central School District No. 1 (reputed owner), a distance of 85.65 feet to the Point of Beginning, the lease area containing 12,982.6 square feet, more or less.

EXHIBIT “B”

DESCRIPTION OF EQUIPMENT

All articles of personal property, all machinery, apparatus, equipment, appliances, floor coverings, furniture, furnishings, supplies, materials, fittings and fixtures of every kind and nature whatsoever and all appurtenances acquired by **WEST WARWICK ENERGY STORAGE 1 LLC** (the “*Company*”) and now or hereafter attached to, contained in or used or acquired in connection with the Project Facility (as defined in the Subleaseback Agreement) or placed on any part thereof, though not attached thereto, including, but not limited to, batteries, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, maintenance equipment, flagpoles, signs, waste containers, outdoor benches, fire prevention and extinguishing apparatus and materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

EXHIBIT “C”

TABLE OF DEFINITIONS

The following terms shall have the meanings set forth below, unless the context or use clearly indicate another or different meaning and the singular form of such defined words and terms shall include the plural and vice versa:

Act: means the New York State Industrial Development Agency Act (N.Y. Gen. Municipal Law §§ 850 et seq.) as amended, together with Section 926 of the N.Y. General Municipal Law, as amended from time to time.

Additional Agents: means a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents appointed by the Company in furtherance of the completion of the Project in accordance with the terms of the Subleaseback Agreement.

Agency: means the Orange County Industrial Development Agency and its successors and assigns.

Agency Documents: means the Project Agreement, the Sublease Agreement, the Subleaseback Agreement, the Tax Agreement and any other documents executed by the Agency in connection with the Project or the Financial Assistance granted in connection therewith.

Applicable Laws: means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Agency were the owner of the Project Facility and as if the Company and not the Agency were the owner of the Project Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Project Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

Application: means the application submitted by the Company to the Agency dated January 6, 2022, requesting the Agency undertake the Project, as same may be amended or supplemented from time to time.

Authorized Representative: means for the Agency, the Chair or Vice Chair of the Agency; for the Company, its Member or its Managing Member (designated by resolution) or any officer designated in a certificate signed by an Authorized Representative of such Company and, for either the Agency or the Company, any additional persons designated to act on behalf of the Agency or the Company by written certificate furnished by the designating party containing the specimen signature of each designated person.

Bill of Sale: means that certain Bill of Sale from the Company to the Agency dated as of July 1, 2022 in connection with the Equipment.

Closing Date: means August 22, 2022.

Closing Memorandum: means the closing memorandum of the Agency relating to the Project.

Company: means West Warwick Energy Storage 1 LLC, a Delaware limited liability company, organized and existing under the laws of the State of Delaware, authorized to do business in New York, having an address at Times Square Tower Suite 3504, New York, New York 10036, and its permitted successors and assigns.

Company Documents: means the Application, the Ground Lease, the Sublease Agreement, the Subleaseback Agreement, the Project Agreement, the Tax Agreement, the Environmental Compliance and Indemnification Agreement, the Bill of Sale, the Local Labor Certificate and any other documents executed by the Company in connection with the Project or the Financial Assistance granted in connection therewith.

Completion Date: means March 31, 2023.

Condemnation: means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

County: means the County of Orange in the State of New York.

Environmental Compliance and Indemnification Agreement: means the Environmental Compliance and Indemnification Agreement dated as of July 1, 2022 by the Company to the Agency.

Equipment: means all materials, machinery, furnishings, fixtures and equipment installed or used at the Project Facility, as of the Closing Date and thereafter acquired for or installed in, or upon, the Project Facility, as more fully described in **Exhibit "B"** to the Subleaseback Agreement.

Facility: means the buildings and other improvements located or to be constructed on the Land.

Financial Assistance: has the meaning given to such term in Section 854(14) of the Act.

Financial Assistance Recapture Amounts: means any and all direct monetary benefits and all other components of Financial Assistance, including any payment in lieu of taxes benefits or mortgage recording tax exemptions provided to the Company.

Governmental Authority or Governmental Authorities: means any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign.

Ground Lease: means the long-term Energy Storage Lease Agreement, dated May 18, 2020, as amended by First Amendment of Energy Storage Lease Agreement, dated May 5, 2022, with an initial term of 10 years with the option of two renewal terms of 10 years each.

Land: means approximately 12,982.6 sq.ft of vacant land located at 63 County Highway 1, Warwick, New York which is a portion of a larger approximately 31.5 acre vacant parcel (bearing tax map no. 42-1-35.1), more particularly described on **Exhibit "A"** attached to the Subleaseback Agreement.

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

Mortgage: means one or more mortgages from the Agency and the Company to the Mortgagee and recorded in the Orange County Clerk's office subsequent to the filing and recording of the Memorandum of Leaseback Agreement, securing construction and/or permanent financing for the Project Facility, executed in accordance with Section 4.5 of the Subleaseback Agreement, and securing the Note.

Mortgagee: means a lender, its successors and assigns, providing financing pursuant to the Note and Mortgage, relative to the costs of construction and/or equipping of the Project Facility.

Net Proceeds: means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

Note: means one or more notes given by the Company to the Mortgagee in connection with the Mortgage for construction or permanent financing relative to the Project Facility.

Permitted Encumbrances: means (A) utility, access and other easements and rights of way, and restrictions, encroachments and exceptions, that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) artisans', mechanics', materialmen's, warehousemen's, carriers', landlords', bankers', workmen's compensation, unemployment compensation and social security, and other similar Liens to the extent permitted by the Subleaseback Agreement, including the lien of the Mortgage, (C) Liens for taxes (1) to the extent permitted by the Subleaseback Agreement or (2) at the time not delinquent, (D) any Lien on the Project Facility obtained through any Agency Document or Company Document or the Mortgage, (E) Liens of judgments or awards in respect of which an appeal or proceeding for review shall be pending (or is pending within ten days after entry) and a stay of execution shall have been obtained (or is obtained within ten days after entry), or in connection with any claim or proceeding, (F) Liens on any Property hereafter acquired by the Company or any subsidiary which liens are created contemporaneously with such acquisition to secure or provide for the payment or financing of any part of the purchase price thereof, (G) Liens consisting solely of restrictions under any applicable laws or any negative covenants in any applicable agreements (but only to the extent that such restrictions and covenants do not prohibit the execution, delivery and performance by the Company of the Subleaseback Agreement and the Mortgage, and (H) existing mortgages or encumbrances on the Project Facility as of the Closing Date or thereafter incurred with the consent of the Mortgagee and the Agency.

Person: means an individual, partnership, corporation, limited liability company, trust, or unincorporated organization, and any government or agency or political subdivision or branch thereof.

Plans and Specifications: means all representations, plans and specifications presented by the Company to the Agency in its Application and as described in the Project description in the third WHEREAS cause of this Subleaseback Agreement, and any other presentation or representations made by the Company to the Agency relating to the construction, reconstruction, renovation, equipping and completion of the Project Facility; and any additional plans and specifications approved by the Mortgagee.

Project: shall have the meaning ascribed thereto in the third **WHEREAS** clause of this Subleaseback Agreement.

Project Agreement: means the Project Agreement dated as of July 1, 2022 between the Company and the Agency setting forth rights and obligations of the parties with respect to the Financial Assistance, as the same may be amended or supplemented from time to time.

Project Facility: means the Land, the Facility and the Equipment.

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

Recapture Amount: means collectively, the Sales Tax Recapture Amount and the Financial Assistance Recapture Amounts.

Recapture Policy: means the Agency's recapture policy as currently set forth in the Agency's Uniform Tax Exemption Policy and Guidelines, as may be amended from time to time.

Related Person: means a Related Person 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.

Resolution or Resolutions: means the Agency's resolutions adopted on June 15, 2022 authorizing the undertaking of the Project and the execution and delivery of certain documents by the Agency in connection therewith.

Sales and Use Tax or State Sales and Use Taxes: means, when used with respect to State sales and use taxes, sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

Sales Tax Recapture Amount: means the portion of the Financial Assistance consisting of State and local sales and use tax exemption the Agency shall and in some circumstances may, recover, recapture, receive or otherwise obtain from the Company pursuant to Section 875(3) of the Act, and in conjunction with Agency policy, in accordance with the Agency's Recapture Policy.

SEQRA: means the State Environmental Quality Review Act constituting Article 8 of the State Environmental Conservation Law and the regulations promulgated thereunder, as amended.

Sublease Agreement: means the Sublease Agreement dated as of July 1, 2022 from the Company to the Agency, as the same may be amended or supplemented from time to time.

Subleaseback Agreement: means the Subleaseback Agreement dated as of July 1, 2022, by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

State: means the State of New York.

Tax Agreement: means the Tax Agreement dated as of July 1, 2022 between the Agency and the Company, as amended or supplemented from time to time.

Unassigned Rights: means:

(i) the right of the Agency in its own behalf to receive all opinions of counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other

notices or communications, if any, required to be delivered to the Agency under the Subleaseback Agreement;

(ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency under the Subleaseback Agreement;

(iii) the right of the Agency to enforce or otherwise exercise in its own behalf all agreements of the Company with respect to ensuring that the Project Facility shall always constitute a qualified “project” as defined in and as contemplated by the Act;

(iv) the right of the Agency to require and enforce any right of defense and any indemnity from any Person;

(v) the right of the Agency in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 2.2(f), 2.2(h), 2.2(m), 2.2(q), 4.1, 4.5, 5.3, 5.4, 6.2, 6.3, 6.4, 8.2, 8.3, 8.5, 8.7, 8.9, 8.12, 10.2, 10.4, 11.9, 11.11 and 11.12 of the Subleaseback Agreement and Sections 2.6(g), 4.8 and 4.9 of the Sublease Agreement; and

(vi) the right of the Agency in its own behalf to declare an Event of Default and enforce its remedies under Article X of the Subleaseback Agreement or with respect to any of the Agency’s Unassigned Rights.

EXHIBIT "D"
LABOR POLICY

LABOR POLICY
ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
Adopted 01-12-17

The Orange County Industrial Development Agency (IDA) was established for the purpose of creating employment opportunities for, and to promote the general prosperity and economic welfare of the residents of Orange County. The IDA offers economic incentives and benefits to qualified applicants who wish to locate or expand their businesses or facilities in Orange County. When the IDA approves a project, it enters into agreements to extend these incentives and benefits to the applicant.

Construction jobs, though limited in time duration, are vital to the overall employment opportunities and economic growth in Orange County. The IDA believes that companies benefiting from its incentive programs should employ local laborers, mechanics, craft persons, journey workers, equipment operators, truck drivers and apprentices (hereinafter "construction workers"), including those who have returned from military service, during the construction phase of projects. In this way, the IDA can generate significant benefits to advance the County's general prosperity. It is, therefore, the policy of the IDA that firms benefiting from its programs shall employ workers from Orange County and the "local labor" market during all project phases, including the construction phase.

For the purpose of this policy, the "local labor" market for construction workers shall be defined as those individuals living in Orange, Ulster, Sullivan, Dutchess, Putnam, Rockland and Westchester Counties. Applicants receiving IDA benefits shall ensure the contractor/developer hire at least 85% from the "local labor" market for their approved projects. The 85% shall be by contractor and in total at the time of completion of the project. The contractor/developer is mandated to keep daily log sheets of all field workers, commencing on the date of application. Any work performed after application shall be included in the determination of overall compliance with the 85% hiring requirements of this policy. A third-party auditing firm will be engaged to monitor construction work commencing on the date benefits are granted by resolution of the IDA Board.

However, the IDA recognizes that the use of local labor may not be possible for the following reasons and the applicant may request an exemption on a particular contract or trade scope for the following reasons:

1. Warranty issues related to installation of specialized equipment whereby the manufacturer requires installation by only approved installers;
2. Specialized construction is required and no local contractors or local construction workers have the required skills, certifications or training to perform the work;

Labor Policy As Adopted 01-12-17
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3. Cost Differentials:
 - a. For projects whose project cost exceeds \$15M, significant cost differentials in bid prices whereby the use of local labor and materials significantly increases the sub contract or contract of a particular trade or work scope by at least 20%. Every reasonable effort should be made by the applicant and or the applicant's contractor to get below the 20% cost differential including, but not limited to, communicating and meeting with local construction trade organizations, such as the Hudson Valley Building and Construction Trades Council and other local Contractor Associations;
 - b. For projects whose project cost is less than \$15M, significant cost differentials in bid prices whereby the use of local labor and materials significantly increases the sub contract or contract of a particular trade or work scope by 10% or more. Every reasonable effort should be made by the applicant and or the applicant's contractor to get below the 10% cost differential including, but not limited to, communicating and meeting with local construction trade organizations, such as the Hudson Valley Building and Construction Trades Council and other local Contractor Associations;
4. No labor is available for the project; and
5. The contractor requires key or core persons such as supervisors, foreman or "construction workers" having special skills that are not available in the "local labor" market.

The request to secure an exemption for the use of non-local labor must be received from the applicant on the exemption form provided by the IDA or the 3rd party monitor and received in advance of work commencing. The request will be reviewed by the 3rd party monitor and forwarded to the IDA, at which time the IDA's Audit Committee shall have the authority to approve or disapprove the exemption. The 3rd party monitor shall report each authorized exemption to the Board of Directors at its monthly meeting.

In addition, applicants receiving IDA benefits and Contractors on the project shall make every reasonable effort to utilize vendors, material suppliers, subcontractors and professional services from Orange County and the surrounding counties. Applicants and contractors shall be required to keep records of those local vendors, material suppliers, contractors and professional services whom they have solicited and with whom they have contracted with or awarded. This shall be stored in a binder on site and shall be easily available for review by an authorized representative of the IDA, such as the IDA's 3rd party monitor. It shall include any documents for solicitation and contracts. It is the goal of the County of Orange and the IDA to promote the use of local veterans on projects receiving IDA benefits. By partnering with local contractors, local contractor groups, local trade unions and contractors awarded work on IDA projects, there are opportunities for veterans to gain both short term and long term careers in the construction industry.

Once approved for IDA benefits, all applicants will be required to provide to IDA staff the following information:

1. Contact information for the applicant's representative who will be responsible and accountable for providing information about the bidding and awarding of construction contracts relative to the applicant's project;
2. Description of the nature of construction jobs created by the project, including in as much detail as possible, the number, type and duration of construction positions;
3. The names, contact information, certificate of authorization to do business in the State of New York and copies of current Certificates of NYS Workers' Compensation Insurance, NYS Disability Insurance, General Liability Insurance and proof of current OSHA training certification from all contractors' employees performing work on the site; and
4. A Construction Completion Report listing the names and business locations of prime contractors, subcontractors and vendors who have been engaged in the construction phase of the project.

All Orange County IDA projects are subject to local monitoring by the IDA and any 3rd party monitor. The applicant and/or the Construction Manager or General Contractor acting as agent for the applicant on the project, shall keep a log book on site detailing the number of workers, hours worked and counties and states in which they reside. Proof of residency or copy of drivers' license shall be included in the log book, along with evidence of necessary OSHA certifications. Reports will be on forms provided by the IDA or weekly payroll reports which contain the same information as required on the IDA issued form. The applicant and contractors are subject to periodic inspection or monitoring by the IDA or 3rd party monitor.

The 3rd party monitor shall issue a report to the IDA staff immediately when an applicant or applicant's contractor is not in compliance with this labor policy. IDA staff shall advise the Audit Committee and/or IDA Board of non-compliance by email or at the next scheduled meeting. If a violation of policy has occurred, IDA staff shall notify the applicant and contractor in writing of non-compliance and give applicant a warning of violation and 72 hours in which to correct such violation. Upon evidence of continued non-compliance or additional violations, the IDA and/or its 3rd party monitor shall notify the applicant that the project is in violation of the Orange County IDA Labor Policy and is subject to IDA Board action which may result in the revocation, termination and/or recapture of any or all benefits conferred by the IDA.

The IDA will use a third party firm or firms to monitor and audit compliance with this local labor policy, the cost of which shall be paid for by the Company in advance of the audits and held in a non-interest bearing escrow account until audits are complete.

The applicant of an IDA approved project shall be required to maintain a 4' X 8' bulletin board on the project site containing the following information:

Labor Policy As Adopted 01-12-17
Page 3 of 4

1. Contact information of the applicant;
2. Summary of the IDA benefits received;
3. Contractors names and contact information on IDA provided form;
4. Copies of proof of exemption from labor policy;
5. Copies of any warnings or violations of policy;
6. Copy of the Executed Labor Policy.

The bulletin board shall be located in an area that is accessible to onsite workers and visitors, which should be clear and legible at least 10 feet from said board.

The applicant has read the OCIDA Labor Policy and agrees to adhere to it without changes and shall require its construction manager, general contractor and sub-contractors who are not exempt to acknowledge the same. The Applicant understands and agrees that it is responsible for all third-party auditing and monitoring costs.

Applicant Signature

Signature of CM, GC or SC

Company Name

Company Name

Print Name of above signer

Print Name of above signer

Email/phone of Applicant

Email/phone of CM/GC/SC

Date

Date

EXHIBIT "E"

FORM OF ANNUAL REPORTING QUESTIONNAIRE

Orange County Industrial Development Agency
4 Crotty Lane, Suite 100
New Windsor, New York 12553
(845)234-4192

Re: Project Compliance- NYS Reporting Requirements for IDA Projects

As stated in your project agreement with the Orange County Industrial Development Agency, you are required to annually report the information requested in this document to the Orange County IDA.

The IDA is under an obligation to annually report the information requested below to the New York State Authorities Budget Office (ABO) and Office of the State Comptroller (OSC). Under Article 18A of the New York State Municipal Law, failure to immediately provide the Agency with the requested information may result in lease default and the recapture of benefits, including the loss of sales and use tax exemptions and PILOT rights.

To complete the information requested below you will need:

- A. A Completed ST-340 Form and Sales Tax Exemption information, if applicable;
- B. Employment information accompanied by a Completed NYS-45 Form for the Quarter ending: _____;
- C. Mortgage Recording Tax Exemption information, if applicable;
- D. Project Budget evidencing amount of capital investments and expenditures on furnishings and equipment;
- E. NYS Transfer Tax Return (TP-584), for new projects that purchased property;
- F. All insurance documentation as required under the Company's Agreement with the IDA;
- G. Bond information, if applicable; and
- H. PILOT Information.

Please complete this form along with the additional forms specified throughout and return to the address provided below. Please contact us if you have any questions.

Orange County Industrial Development Agency
4 Crotty Lane, Suite 100
New Windsor, New York 12553
Attention: William Fioravanti, Chief Executive Officer
bfioravanti@ocnyida.com
(845)234-4192

COMPANY NAME & ADDRESS:

Email address: _____

Telephone: _____

Project Location: _____

I. SALES TAX INFORMATION

The ST-340, New York State Department of Taxation and Finance Form, relative to sales tax exemptions taken for the 2022 calendar year (even if no exemptions were claimed). This form should be completed and sent to the New York State Department of Finance and Taxation with a copy to the Orange County IDA office. This form cannot be dated prior to January 1, 2022.

Original ST-340 Form to:

NYS Division of Taxation & Finance- IDA Unit
W A Harriman Campus, Albany, NY 12227
(518) 485-1210 (Phone)
(518) 435-8543 (FAX)

Check here if sent original to NYS ☐

Copy to IDA Enclosed ☐

Please Provide: Total Sales Tax Exemptions Received Between 1/1/22 through 12/31/22
(actual sales tax savings, not total purchases).

Insert amount here \$ _____

I hereby certify that any sales tax exemption claimed was applied for and taken during the time period specified in the project agreement (e.g., during construction) and that the total amount claimed to date has not exceeded the amount approved in compliance with said agreement. Failure to certify indicates that the total amount claimed to date has exceeded the amount approved.

Check here to certify ☐

II. **(A) EMPLOYMENT INFORMATION**

Agency Employment Reporting. You must report the current number of jobs during the calendar year 2022 as reported in your NYS-45 Tax Form. **Please submit a copy of the NYS-45 Form for the Quarter ending 12/31/22.**

Current full time employees
(FTEs) retained by the Project
as set forth in the Application
(as of 12/31/22) _____

Current part time employees
(PTEs) retained by the Project
as set forth in the Application
(as of 12/31/22) _____

Current full time employees
(FTEs) created by the Project as
set forth in the Application
(as of 12/31/22) _____

Current part time employees
(PTEs) created by the Project as
set forth in the Application
(as of 12/31/22) _____

of FTE construction jobs in 2022 (If
the project is in construction
phase) _____

(B) INDEPENDENT CONTRACTORS

If any full or part-time independent contractors or employees of independent contractors worked at your facility in 2022, indicate the number by job category and indicate their wage information (if known).

Example: Independent Accountant, Independent Food Services/Cafeteria in Building

Category	# FTEs	#PTEs	Avg. Annual/Hourly Wage
Management	_____	_____	_____
Professional	_____	_____	_____
Administrative	_____	_____	_____
Production	_____	_____	_____
Other _____	_____	_____	_____
Other _____	_____	_____	_____

III. **MORTGAGE RECORDING TAX INFORMATION**

If a mortgage recording tax (MRT) exemption was received in 2022, provide the principal amount of mortgage and total MRT Exemption Amount.

Insert amount here \$ _____

IV. **PROJECT INFORMATION**

Certify that total project cost is consistent with original IDA application and Building Department records.

- A. For new projects that purchased property, insert the purchase price as reported on the NYS Transfer Tax Return (TP-584).

Insert amount here \$ _____

Check here if TP-584 enclosed ☐

- B. For all projects, provide amount of any capital investments made in 2022.

Insert amount here \$ _____

- C. For all projects, provide the amount spent on furnishing and equipment purchases in 2022.

Insert amount here \$ _____

Please provide project budget evidencing amount of capital investments and expenditures on furnishings and equipment, listed in B & C above.

V. **INSURANCE INFORMATION**

Please provide a copy of up-to-date insurance documentation as required under the Company's agreements with the IDA.

Check here if insurance is current ☐

Check here if a copy is attached ☐

VI. **BOND INFORMATION, IF APPLICABLE**

If you have a bond through the IDA please complete the following:

- A. Date of the bond issue _____
- B. Bond Amount at time of issue _____
- C. Principal Amount Paid in 2022 _____
- D. Principal Balance as of 12/31/2022 _____
- E. Final Maturity Date _____
- F. Bank or Trustee (the Bank or Trustee name, Address) _____

VII. **PILOT INFORMATION:** Total PILOT payments made during year _____

VIII. **FIRST TIME REPORTING**

For companies that will be reporting for the first time, please also provide the following information:

- A. # of FTEs before IDA Status _____
- B. Original Estimate of jobs to be created _____
- C. Average estimated annual salary for jobs to be created _____
- D. Annualized salary range of jobs to be created _____ to _____
- E. Original estimate of jobs to be retained _____
- F. Estimated average annual salary of jobs to be retained _____

CERTIFICATIONS

The undersigned hereby certifies that:

(Initial below to certify)

1. All sales tax exemptions claimed for this Project during the preceding calendar year were applied for and taken during the time period specified in the project agreement (e.g., during construction), and the total amount claimed to date has not exceeded the amount approved in compliance with said agreement. _____
2. All insurance required under the Company's agreements with the IDA is currently in effect. _____
3. The Company has listed all applicable new 2022 employment opportunities with the NYS Department of Labor, Community Services Division and with the administrative entity of the service delivery area in which the project is located, pursuant to the Job Training Partnership Act. _____
4. There are no outstanding real estate tax or PILOT obligations in respect of the Project facility beyond the date(s) when such payments are due. _____
5. The information in this report is true, accurate, and complete. _____

Please retain a copy for your files. Under Article 18A of the New York State Municipal Law, failure to immediately provide the Agency with the requested information may result in lease default and the recapture of benefits, including the loss of sales and use tax exemptions and PILOT rights.

Company representative (Name & Title): _____

Date: _____

Please give this matter your urgent attention and contact the IDA if you have any questions.

Orange County Industrial Development Agency
4 Crotty Lane, Suite 100
New Windsor, New York 12553
Attention: William Fioravanti, Chief Executive Officer
bfioravanti@ocnyida.com
(845)234-4192

EXHIBIT "F"

FORM OF SUB-AGENT AGREEMENT

THIS SUB-AGENT APPOINTMENT AGREEMENT (the "**Agreement**"), dated as of _____, 20__, is by and between **WEST WARWICK ENERGY STORAGE 1 LLC** (the "**Company**"), a limited liability company organized under the laws of the State of Delaware, authorized to do business in the State of New York, with an office at 7 Times Square Tower Suite 3504, New York, New York 10036 (the "**Company**"), and _____, a _____ of the State of New York, having an office for the transaction of business at _____ (the "**Sub-Agent**").

WITNESSETH:

WHEREAS, the Orange County Industrial Development Agency (the "**Agency**") was created by Chapter 390 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "**Act**") as a body corporate and politic and as a public benefit corporation of the State of New York (the "**State**"); and

WHEREAS, by resolution of its members adopted on April 20, 2022 (the "**Resolution**"), the Agency agreed to undertake a project for the benefit of the Company (the "**Project**") consisting of: (A)(i) the acquisition of a (sub)leasehold interest in approximately 12,982.6 sq.ft of vacant land located at 63 County Highway 1, Warwick, New York (the "**Land**") which is a portion of a larger approximately 31.5 acre vacant parcel (bearing tax map no. 42-1-35.1); (ii) the construction of an approximate 10,000 sq.ft. 4MW/22.4MWh battery storage system, including an auxiliary switchboard and a metal enclosed switchgear located on the Land to service the local distribution grid, and provide improvements to the distribution systems' reliability and resiliency, as well as providing emission free energy to the residents of Orange County (collectively, the "**Facility**"); and (iii) the acquisition and installation in and on the Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and real property tax (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a subleaseback agreement. The stored energy from the Project Facility will be utilized by Orange and Rockland Utilities, Inc.; and

WHEREAS, under the Resolution and in the Subleaseback Agreement by and between the Company and the Agency dated as of July 1, 2022 (the "**Subleaseback Agreement**") the Agency appointed the Company as its agent for purposes of completing the Project and delegated

to the Company the authority to appoint as agents of the Agency a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (the “***Additional Agents***” or “***Sub-Agents***”), for the purpose of completing the Project and benefitting from the State and local sales and use tax exemption that forms a portion of the Financial Assistance all in accordance with the terms of the Resolution and the Subleaseback Agreement; and

WHEREAS, the Company and the Agency entered into a Project Agreement dated as of July 1, 2022 (the “***Project Agreement***”).

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. The Company hereby appoints the Sub-Agent as an Additional Agent of the Agency for the purpose of assisting the Company and the Agency in the completion of the Project and benefitting from the State and local sales and use tax exemption relative to expenditures made in furtherance thereof. The Sub-Agent is only an agent of the Agency for the aforementioned purposes. The Sub-Agent hereby agrees to limit its activities as agent for the Agency under the authority of this Agreement to acts reasonably related to the completion of the Project Facility.

2. The Sub-Agent represents, warrants, covenants, agrees and acknowledges:

a. that the undersigned is an authorized representative of the Sub-Agent with authority to bind the Sub-Agent and upon execution of this Agreement by the undersigned, same shall be binding upon the Sub-Agent.

b. to make all records and information regarding State and local sales and use tax exemption benefits claimed by it in connection with the Project available to the Company and the Agency upon request. The Sub-Agent agrees to comply with all procedures and policies established by the State Department of Taxation and Finance, or any similar entity, regarding the documenting or reporting of any State and local sales and use tax exemption benefits, including providing to the Company all information of the Sub-Agent necessary for the Company to complete the State Department of Taxation and Finance’s “Annual Report of Sales and Use Tax Exemptions” (Form ST-340).

c. to be bound by and comply with the terms and conditions of the Agency’s policies, the Resolution and Section 875(3) of the Act (as if such section were fully set forth herein). Without limiting the scope of the foregoing, the Sub-Agent acknowledges and agrees to be bound by the Agency’s recapture policy, as currently set forth in the Agency's Uniform Tax Exemption Policy (the “***Recapture Policy***”), a copy of which is attached hereto as **Schedule “A”**.

d. that the failure of the Sub-Agent to promptly pay any Sales Tax Recapture Amount in accordance with the Recapture Policy, the Subleaseback Agreement and/or the Resolution to the Agency will be grounds for the Agency, the State Commissioner of Taxation and Finance or such other entity, to collect sales and use taxes from the Sub-Agent under Article 28 of the Tax Law, or other applicable law, policy or contract, together with interest and

penalties. In addition to the foregoing, the Sub-Agent acknowledges and agrees that for purposes of exemption from State sales and use taxation, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the Tax Law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

e. that all purchases made by the Sub-Agent in connection with the Project shall be made using Form ST-123 (IDA Agent or Project Operator Exempt Purchase Certificate), a copy of which is attached hereto as **Exhibit "A"**). It shall be the responsibility of the Sub-Agent (and not the Company or the Agency) to complete Form ST-123. The failure to furnish a completed Form ST-123 with each purchase will result in loss of the exemption for that purchase.

f. that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Sub-Agent is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Sub-Agent acknowledges and agrees that the bill of invoice should state, "I, [NAME OF SUB-AGENT], certify that I am a duly appointed agent of the Orange County Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following Agency project and that such purchases qualify as exempt from sales and use taxes under my Sub-Agent Appointment Agreement." The Sub-Agent further acknowledges and agrees that the following information shall be used by the Sub-Agent to identify the Project on each bill and invoice: West Warwick Energy Storage 1 LLC Project; 63 County Highway 1, Warwick, New York; IDA Project No.: IDA-1086.

g. that for purposes of any exemption from the State sales and use taxation as part of any Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

h. that the Sub-Agent shall indemnify and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the Project Facility (including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), for such claims or liabilities that arise as a result of the Sub-Agent acting as agent for the Agency pursuant to this Agreement or otherwise.

The Sub-Agent shall indemnify and hold the Agency, its members, officers, employees and agents and anyone for whose acts or omissions the Agency or any one of them may be liable, harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation only to Sub-Agent's work on or for the Project Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

The foregoing defenses and indemnities shall survive expiration or termination of this Agreement and shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by statutory law.

i. that as agent for the Agency or otherwise, the Sub-Agent will comply at the Sub-Agent's sole cost and expense with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Sub-Agent with respect to the Project Facility.

j. that Section 875(7) of the Act requires the Agency to post on its website all resolutions and agreements relating to the Sub-Agent's appointment as an agent of the Agency or otherwise related to the Project, including this Agreement, and that Public Officers Law Article 6 declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Sub-Agent feels that there is information about the Sub-Agent in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Sub-Agent's competitive position, the Sub-Agent must identify such elements in writing, supply same to the Agency prior to or contemporaneously with the execution hereof and request that such elements be kept confidential in accordance with Public Officers Law Article 6. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the Act.

k. The Sub-Agent agrees Local contractors and suppliers will be used for the construction and equipping of the Project unless a waiver is first received from the Agency in writing. Such waiver shall be in the Agency's sole discretion. The Sub-Agent agrees that such Local contractors shall be provided the opportunity to bid on contracts related to the Project. Local shall mean, for the purposes of this Agreement, Orange, Ulster, Sullivan, Dutchess, Putnam, Rockland and Westchester Counties. Failure to comply with the local labor requirements of this Section (j) (collectively, the "**Local Labor Requirements**") may result in the revocation or recapture of benefits provided/approved to the Project by the Agency.

l. that the Sub-Agent must timely provide the Company with the necessary information to permit the Company, pursuant to General Municipal Law §874(8), to timely file an Annual Statement with the New York State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (Form ST-340) regarding the value of sales and use tax exemptions the Additional Agent claimed pursuant to the agency conferred on it by the Company with respect to this Project on an annual basis.

m. that the failure to comply with the foregoing will result in the loss of the exemption.

n. that if the Sub-Agent is the general contractor for the Project, then at all times following the execution of this Agreement, and during the term thereof, the Sub-Agent shall maintain or cause to be maintained the following insurance policies with an insurance company licensed in the State that has an A.M. Best rating of not less than A-:

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

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

(c) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per occurrence on an "occurrence" basis and \$2,000,000 in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Subleaseback Agreement and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

In addition, all insurance required by this section shall be with insurance companies of recognized financial standing selected by the general contractor and licensed to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the general contractor is engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the general contractor as insured and the Agency as an additional insured, as its interests may appear, and shall provide that such coverage with respect to the Agency be primary and non-contributory with any insurance secured by the Agency and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof.

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

The general contractor shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately preceding paragraphs, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required hereby for so long as the general contractor is performing, supervising or causing work to be done on or at the Project Facility. The general contractor shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement in each such year.

o. that every controversy, dispute or claim arising out of or relating to this Agreement shall be governed by the laws of the State of New York, without regard to its conflicts-of-laws provisions that if applied might require the application of the laws of another jurisdiction; and that the Sub-Agent irrevocably and expressly submits to the exclusive personal jurisdiction of the Supreme Court of the State of New York and the United States District Court for the Northern District of New York, to the exclusion of all other courts, for the purposes of litigating every controversy, dispute or claim arising out of or relating to this Agreement.

3. Failure of the Sub-Agent to comply with any of the provisions of this Agreement shall result in the immediate nullification of the appointment of the Sub-Agent and the immediate termination of this Agreement and may result in the loss of the Company's State and local sales and use tax exemption with respect to the Project at the sole discretion of the Agency. In addition, such failure may result in the recapture of the State and local sales and use taxes avoided.

4. The Company acknowledges that the assumption of certain obligations by the Sub-Agent in accordance with this Agreement does not relieve the Company of its obligations under any provisions of the Subleaseback Agreement or of any other agreement entered into by the Company in connection with the Project.

5. The Company and the Sub-Agent agree that the Agency is a third-party beneficiary of this Agreement.

6. This Agreement shall be in effect until the earlier of: (i) the completion of the work on the Project by the Sub-Agent; or (ii) the Sub-Agent's loss of status as an agent of the Agency as set forth herein. Notwithstanding the foregoing, the provisions of Sections 2(b), 2(c), 2(f), 2(g), 2(j), and 2(l) shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Company and the Sub-Agent have caused this Agreement to be executed in their respective names by their respective duly authorized officers, all as of the day and year first above written.

WEST WARWICK ENERGY STORAGE 1 LLC

By: Convergent West Warwick LLC
its sole member

By: Convergent Energy and Power LP,
its sole member

By: _____
Frank Genova, President

[NAME OF SUB-AGENT]

By: _____
Name:
Title:

EXHIBIT "A"
to Sub-Agent Agreement

FORM ST-123



New York State Department of Taxation and Finance

New York State Sales and Use Tax

IDA Agent or Project Operator**Exempt Purchase Certificate**

Effective for projects beginning on or after June 1, 2014

ST-123

(7/14)

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller			Name of agent or project operator		
Street address			Street address		
City, town, or village	State	ZIP code	City, town, or village	State	ZIP code
Agent or project operator sales tax ID number (see instructions)					

Mark an **X** in one: ☐ Single-purchase certificate ☐ Blanket-purchase certificate (valid only for the project listed below)**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Name of project	IDA project number (see OSD number)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yyyy)	/	/
Enter the date that agent or project operator status ends (mm/dd/yyyy)	/	/

Exempt purchases(Mark an **X** in boxes that apply)

- ☐ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- ☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- ☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1839 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1118(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(2)(15) and 1115(2)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam, and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your Certificate of Authority, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Sales Tax Information Center:

(516) 455-2659

To order forms and publications:

(516) 457-5431



Text Telephone (TTY) Hotline

(for persons with hearing and speech disabilities using a TTY):

(516) 455-5032

SCHEDULE "A"
to Sub-Agent Agreement

UNIFORM TAX EXEMPTION POLICY

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
UNIFORM TAX EXEMPTION POLICY AND GUIDELINES
(Revised June 13, 2019)

The general policy of the Orange County Industrial Development Agency ("Agency") is to grant applicants real property tax abatements (or exemptions) and exemptions from sales, use and mortgage recording taxes as described below. The Agency may grant additional benefits outside the guidelines set forth herein on a case by case basis for a project expected to have a significant economic impact on Orange County as determined by the Agency at its discretion. This policy supersedes and replaces the policy revised February 15, 2012.

General Considerations for Financial Assistance and Project Review.

The Agency will consider the following factors, among others, in determining whether to approve a project and financial assistance:

- (i) The extent to which a project will create or retain permanent private sector jobs, including the number of jobs, the quality of and salary for such jobs and any related benefits (healthcare and retirement, for example);
- (ii) The estimated value of any tax exemptions and abatements to be provided;
- (iii) Whether affected tax jurisdictions shall be reimbursed by the project occupant if a project does not fulfill the purposes for which the exemption and abatement were provided;
- (iv) The impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity;
- (v) The amount of private sector investment generated or likely to be generated by the proposed project;
- (vi) The demonstrated public support for the proposed project;
- (vii) The likelihood of accomplishing the proposed project in a timely fashion;
- (viii) The effect of the proposed project on the environment;
- (ix) The extent to which the proposed project will require the provision of additional services, including, but not limited to additional educational, transportation, police, emergency, medical or fire services; and
- (x) The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts.

Attached hereto as Schedule F is the Agency's project grading matrix that, unless otherwise determined by the Agency, will be applied against all projects in determining whether the project qualifies for financial assistance and the amount and duration of any such financial assistance.

A. Real Property Taxes.

The Agency maintains a policy for the provision of real property tax abatements for qualified projects, as allowed under General Municipal Law, Section 874 and Real Property Tax Law, Section 412-a. The abatement provided applies to value added by construction or renovation upon the existing parcel involved; and unless otherwise approved by the Agency, the abatement does not apply to land valuation. Unless otherwise approved by the Agency, the period of the exemption will not exceed the period of respective Agency financing or lease and will be, depending on the nature of the project as further set forth below, for a period of four (4), six (6), ten (10), or in certain cases fifteen (15) years, plus a construction period of up to three (3) years, unless extended for up to twenty (20) years under paragraph "E" below or other length of time determined by the Agency in its discretion depending on the project. The Agency's policy typically results in a graduated schedule of abatement applicable to County, Town, Village, and School taxes.

The ten (10) year schedule will result in increasing percentages of taxes due with a maximum initial abatement of one hundred percent (100%), and annual increases of ten percent (10%) per annum (see Schedule A). Eligible projects include, but are not limited to, industrial, manufacturing or business projects such as agriculture, media, defense, banking and financial, data-processing, medical, insurance, professional office, hospital, life and health care and, at the Agency's discretion, qualifying tourism, retail and recreational facilities.

The fifteen (15) year schedule will result in increasing percentages of tax due with a maximum initial abatement of ninety-five percent (95%) in the first year, annual increases of five percent (5%) per annum for the next nine years, and annual increases of ten percent (10%) per annum for the next five years (see Schedule B). Eligible projects include, but are not limited to, manufacturing, research and development, technology, electronics and micro-electronics, biotech, drug-related, pharmaceutical, life science, telecommunications, nanotech, computer hardware and software, internet, semiconductors, micro-chip, solar, communications, assembly, and processing. The Agency may, at its discretion, provide the above schedule to retail, distribution and other projects.

For certain other projects the Agency, may at its discretion, provide a real property tax abatement equivalent to NYS Real Property Tax Law Section 485-b (see Schedule C).

For qualifying hotel projects the duration of the real property tax abatement shall be four (4) years (See Schedule D).

For qualifying new distribution/warehouse facilities the duration of the real property tax abatement shall be six (6) years (See Schedule E).

Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district and library district charges), and water charges and sewer charges are to be paid in full in accordance with normal billing practices.

Any deviations from the standard policy will be made only with the specific approval of the Agency's members based on the factors described in the New York State General Municipal Law Section 874(4) (a). The Agency shall comply with all applicable law prior to any deviation.

At the discretion of the Agency, an appraisal may be required.

B. Tax Agreement.

Each project receiving a real property tax abatement will be subject to a Tax Agreement ("Tax Agreement") in a form acceptable to the Agency. A copy of the Tax Agreement together with other applicable forms will be sent to each of the affected taxing jurisdictions within fifteen (15) days of execution. Unless otherwise agreed by the Agency, with written consent from the affected taxing jurisdictions, such payments shall be allocated among the affected taxing jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected taxing jurisdiction had the project not been tax exempt due to the status of the Agency involved in the project.

C. Sales and Use Tax Exemptions.

- (i) Purchases of construction materials and equipment rentals and purchases of project related equipment, furnishings and services are made as agent for the Agency, and are therefore afforded full exemption from local and New York State Sales and Use Taxes until the project is completed (i.e., certificate of occupancy), or such other period of time as approved by the Agency. Operating and maintenance expenses of projects are not incurred as agent of the Agency, and no sales tax exemption is provided thereof.
- (ii) All project applicants must agree in writing to file with the New York State Department of Taxation, in form and at times required, an annual statement of the value of all sales and use taxes exemption claimed in connection with the facility in full compliance with Section 874(8) of the General Municipal Law.
- (iii) The Agency shall comply with New York State General Municipal and any other applicable law requiring recapture of sales and use tax exemptions.

D. Mortgage Recording Tax Exemptions.

- (i) The Agency's Policy is to permit mortgage recording tax exemptions on all project-related financing to the full extent permitted by New York State Law.
- (ii) The Agency may, in its sole discretion, permit mortgage recording tax exemptions on non-project related financings, (eg. second mortgages on the project to secure subordinated indebtedness of the project applicant, or re-financings of existing

mortgages.) In determining whether to permit such exemptions on non-project related financing, the Agency shall consider such factors as it deems appropriate, including but not limited to the use of the property, the degree of investment, the degree and nature of the employment and the economic condition of the areas in which the facility is located.

E. Deviations.

In addition to or in lieu of the foregoing the Agency may determine, on a case by case basis, to deviate from the guidelines described herein or provide additional benefits for a project expected to have significant impact in the locality where the project will be located, or as otherwise determined by the Agency as warranting enhanced financial assistance. Any deviations from the guidelines set forth above require the written notification by the Agency to the chief executive officer of each affected taxing jurisdictions. In determining whether to deviate from the guidelines set forth herein, the Agency may consider any or all of the factors set forth under the heading General Considerations for Financial Assistance and Project Review above, no single one of which is determinative.

F. Recapture of Benefits.

The Agency, at its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so unless otherwise required by all applicable law) with respect to a particular project, that a project has failed to meet its intended goals and to require the applicant to comply with the recapture by the Agency of the value of any or all exemptions from taxation granted with respect to the project by virtue of the Agency's involvement. Events that the Agency may determine will trigger recapture may include but are not limited to:

- (i) Sale or closure of facility;
- (ii) Significant employment reduction or failure to achieve employment projections;
- (iii) Significant change in use in facility;
- (iv) Significant change in business activities or project applicant or operator;
- (v) Material non-compliance with or breach of terms of Agency transaction documents or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations;
- (vi) Failure to comply with Agency and New York State reporting requirements.

If the Agency determines to provide for the recapture with respect to a particular project, the Agency also shall determine the timing and percentage of recapture.

G. Effective Date.

This Uniform Tax Exemption Policy shall be effective as of June 13, 2019 and it shall apply to all projects for which the Agency has adopted or adopts an Inducement Resolution after the effective date of this policy, and all re-financings of any project induced or closed before that date, and any project that may be re-induced by subsequent Agency resolution in order to obtain the benefits provided herein.

H. Amendments.

The Agency by resolution of its members and upon compliance with all applicable law may amend or modify the foregoing policy as it may from time to time determine.

SCHEDULE A

TEN YEAR SCHEDULE

Year of Exemption	Percentage of Tax Abatement
1	100
2	90
3	80
4	70
5	60
6	50
7	40
8	30
9	20
10	10

SCHEDULE B

FIFTEEN YEAR SCHEDULE

Year of Exemption	Percentage of Tax Abatement
1	95
2	90
3	85
4	80
5	75
6	70
7	65
8	60
9	55
10	50
11	40
12	30
13	20
14	10
15	10

SCHEDULE C

"485-B EQUIVALENT" SCHEDULE

Year of Exemption	Percentage of Tax Abatement
1	50
2	45
3	40
4	35
5	30
6	25
7	20
8	15
9	10
10	5

SCHEDULE D

FOUR (4) YEAR SCHEDULE FOR QUALIFYING HOTEL PROJECTS

Year of Exemption	Percentage of Tax Abatement
1	75
2	60
3	50
4	30

SCHEDULE E

SIX (6) YEAR SCHEDULE

Year of Exemption	Percentage of Tax Abatement
1	100
2	80
3	60
4	40
5	20
6	10

SCHEDULE F

AGENCY PROJECT GRADING MATRIX

	Score
1. Strategic Vision (0 OR 5)*:	
a. Does the project fit into preferred industry categories (manufacturing, industrial, medical, office, tourism)?	
b. Capitalizes upon un-or-under-employed, available talent pool?	
2. Ratable Value (Capital Expenditure) (0 – 5):	
a. Investment in property resulting in increased ratables in municipality.	
b. Utilizes brownfield or otherwise "undesirable" parcel	
c. Return non-taxable property tax rolls	
d. "Brownfield remediation" would receive a 5	
3. Number of Jobs (1 – 5):	
a. NOT sliding scale; relative to industry	
4. Quality of Jobs (0 – 5):	
a. Defined as	
0 = ANY jobs at minimum wage	
1 = ALL jobs over \$15/hour	
2 = 25% over \$25/hr plus benefits	
3 = 50% over \$25/hr plus benefits	
4 = 75% over \$25/hr plus benefits	
5 = ALL jobs over \$25/hr plus benefits	
5. Location (1 OR 5):	
a. 1 = In Orange County	
b. 5 = Designated growth zone, as identified by IDA (ex. Port Jervis, Highland Falls)	
6. Desirability (0 – 5)*:	
a. Does the project have local political support?	
i. Support letter from Supervisor/Mayor	
b. Is there favor, locally, for the project?	
c. Is the project remediating a brownfield or repurposing a zombie property?	
d. Is the parcel located in federally distressed area?	
TOTAL	0
<p>* Speculative Buildings - identified as a project built with no end-user committed - result in an automatic 0 in these categories</p> <p>2-10 - Low/No PILOT</p> <p>11-20 - Medium/Sector-based PILOT</p> <p>21-30 - High/Qualifies for "Goliath" PILOT</p>	

EXHIBIT “G”

UNIFORM TAX EXEMPTION POLICY

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
UNIFORM TAX EXEMPTION POLICY AND GUIDELINES
(Revised June 13, 2019)

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General Considerations for Financial Assistance and Project Review.

The Agency will consider the following factors, among others, in determining whether to approve a project and financial assistance:

- (i) The extent to which a project will create or retain permanent private sector jobs, including the number of jobs, the quality of and salary for such jobs and any related benefits (healthcare and retirement, for example);
- (ii) The estimated value of any tax exemptions and abatements to be provided;
- (iii) Whether affected tax jurisdictions shall be reimbursed by the project occupant if a project does not fulfill the purposes for which the exemption and abatement were provided;
- (iv) The impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity;
- (v) The amount of private sector investment generated or likely to be generated by the proposed project;
- (vi) The demonstrated public support for the proposed project;
- (vii) The likelihood of accomplishing the proposed project in a timely fashion;
- (viii) The effect of the proposed project on the environment;
- (ix) The extent to which the proposed project will require the provision of additional services, including, but not limited to additional educational, transportation, police, emergency, medical or fire services; and
- (x) The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts.

Attached hereto as Schedule F is the Agency's project grading matrix that, unless otherwise determined by the Agency, will be applied against all projects in determining whether the project qualifies for financial assistance and the amount and duration of any such financial assistance.

A. Real Property Taxes.

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The ten (10) year schedule will result in increasing percentages of taxes due with a maximum initial abatement of one hundred percent (100%), and annual increases of ten percent (10%) per annum (see Schedule A). Eligible projects include, but are not limited to, industrial, manufacturing or business projects such as agriculture, media, defense, banking and financial, data-processing, medical, insurance, professional office, hospital, life and health care and, at the Agency's discretion, qualifying tourism, retail and recreational facilities.

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For certain other projects the Agency, may at its discretion, provide a real property tax abatement equivalent to NYS Real Property Tax Law Section 485-b (see Schedule C).

For qualifying hotel projects the duration of the real property tax abatement shall be four (4) years (See Schedule D).

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At the discretion of the Agency, an appraisal may be required.

B. Tax Agreement.

Each project receiving a real property tax abatement will be subject to a Tax Agreement ("Tax Agreement") in a form acceptable to the Agency. A copy of the Tax Agreement together with other applicable forms will be sent to each of the affected taxing jurisdictions within fifteen (15) days of execution. Unless otherwise agreed by the Agency, with written consent from the affected taxing jurisdictions, such payments shall be allocated among the affected taxing jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected taxing jurisdiction had the project not been tax exempt due to the status of the Agency involved in the project.

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- (i) Purchases of construction materials and equipment rentals and purchases of project related equipment, furnishings and services are made as agent for the Agency, and are therefore afforded full exemption from local and New York State Sales and Use Taxes until the project is completed (i.e., certificate of occupancy), or such other period of time as approved by the Agency. Operating and maintenance expenses of projects are not incurred as agent of the Agency, and no sales tax exemption is provided thereof.
- (ii) All project applicants must agree in writing to file with the New York State Department of Taxation, in form and at times required, an annual statement of the value of all sales and use taxes exemption claimed in connection with the facility in full compliance with Section 874(8) of the General Municipal Law.
- (iii) The Agency shall comply with New York State General Municipal and any other applicable law requiring recapture of sales and use tax exemptions.

D. Mortgage Recording Tax Exemptions.

- (i) The Agency's Policy is to permit mortgage recording tax exemptions on all project-related financing to the full extent permitted by New York State Law.
- (ii) The Agency may, in its sole discretion, permit mortgage recording tax exemptions on non-project related financings, (eg. second mortgages on the project to secure subordinated indebtedness of the project applicant, or re-financings of existing

mortgages.) In determining whether to permit such exemptions on non-project related financing, the Agency shall consider such factors as it deems appropriate, including but not limited to the use of the property, the degree of investment, the degree and nature of the employment and the economic condition of the areas in which the facility is located.

E. Deviations.

In addition to or in lieu of the foregoing the Agency may determine, on a case by case basis, to deviate from the guidelines described herein or provide additional benefits for a project expected to have significant impact in the locality where the project will be located, or as otherwise determined by the Agency as warranting enhanced financial assistance. Any deviations from the guidelines set forth above require the written notification by the Agency to the chief executive officer of each affected taxing jurisdictions. In determining whether to deviate from the guidelines set forth herein, the Agency may consider any or all of the factors set forth under the heading General Considerations for Financial Assistance and Project Review above, no single one of which is determinative.

F. Recapture of Benefits.

The Agency, at its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so unless otherwise required by all applicable law) with respect to a particular project, that a project has failed to meet its intended goals and to require the applicant to comply with the recapture by the Agency of the value of any or all exemptions from taxation granted with respect to the project by virtue of the Agency's involvement. Events that the Agency may determine will trigger recapture may include but are not limited to:

- (i) Sale or closure of facility;
- (ii) Significant employment reduction or failure to achieve employment projections;
- (iii) Significant change in use in facility;
- (iv) Significant change in business activities or project applicant or operator;
- (v) Material non-compliance with or breach of terms of Agency transaction documents or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations;
- (vi) Failure to comply with Agency and New York State reporting requirements.

If the Agency determines to provide for the recapture with respect to a particular project, the Agency also shall determine the timing and percentage of recapture.

G. Effective Date.

This Uniform Tax Exemption Policy shall be effective as of June 13, 2019 and it shall apply to all projects for which the Agency has adopted or adopts an Inducement Resolution after the effective date of this policy, and all re-financings of any project induced or closed before that date, and any project that may be re-induced by subsequent Agency resolution in order to obtain the benefits provided herein.

H. Amendments.

The Agency by resolution of its members and upon compliance with all applicable law may amend or modify the foregoing policy as it may from time to time determine.

SCHEDULE A

TEN YEAR SCHEDULE

Year of Exemption	Percentage of Tax Abatement
1	100
2	90
3	80
4	70
5	60
6	50
7	40
8	30
9	20
10	10

SCHEDULE B

FIFTEEN YEAR SCHEDULE

Year of Exemption	Percentage of Tax Abatement
1	95
2	90
3	85
4	80
5	75
6	70
7	65
8	60
9	55
10	50
11	40
12	30
13	20
14	10
15	10

SCHEDULE C

"485-B EQUIVALENT" SCHEDULE

Year of Exemption	Percentage of Tax Abatement
1	50
2	45
3	40
4	35
5	30
6	25
7	20
8	15
9	10
10	5

SCHEDULE D

FOUR (4) YEAR SCHEDULE FOR QUALIFYING HOTEL PROJECTS

Year of Exemption	Percentage of Tax Abatement
1	75
2	60
3	50
4	30

SCHEDULE E

SIX (6) YEAR SCHEDULE

Year of Exemption	Percentage of Tax Abatement
1	100
2	80
3	60
4	40
5	20
6	10

SCHEDULE F

AGENCY PROJECT GRADING MATRIX

	Score
1. Strategic Vision (0 OR 5)*:	
a. Does the project fit into preferred industry categories (manufacturing, industrial, medical, office, tourism)?	
b. Capitalizes upon un-or-under-employed, available talent pool?	
2. Ratable Value (Capital Expenditure) (0 – 5):	
a. Investment in property resulting in increased ratables in municipality.	
b. Utilizes brownfield or otherwise “undesirable” parcel	
c. Return non-taxable property tax rolls	
d. “Brownfield remediation” would receive a 5	
3. Number of Jobs (1 – 5):	
a. NOT sliding scale; relative to industry	
4. Quality of Jobs (0 – 5):	
a. Defined as	
0 = ANY jobs at minimum wage	
1 = ALL jobs over \$15/hour	
2 = 25% over \$25/hr plus benefits	
3 = 50% over \$25/hr plus benefits	
4 = 75% over \$25/hr plus benefits	
5 = ALL jobs over \$25/hr plus benefits	
5. Location (1 OR 5):	
a. 1 = In Orange County	
b. 5 = Designated growth zone, as identified by IDA (ex. Port Jervis, Highland Falls)	
6. Desirability (0 – 5)*:	
a. Does the project have local political support?	
i. Support letter from Supervisor/Mayor	
b. Is there favor, locally, for the project?	
c. Is the project remediating a brownfield or repurposing a zombie property?	
d. Is the parcel located in federally distressed area?	
TOTAL	0
<p>* Speculative Buildings - identified as a project built with no end-user committed - result in an automatic 0 in these categories</p> <p>2-10 - Low/No PILOT</p> <p>11-20 - Medium/Sector-based PILOT</p> <p>21-30 - High/Qualifies for “Goliath” PILOT</p>	

SCHEDULE 1

FORM OF CERTIFICATION REGARDING ONGOING OBLIGATIONS UPON TERMINATION OF LEASES

CERTIFICATION

In July, 2022, at the request of West Warwick Energy Storage 1 LLC (the “**Company**”), the Orange County Industrial Development Agency (the “**Agency**”) undertook a project (the “**Project**”) consisting of: (A)(i) the acquisition of a (sub)leasehold interest in approximately 12,982.6 sq.ft of vacant land located at 63 County Highway 1, Warwick, New York (the “**Land**”) which is a portion of a larger approximately 31.5 acre vacant parcel (bearing tax map no. 42-1-35.1); (ii) the construction of an approximate 10,000 sq.ft. 4MW/22.4MWh battery storage system, including an auxiliary switchboard and a metal enclosed switchgear located on the Land to service the local distribution grid, and provide improvements to the distribution systems' reliability and resiliency, as well as providing emission free energy to the residents of Orange County (collectively, the “**Facility**”); and (iii) the acquisition and installation in and on the Facility of furniture, fixtures and equipment (the “**Equipment**” and together with the Land and the Facility, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and real property tax (collectively, the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a subleaseback agreement. The stored energy from the Project Facility will be utilized by Orange and Rockland Utilities, Inc.

The meaning of capitalized terms not otherwise defined herein shall have the meanings attached to them in the Subleaseback Agreement, dated as of July 1, 2022 between the Agency and the Company (the “**Subleaseback Agreement**”).

On July __, 2022, the Agency and the Company closed on a straight lease transaction with respect to the Project and the Financial Assistance (the “**Original Closing**”) pursuant to which the parties executed and delivered the Company Documents and the Agency Documents (collectively the “**Lease Documents**”).

Pursuant to the Company's request, the Agency terminated their leasehold interest in the Project Facility as of _____, 20__ (the “**Termination**”).

Pursuant to the terms of the Subleaseback Agreement, the Company has ongoing obligations, including to perform certain reporting requirements to the Agency, as more particularly described below:

- (1) certain provisions and obligations of the Lease Documents survive the Termination, including: Article 4 of the Subleaseback Agreement and Sections 2.2, 8.2, 8.5, 8.12, 10.4, 11.7 and 11.14 of the Subleaseback Agreement;
- (2) in accordance with its terms, the entire Project Agreement, and the Company's obligations thereunder, shall survive the Termination;
- (3) the Company is familiar with all of the Agency's policies, including but not limited to, its Recapture Policy, and is bound thereby; and
- (4) in furtherance of (i) above, but without limiting the foregoing, the Company continues to be obligated to comply with the following reporting obligation in accordance with Article 4 of the Project Agreement:

Section 4.01. Compliance Commitments. The Company agrees and covenants that it shall meet and maintain the commitments set forth in (a) below beginning in the first year after completion of the Project. The Company further agrees and covenants that it shall meet and maintain the commitments set forth in (b) below with respect to retained jobs set forth in the Application starting in the first year in which Financial Assistance is claimed and/or provided; and with respect to new jobs, the Company shall create, in years one (1) through five (5) following completion of the Project the new jobs set forth in the Company's Application. The reporting of, and the commitment to, each of (a), (b) and (c) below continuing for a five (5) year period following completion of the Project (the "***Term***"):

(a) The total investment made with respect to the Project at the Project's completion date shall equal to or exceed \$7,703,704, being the total project cost as stated in the Company's Application for Financial Assistance (the "***Investment Commitment***").

(b) There were no full time equivalent ("***FTE***") employees were retained by the Project Facility as of the date of the Application for Financial Assistance. The Company's application estimated the creation of twenty (20) new construction FTEs (the "***New Construction FTEs***") at the Project Facility. The Project is not designed to be a job creation project beyond the New Construction FTEs. Rather the Project is designed to provide improvements to the distribution systems' reliability and resiliency, as well as providing emission free energy to the residents of Orange County. The Company covenants and agrees to create and demonstrate the New Construction FTEs for the construction period of the Project Facility.

(c) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project for the Term (the "***Reporting Commitment***").

Section 4.02. Reporting Requirement. As part of the commitments set forth in Section 4.01, the Company shall provide annually, to the Agency, a certified statement and supporting documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the

Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. **Exhibit A** contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act.

Dated as of _____, 20__

WEST WARWICK ENERGY STORAGE 1 LLC

By: Convergent West Warwick LLC
its sole member

By: Convergent Energy and Power LP,
its sole member

By: _____
Frank Genova, President

EXHIBIT A
(to Form of Certification)

FORM OF ANNUAL REPORTING QUESTIONNAIRE

Orange County Industrial Development Agency
4 Crotty Lane, Suite 100
New Windsor, New York 12553
(845)234-4192

Re: Project Compliance- NYS Reporting Requirements for IDA Projects

As stated in your project agreement with the Orange County Industrial Development Agency, you are required to annually report the information requested in this document to the Orange County IDA.

The IDA is under an obligation to annually report the information requested below to the New York State Authorities Budget Office (ABO) and Office of the State Comptroller (OSC). Under Article 18A of the New York State Municipal Law, failure to immediately provide the Agency with the requested information may result in lease default and the recapture of benefits, including the loss of sales and use tax exemptions and PILOT rights.

To complete the information requested below you will need:

- I. A Completed ST-340 Form and Sales Tax Exemption information, if applicable;
- J. Employment information accompanied by a Completed NYS-45 Form for the Quarter ending:
_____;
- K. Mortgage Recording Tax Exemption information, if applicable;
- L. Project Budget evidencing amount of capital investments and expenditures on furnishings and equipment;
- M. NYS Transfer Tax Return (TP-584), for new projects that purchased property;
- N. All insurance documentation as required under the Company's Agreement with the IDA;
- O. Bond information, if applicable; and
- P. PILOT Information.

Please complete this form along with the additional forms specified throughout and return to the address provided below. Please contact us if you have any questions.

Orange County Industrial Development Agency
4 Crotty Lane, Suite 100
New Windsor, New York 12553
Attention: William Fioravanti, Chief Executive Officer
bfioravanti@ocnyida.com
(845)234-4192

COMPANY NAME & ADDRESS:

Email address: _____

Telephone: _____

Project Location: _____

IX. **SALES TAX INFORMATION**

The ST-340, New York State Department of Taxation and Finance Form, relative to sales tax exemptions taken for the 2022 calendar year (even if no exemptions were claimed). This form should be completed and sent to the New York State Department of Finance and Taxation with a copy to the Orange County IDA office. This form cannot be dated prior to January 1, 2022.

Original ST-340 Form to:

NYS Division of Taxation & Finance- IDA Unit
W A Harriman Campus, Albany, NY 12227
(518) 485-1210 (Phone)
(518) 435-8543 (FAX)

Check here if sent original to NYS ☐

Copy to IDA Enclosed ☐

Please Provide: Total Sales Tax Exemptions Received Between 1/1/22 through 12/31/22
(actual sales tax savings, not total purchases).

Insert amount here \$ _____

I hereby certify that any sales tax exemption claimed was applied for and taken during the time period specified in the project agreement (e.g., during construction) and that the total amount claimed to date has not exceeded the amount approved in compliance with said agreement. Failure to certify indicates that the total amount claimed to date has exceeded the amount approved.

Check here to certify ☐

X. **(A) EMPLOYMENT INFORMATION**

Agency Employment Reporting. You must report the current number of jobs during the calendar year 2022 as reported in your NYS-45 Tax Form. **Please submit a copy of the NYS-45 Form for the Quarter ending 12/31/22.**

Current full time employees
(FTEs) retained by the Project
as set forth in the Application
(as of 12/31/22) _____

Current part time employees
(PTEs) retained by the Project
as set forth in the Application
(as of 12/31/22) _____

Current full time employees
(FTEs) created by the Project as
set forth in the Application
(as of 12/31/22) _____

Current part time employees
(PTEs) created by the Project as
set forth in the Application
(as of 12/31/22) _____

of FTE construction jobs in 2022 (If
the project is in construction
phase) _____

(B) INDEPENDENT CONTRACTORS

If any full or part-time independent contractors or employees of independent contractors worked at your facility in 2022, indicate the number by job category and indicate their wage information (if known).

Example: Independent Accountant, Independent Food Services/Cafeteria in Building

Category	# FTEs	#PTEs	Avg. Annual/Hourly Wage
Management	_____	_____	_____
Professional	_____	_____	_____
Administrative	_____	_____	_____
Production	_____	_____	_____
Other _____	_____	_____	_____
Other _____	_____	_____	_____

XI. MORTGAGE RECORDING TAX INFORMATION

If a mortgage recording tax (MRT) exemption was received in 2022, provide the principal amount of mortgage and total MRT Exemption Amount.

Insert amount here \$ _____

XII. **PROJECT INFORMATION**

Certify that total project cost is consistent with original IDA application and Building Department records.

- D. For new projects that purchased property, insert the purchase price as reported on the NYS Transfer Tax Return (TP-584).

Insert amount here \$ _____

Check here if TP-584 enclosed ☐

- E. For all projects, provide amount of any capital investments made in 2022.

Insert amount here \$ _____

- F. For all projects, provide the amount spent on furnishing and equipment purchases in 2022.

Insert amount here \$ _____

Please provide project budget evidencing amount of capital investments and expenditures on furnishings and equipment, listed in B & C above.

XIII. **INSURANCE INFORMATION**

Please provide a copy of up-to-date insurance documentation as required under the Company's agreements with the IDA.

Check here if insurance is current ☐

Check here if a copy is attached ☐

XIV. **BOND INFORMATION, IF APPLICABLE**

If you have a bond through the IDA please complete the following:

- F. Date of the bond issue _____
- G. Bond Amount at time of issue _____
- H. Principal Amount Paid in 2022 _____
- I. Principal Balance as of 12/31/2022 _____
- J. Final Maturity Date _____
- F. Bank or Trustee (the Bank or Trustee name, Address) _____

XV. **PILOT INFORMATION:** Total PILOT payments made during year _____

XVI. **FIRST TIME REPORTING**

For companies that will be reporting for the first time, please also provide the following information:

- A. # of FTEs before IDA Status _____
- B. Original Estimate of jobs to be created _____
- C. Average estimated annual salary for jobs to be created _____
- D. Annualized salary range of jobs to be created _____ to _____
- E. Original estimate of jobs to be retained _____
- F. Estimated average annual salary of jobs to be retained _____

CERTIFICATIONS

The undersigned hereby certifies that:

(Initial below to certify)

6. All sales tax exemptions claimed for this Project during the preceding calendar year were applied for and taken during the time period specified in the project agreement (e.g., during construction), and the total amount claimed to date has not exceeded the amount approved in compliance with said agreement. _____
7. All insurance required under the Company's agreements with the IDA is currently in effect. _____
8. The Company has listed all applicable new 2022 employment opportunities with the NYS Department of Labor, Community Services Division and with the administrative entity of the service delivery area in which the project is located, pursuant to the Job Training Partnership Act. _____
9. There are no outstanding real estate tax or PILOT obligations in respect of the Project facility beyond the date(s) when such payments are due. _____
10. The information in this report is true, accurate, and complete. _____

Please retain a copy for your files. Under Article 18A of the New York State Municipal Law, failure to immediately provide the Agency with the requested information may result in lease default and the recapture of benefits, including the loss of sales and use tax exemptions and PILOT rights.

Company representative (Name & Title): _____

Date: _____

Please give this matter your urgent attention and contact the IDA if you have any questions.

Orange County Industrial Development Agency
4 Crotty Lane, Suite 100
New Windsor, New York 12553
Attention: William Fioravanti, Chief Executive Officer
bfioravanti@ocnyida.com
(845)234-4192