SARATOGA COUNTY – STATE OF NEW YORK
SARATOGA COUNTY CLERK
CRAIG A. HAYNER
40 MCMASTER STREET, BALLSTON SPA, NY 12020

COUNTY CLERK'S RECORDING PAGE
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INSTRUMENT #: 2022001511

Receipt#: 2022212412447
Clerk: GW
Rec Date: 01/12/2022 10:41:27 AM
Doc Grp: R
Descrip: LEASE AGREEMENT W/TP 584
Num Pgs: 36

Party1: COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY
Party2: SUMMIT AT HALFMOON LLC
Town: HALFMOON

Recording:

Pages	175.00
Cover Sheet Fee	5.00
Recording Fee	20.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
Names	0.00
TP 584	5.00
Sub Total:	225.00

Transfer Tax

Transfer Tax	0.00
Sub Total:	0.00
Total:	225.00

****** NOTICE: THIS IS NOT A BILL ******

***** Transfer Tax *****
Transfer Tax #: 3965
Transfer Tax

Total: 0.00

This page constitutes the Clerk's endorsement, required by section 316-a (5) & 319 of the Real Property Law of the State of New York with a stamped signature underneath.

Craig A. Hayner
Saratoga County Clerk

Record and Return To:

LEMERY GREISLER LLC
60 RAILROAD PLACE STE 502
SARATOGA SPRINGS, NY 12866-3033

RECORD AND RETURN TO:
LEMERY GREISLER LLC
60 Railroad PL STE 502
Saratoga Springs, NY
12866-3033

2022001511

01/12/2022 10:41:27 AM
36 Pages RECORDED
LEASE AGREEMENT W/TP 584
Saratoga County Clerk

COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY

AND

SUMMIT AT HALFMOON LLC

LEASE AGREEMENT

DATED AS OF DECEMBER 31, 2021

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LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of DECEMBER 31, 2021 ("Lease Agreement") by and between the COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at Saratoga County Municipal Center, Ballston Spa, New York 12020 (the "Lessor"), as landlord, and SUMMIT AT HALFMOON LLC, a limited liability company organized and existing under the laws of the State of New York having an address of 18 Computer Drive East, Suite 201, Albany, New York 12205 (the "Company"), as tenant;

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, being Title I of Article 18-A of the General Municipal Law, Chapter 24, of the Consolidated Laws of the State of New York, as amended (the "Enabling Act"), authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for, among other things, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities; and

WHEREAS, the Lessor was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 855 of the Laws of 1971 of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and improve their standard of living; and

WHEREAS, the Lessor, by resolution adopted on December 7, 2021 (the "Resolution"), resolved to undertake a project (the "Project") consisting of (A) (1) the acquisition of an interest in an approximately 13.80 acre parcel of land constituting tax map parcel 278.-1-55 and located at 1620 NYS Route 9 in the Town of Halfmoon, New York (the "Land"), (2 the construction on the Land of an approximately 147,200 square foot 110 unit independent senior living residential rental facility together with related amenities and infrastructure improvements (the "Facility") to be leased to tenants (the "Tenants") and (3) the acquisition and installation in the Facility of certain machinery and equipment (collectively, the "Equipment" and together with the Facility, collectively the "Project Facility"), (B) the lease (with the obligation to purchase) or the sale of the Project Facility to the Company or such other person as may be designated by the company and agreed upon by the Agency and (C) the providing by the Agency of certain "financial assistance" (as defined in the Act) in the form of exemptions from mortgage recording tax and state and local sales tax; and;

WHEREAS, the providing of the Project Facility and the lease of the Project Facility to the Company pursuant to this Lease Agreement is for a proper purpose, to wit, to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State of New York, pursuant to the provisions of the Act (as hereinafter defined); and

WHEREAS, all things necessary to constitute this Lease 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 Lease Agreement have in all respects been duly authorized;

NOW, THEREFORE, THE LESSOR AND THE COMPANY HEREBY AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS

SECTION 1.1. DEFINITIONS. The terms defined in this Section 1.1 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Lease Agreement and of any agreement supplemental hereto shall have the respective meanings specified in this Section 1.1.

"Act" means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 855 of the Laws of 1971 of the State.

"Authorized Representative" means the person or persons at the time designated to act in behalf of the Lessor or the Company, as the case may be, by written certificate furnished to the Company and the Lessor and signed on behalf of (A) the Lessor by an officer thereof and (B) on behalf of the Company by an officer, member or manager thereof.

"Bill of Sale to the Lessor" means the bill of sale from the Company to the Lessor conveying the Company's interest in the Equipment.

"Bill of Sale to the Company" means the bill of sale from the Lessor to the Company (substantially in the form shown in Exhibit "D" to the Lease Agreement) to be delivered to the Company upon satisfaction of the conditions set forth in the Lease Agreement.

"Business Day" means a day on which banks located in New York City are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

"Closing Date" means the date of the execution and delivery of the Lease Agreement by the Company and the Lessor.

"Code" means the Internal Revenue Code of 1986, as amended and regulations of the Department of Treasury promulgated thereunder and under the Internal Revenue Code of 1954, as amended.

"Company" means Summit at Halfmoon LLC, a limited liability company organized and existing under the laws of the State of New York, and its successors and permitted assigns.

"Completion Date" means the date which is certified by an Authorized Representative of the Company as the date of completion of the construction of the Facility and the installation of the Equipment pursuant to this Lease Agreement.

"Condemnation" means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any Governmental Authority.

"Construction Period" means the period (A) beginning on the date of commencement of construction of the Facility and installation of the Equipment, and (B) ending on the Completion Date.

"Equipment" means the materials, machinery, equipment, fixtures or furnishings acquired described in Exhibit "B" attached to this Lease Agreement.

"Event of Default" means any of those events defined as Events of Default by the terms of this Lease Agreement, the Underlying Lease, and/or any other document now or hereafter executed by the Agency and the Company in connection with the Project Facility.

"Facility" means a 110 unit age-restricted senior independent living rental facility to be constructed on the Land.

"Governmental Authority" means the United States, the State and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them.

"Land" means a leasehold interest in the approximately 13.80 acre parcel of land located in the Town of Halfmoon, County of Saratoga, State of New York as more particularly described on Exhibit A to this Lease Agreement.

"Lease" or "Leases" means any agreements of lease or sublease with respect to all or portions of the Project Facility, as said agreements of lease or sublease may have been or may from time to time be hereinafter modified, extended and revised, and any future lease or sublease affecting any portion of the Project Facility.

"Lease Agreement" means this lease agreement, as said lease agreement may be amended or supplemented from time to time in accordance with the terms hereof.

"Lease Term" shall have the meaning assigned to such term in Section 5.2 hereof.

"Leasing Documents" means the Underlying Lease, the Bill of Sale to Lessor, this Lease Agreement, the Project Agreement and any other document now or hereafter executed by the Lessor and the Company in connection with the Project Facility, as the same may be amended or supplemented from time to time in accordance with the terms thereof.

"Lender" means M&T Bank and its successors and assigns.

"Lessor" means (A) the County of Saratoga Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which the County of Saratoga Industrial Development Agency or its successors or assigns may be a party.

"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, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics', materialmen's warehousemen's and carriers' liens and other similar encumbrances, affecting real property. For the purposes hereof, a Person shall be deemed to be the owner of 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.

"Lien Law" means the Lien Law of the State.

"Local Authority" means any Governmental Authority which exercises jurisdiction over the Project Facility.

"Local Requirement" means any law, ordinance, order, rule or regulation of a Governmental Authority or a Local Authority, respectively.

"Permitted Encumbrances" means and includes: (i) in the case of real properties, easements, restrictions, exceptions, reservations or defects which, in the aggregate, do not interfere with the continued use of such properties for the purposes for which they are used and do not affect the value thereof; (ii) liens, if contested in good faith by appropriate proceedings as allowed pursuant to Section 8.8 of the Lease Agreement; (iii) existing leases by the Company of real and personal property; (iv) mortgage liens and/or security interests granted by the Company from time to time, (v) liens arising out of or created by the Leasing Documents; (vi) liens allowed pursuant to the terms of the Mortgage and (vii) such other encumbrances as may be consented to, from time to time, by the Lessor and the Company.

"Person" shall mean any legal entity, including without limitation an individual, a corporation, a company, a voluntary association, a partnership, a trust, an unincorporated organization or a government, or any agency, instrumentality or political subdivision thereof.

"Project" means that project undertaken by the Lessor consisting of (A) the acquisition of the Land, (B) the construction of the Facility and (C) the acquisition and installation of the Facility of the Equipment.

"Project Agreement" means that certain uniform agency project agreement of even date herewith by and between the Company and the Lessor as said uniform agency project agreement may be amended or supplemented from time to time in accordance with the terms thereof.

"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.

"Requirement" means any law, ordinance, order, rule or regulation of a Governmental Authority or a Local Authority, respectively.

"Resolution" means the resolution duly adopted by the Lessor on December 7, 2021 authorizing the execution and delivery of the Leasing Documents to which the Lessor is a party.

"SEQRA" means the New York State Environmental Quality Review Act constituting Article 8 of the New York state Environmental Conservation Law and the regulations promulgated thereunder.

"State" means the State of New York.

"Unassigned Rights" means (A) the rights of the Lessor granted pursuant to Sections 2.2(D), 3.1, 4.1(C), 5.4, 6.3, 6.4, 6.6, 8.1, 8.2, 8.3, 8.5, 8.7, 8.8, 8.9, 9.1, 9.2, 9.4, 11.3, 12.1(B) and 12.10 of this Lease Agreement, (B) the moneys due and to become due to the Lessor for its own account or the members, officers, agents and employees of the Lessor for their own account pursuant to Sections 2.2(D), 4.1, 5.4, 6.3, 6.4, 6.6, 8.2, 10.2, 10.4 and 12.10 of this Lease Agreement, and (C) the right to enforce the foregoing pursuant to Article X of this Lease Agreement

"Underlying Lease" means that certain underlying lease of even date herewith by and between the Company, as landlord, and the Lessor, as tenant, as said underlying lease may be amended or supplemented from time to time in accordance with the terms thereof.

SECTION 1.2. INTERPRETATION. In this Lease Agreement, unless the context otherwise requires:

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

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE LESSOR. The Lessor makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Lessor is duly established under the provisions of the Act and has the power to enter into this Lease Agreement and to carry out its obligations hereunder. Based upon the representations of the Company, the acquisition, construction and installation of the Project Facility constitutes and will constitute a "project" as such quoted term is defined in the Act. By proper official action the Lessor has been duly authorized to execute, deliver and perform this Lease Agreement and the Leasing Documents to which it is a party.

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

(C) The Lessor will cause the Project Facility to be acquired, constructed and installed and will lease the Project Facility to the Company pursuant to this Lease Agreement, all for the purpose of advancing the job opportunities, health, general prosperity and economic welfare of the people of the State and improving their standard of living.

(D) Except as provided herein and in Article IX and Section 10.2(A)(3) hereof, the Lessor, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project Facility or any part thereof and shall maintain the Project Facility free and clear of all Liens or encumbrances, except as contemplated or allowed by the terms of this Lease Agreement.

SECTION 2.2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company organized and existing under the laws of the State of New York, has power to enter into this Lease Agreement and to carry out its obligations hereunder, has been duly authorized to execute this Lease Agreement and is qualified to do business in all jurisdictions in which its operations or ownership of Properties so require. This Lease Agreement and the transactions contemplated hereby have been duly authorized by all necessary member action.

(B) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Lease Agreement will (1) result in a breach of or conflict with any of the terms, conditions or provisions of the Company's articles of organization or operating agreement or any agreement, instrument, order or judgment to which the Company is a party or by which the Company is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any such instrument or agreement, other than the Permitted Encumbrances, (2) require consent under (which has not been heretofore received) or result in a breach of or default under 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 it 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 government, governmental instrumentality or court (domestic or foreign), having jurisdiction over the Company or any of the Property of the Company.

(C) The acquisition, construction and installation of the Project Facility will not result in the removal of a facility or plant of the Company or any contemplated occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any contemplated occupant of the Project Facility located within the State.

(D) The Company shall cause all notices required by law to be given, and shall comply or cause compliance with all laws, ordinances, municipal rules and 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 as if the Company and not the Lessor were the owner of the Project Facility), and the Company will defend and save the Lessor and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith.

(E) The acquisition, construction and installation of the Project Facility will not have a significant impact on the environment within the terms of SEQRA and the statewide and local regulations thereunder. The Company hereby covenants to comply with all mitigation measures, requirements and conditions, if any, enumerated in the negative declaration issued by the Town of Halfmoon Planning Board under SEQRA with respect to the Project and in any other approvals issued by any other Governmental Authority.

(F) So long as this Lease Agreement shall be in effect, 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 Leasing Documents or which the Lessor, advises 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.

(G) The Company is in possession of all local land use and zoning approvals relating to the construction and operation of the Facility for its intended purpose and the Facility and the operation thereof complies and will comply with all applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authority having jurisdiction over the Facility.

(H) Except as provided in Section 9.4 hereof, all items comprising the Equipment shall remain in the Facility at all times during the term of this Lease Agreement.

ARTICLE III

CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1. CONVEYANCE TO THE LESSOR. The Company has conveyed or will convey, or will cause to be conveyed, all the its right, title and interest in and to the Project Facility to the Lessor pursuant to the Underlying Lease and the Bill of Sale to Lessor. The Company hereby represents and warrants that it has good and marketable title to the Project Facility, free and clear of all Liens except for Permitted Encumbrances and the Underlying Lease and agrees that it will defend, indemnify and hold the Lessor harmless from any expense or liability due to any defect in title thereto. The Company shall pay all (i) costs, expenses, taxes and charges incurred in connection with such conveyance and transfer, and (ii) taxes, assessments and other charges and impositions of the Project Facility attributable to periods prior to the date of this Lease Agreement.

SECTION 3.2. USE OF PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Leasing Documents, provided that such use (1) causes the Project Facility to qualify or continue to qualify as a "project" under the Act and (2) does not tend, in the reasonable judgment of the Lessor, to bring the Project Facility into disrepute as a public project.

ARTICLE IV

ACQUISITION, CONSTRUCTION AND INSTALLATION OF PROJECT FACILITY

SECTION 4.1. ACQUISITION, CONSTRUCTION AND INSTALLATION OF PROJECT FACILITY. (A) The Company shall, on behalf of the Lessor, promptly acquire, construct and install the Project Facility.

(B) The Lessor hereby appoints the Company its true and lawful agent during the Construction Period to perform under the following authority in compliance with the terms, purposes and intent of the Leasing Documents, and the Company hereby accepts such agency: (1) acquire, construct and install the Project Facility, (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 acquisition, construction and installation of the Project Facility, with the same powers and with the same validity as the Lessor could do if acting in its own behalf including, but not limited to, the appointment of subagents for such purposes, and (3) to pay all fees, costs and expenses incurred in the acquisition, construction and installation of the Project Facility.

(C) The Company has given or will give or cause to be given all notices and has 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 as if the Company and not the Lessor were the owner of the Project Facility), and the Company will defend, indemnify and save the Lessor 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.

(D) To the extent required by applicable law, the Company, as agent for the Lessor, will cause (1) compliance with the requirements of Article 8 of the Labor Law of the State, and (2) any contractor,

subcontractors and other Persons involved in the acquisition, construction and installation of the Project Facility to comply with Article 8 of the Labor Law of the State. The covenant in this subsection is not intended as a representation that Article 8 of the Labor Law of the State applies.

(E) The Company agrees to file with the Department of Taxation and Finance of the State in a manner and at the time prescribed thereby, information relating to the extent of exemption from sales and use tax claimed with respect to the acquisition, reconstruction, construction and installation of the Project Facility all in compliance with Section 874 of the General Municipal Law of the State. THE COMPANY ACKNOWLEDGES THAT THE FAILURE TO COMPLY WITH THE PROVISIONS OF SAID SECTION 874 SHALL RESULT IN A REVOCATION OF THE AUTHORITY GRANTED PURSUANT TO SUBSECTION (B) OF THIS SECTION 4.1.

(F) The Company acknowledges and agrees that to the extent it (i) utilizes the exemption from New York State and local sales and use tax in a manner inconsistent with the intent of this Agreement and/or (ii) attempts to obtain an exemption from New York State and/or local sales and/or use tax which exceeds the scope of the exemption conferred by the provisions of this Agreement, it will be subject to a recapture of such inconsistent or excessive exemption benefits by the Lessor in accordance with the provisions of Section 875 of the General Municipal Law of the State, the provisions of which are hereby incorporated herein by reference. The Company agrees to cooperate with the efforts of the Lessor to recapture such inconsistent or excessive exemption benefits and any failure to do so shall constitute an Event of Default hereunder.

ARTICLE V

LEASE OF PROJECT FACILITY; RENT; CONVEYANCE OF PROJECT FACILITY

SECTION 5.1. LEASE OF PROJECT FACILITY. The Lessor hereby leases the Project Facility to the Company, and the Company hereby leases the Project Facility from the Lessor, for and during the term hereinafter provided and upon and subject to the terms and conditions hereinafter set forth. The Company assumes and agrees to perform and discharge all of the Lessor's obligations under the Lease Documents during the Lease Term, and shall enforce all claims arising under any representation, warranty, covenant, indemnity, guarantee or agreement in the Lease Documents.

SECTION 5.2. DURATION OF TERM. The term of this Lease Agreement shall become effective upon its delivery and shall expire on December 31, 2023, or such earlier date as this Lease Agreement may be terminated as hereinafter provided (the "Lease Term"). The Lessor shall deliver to the Company and the Company shall accept sole and exclusive possession of the Project Facility simultaneously with the execution of this Lease Agreement.

SECTION 5.3. QUIET ENJOYMENT. So long as no Event of Default shall have occurred and be continuing, and except as otherwise expressly provided herein or in the Leasing Documents, the Lessor will not disturb the Company in its peaceful and quiet enjoyment of the Project Facility, which shall be free from any interference, repossession or disturbance by the Lessor.

SECTION 5.4. RENT AND OTHER AMOUNTS PAYABLE. The Company shall pay rent for the Project Facility as follows:

(A) The Company shall remit to the Lessor on the Closing Date and on each anniversary of the Closing Date during the term hereof, the sum of Ten Dollars ($10.00)

(B) Within seven (7) days after receipt of a demand therefor from the Lessor accompanied by any supporting evidence or documentation therefor reasonably requested by the Company, the Company shall

pay to the Lessor the sum of the reasonable and actual expenses of the Lessor and the officers, members, agents and employees thereof incurred by reason of the Lessor's ownership or lease of the Project Facility or in connection with the carrying out of the Lessor's duties and obligations under this Lease Agreement or any of the other Leasing Documents and any other reasonable and actual fee or expense of the Lessor, including reasonable and actual attorneys' fees, with respect to the Project Facility, the sale of the Project Facility to the Company, any of the other Leasing Documents, the payment of which is not otherwise provided for under this Lease Agreement.

(C) The Company agrees to make the above mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.4 for a period of more than thirty (30) days from the date such payment is due, the Company shall pay the same together with interest thereon at a rate equal to two percent (2%) per month or the maximum permitted by law, whichever is less, from the date on which such payment was due until the date on which such payment is made.

SECTION 5.5. NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER. (A) The obligations of the Company to make the payments required by this Lease Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any rights of set-off, recoupment or counterclaim the Company may otherwise have against the Lessor. 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 Lease Agreement, or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the acquisition of the Land, the construction of the Facility or the installation of the Equipment, any material 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, failure of consideration for, destruction of or damage to, 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 or any political subdivision thereof, or any failure of the Lessor to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease Agreement.

(B) Nothing contained in this Section 5.5 shall be construed to release the Lessor from the performance of any of the agreements on its part contained in this Lease Agreement, and, in the event the Lessor should fail to perform any such agreement, the Company may institute such action against the Lessor as the Company may deem necessary to compel performance or recover damages for non-performance; provided, however, that the Company shall look solely to the Lessor's estate and interest in the Project Facility (other than the Unassigned Rights), for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Lessor in the event of any liability on the part of the Lessor, and no other Property or assets of the Lessor or members, officers, agents (other than the Company) or employees of the Lessor shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Lease Agreement, the relationship of the Lessor and the Company hereunder or the Company's purchase of and title to the Project Facility, or any other liability of the Lessor to the Company.

ARTICLE VI

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1. MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY. The Company agrees that during the period that the Lease Agreement is outstanding it will (1) keep the Project Facility in

good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) make all repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) deemed necessary by the Company, in the Company's reasonable discretion, and (3) operate the Project Facility in a sound and economic manner.

SECTION 6.2. TAXES, ASSESSMENTS AND UTILITY CHARGES. (A) The Company shall pay or cause to be paid, before the imposition of any penalties, fees or interest for late payment of the same, respectively become, (1) 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, (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, (3) all assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements, and (4) all payments required under Section 6.6 (B) hereof; 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 hereunder to pay only such installments as are required to be paid during all periods that sums payable by the Company hereunder or under any of the other Leasing Documents are due and owing.

(B) Notwithstanding the provisions of subsection (A) of this Section 6.2 the Company may in good faith actively contest any such taxes, assessments and other charges, provided that the Company shall pay such taxes, assessments and other charges in accordance with the provisions of such subsection (A) and shall not defer, or be deemed entitled to defer such payment by reason of any such contest.

SECTION 6.3. INSURANCE REQUIRED. At all times during the Lease Term and/or that the Lessor is the owner of the Project Facility, including without limitation during any Construction Period, the Company shall maintain or, with respect to the insurance required by subsection (E) of this Section 6.3, cause the general contractor to maintain 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, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) (1) During the Construction Period or any other time when acquisition, reconstruction, construction and installation of the Project Facility shall take place, builder's "all-risk" (or equivalent coverage) insurance upon any work done or material furnished in connection with the acquisition, reconstruction, construction and installation of the Project Facility, with extended coverage for floods, vandalism, malicious mischief, debris removal and collapse insurance endorsements, issued to the Company and the Lessor as insureds, as their interests may appear, and written in completed value non-reporting form for the full completed insurable value of the Project Facility, and (2) at such time that builder's risk (or equivalent coverage) insurance is no longer available by virtue of completion of the acquisition, construction and installation of the Project Facility, insurance protecting the interests of the Company and the Lessor as insureds, as their interests may appear, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief, floods and other perils and casualties normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount not less than the full insurable value of the Facility; provided, however, that the Company may insure all or a portion of the Project Facility under a blanket insurance policy or policies covering not only the Project Facility or portions thereof but other Property.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms 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, including, but not limited to, all contractors and subcontractors.

(C) Insurance protecting the Company and the Lessor against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.2 of this Lease Agreement) and arising from personal injury or death or damage to the property of others caused by any accident or occurrence, with limits of not less than $1,000,000 per person per accident or occurrence on account of personal injury, including death resulting therefrom, and $1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate commercial umbrella liability policy in excess of the basic coverage stated above protecting the Company and the Lessor with a limit of not less than $5,000,000.

(D) During the Construction Period, the general contractor and any subcontractor constructing, installing and equipping the Project Facility shall be required to carry workers' compensation and general comprehensive liability insurance containing coverages for premises operations, products and completed operations, explosion, collapse and underground damage hazard, contractor's protective, owner's protective and coverage for all owned, non-owned and hired vehicles with non-ownership protection from the general contractor or subcontractor's employees providing the following minimum limits:

(a) Workers' compensation and employer's liability - in accordance with applicable law, covering loss resulting from injury, sickness, disability and death of employees located at or assigned to the Facility or who are responsible for the construction of the Facility.

(b) Comprehensive general liability:

(i) Bodily injury liability in an amount not less than $1,000,000 for each accident and not less than $2,000,000 for injuries sustained by two or more persons in any one accident.

(ii) Property damage liability in an amount not less than $1,000,000 for each accident and not less than $2,000,000 in the aggregate for each year of the policy period.

(c) Comprehensive automobile liability:

(i) Bodily injury liability in an amount not less than $1,000,000 for each accident and not less than $3,000,000 for injuries sustained by two or more persons in any one accident.

(E) Other insurance coverage required by any Governmental Authority in connection with any Requirement.

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

SECTION 6.4. ADDITIONAL PROVISIONS RESPECTING INSURANCE. All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and reasonably satisfactory to the Lessor. The company or companies issuing the policies required by Sections 6.3(A) shall be rated "A" or better by A.M. Best Co., Inc. in the most recent edition of Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall name the Company and the Lessor as insureds, as their interests may appear, and provide for at least thirty (30) days' written notice to the Company and the Lessor prior to cancellation, lapse, reduction in policy limits or material change in

coverage thereof. All insurance required hereunder shall be in form, content and coverage satisfactory to the Lessor. Certificates satisfactory in form and substance to the Lessor to evidence all insurance required hereby shall be delivered to the Lessor on or before the Closing Date. The Company shall deliver to the Lessor on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding December l 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 hereof. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish to the Lessor evidence that the policy has been renewed or replaced or is no longer required by this Lease Agreement.

(B) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company; provided, however, that if the premiums are not timely paid, the Lessor may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Lessor, together with interest, to the extent permitted by law, at a rate equal to two percent (2%) per month from the date on which such payment was due until the date on which the payment is made.

(C) (1) The Company shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under Section 6.3 unless the Lessor is included therein as a named insured.

(2) Each of the policies required pursuant to Section 6.3 hereof shall, to the extent commercially available, waive (a) any right of subrogation against any Person insured under such policy, and (b) any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy.

SECTION 6.5. APPLICATION OF NET PROCEEDS OF INSURANCE. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 hereof shall be applied as follows: (A) the Net Proceeds of the insurance required by Section 6.3(A) hereof shall be applied as provided in Section 7.1 hereof and (B) the Net Proceeds of the insurance required by Section 6.3(B), 6.3(C), 6.3(D) and 6.3(E) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

SECTION 6.6. PAYMENTS IN LIEU OF TAXES. (A) It is recognized that, under the provisions of the Act, the Lessor is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control or supervision or upon its activities. It is not the intention, however, of the parties hereto that the Project Facility be treated as exempt from real property taxation. Accordingly, the Lessor and the Company hereby agree that the Company, or any subsequent user of the Project Facility under this Lease Agreement, shall in such event be required to make or cause to be made payments in lieu of taxes to the Lessor for proportional re-distribution to the school district or school districts, city, town, county, village and other political units wherein the Project Facility is located having taxing powers (such political units are hereinafter collectively referred to as the "Taxing Entities") in such amounts as would result from taxes being levied on the Project Facility by the Taxing Entities if the Project Facility were privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Lessor, but with appropriate reductions similar to the real property tax exemptions and credits, if any, which would be afforded to the Company if it were the owner of the Project Facility. It is agreed that the Company, in cooperation with the Lessor, (a) shall cause the Project Facility to be valued for purposes of determining the amounts due hereunder as if owned by the Company as aforesaid by the appropriate officer or officers of any of the Taxing Entities as may from time to time be charged with responsibility for making such valuations, (b) shall cause to be appropriately applied to the valuation or valuations so determined the respective tax rate or rates of the Taxing Entities that would be applicable to the Project Facility if so privately owned, (c) shall cause the appropriate officer or officers of the Taxing Entities charged with the duty of levying and collecting such taxes to submit to the Company, when the respective levies are made for purposes of such taxes upon

Property privately owned as aforesaid, statements specifying the amounts and due dates of such taxes which the Taxing Entities would receive if such Property were so privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Lessor, and (d) shall file with the appropriate officer or officers any accounts or tax returns furnished to the Lessor by the Company for the purpose of such filing.

(B) The Company shall pay or cause to be paid to the Lessor within thirty (30) days of receipt of an invoice with respect thereto all such payments in lieu of taxes with respect to the Project Facility required by Section 6.6(B) of this Lease Agreement, subject in each case to the Company's right to (a) obtain exemptions and credits, if any, which would be afforded to a private owner of the Project Facility, including any available exemption under Section 485-b of the New York Real Property Tax Law with respect to the Project Facility, (b) contest valuations of the Project Facility made for the purpose of determining such payments therefrom (provided, however, no such contest shall entitle the Company to defer payments in lieu of taxes by reason of any such contest), and (c) seek to obtain a refund of any such payments made. In the event the Company shall fail to make or cause to be made any such payments in lieu of taxes, the amount or amounts so in default shall continue as an obligation of the Company until fully paid, and the Company hereby agrees to pay or cause to be paid the same, together with late charges and interest thereon as provided for in subsection (5) of Section 874 of the General Municipal Law of the State (or any successor provision).

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1. DAMAGE OR DESTRUCTION.

If the Project Facility shall be damaged or destroyed, in whole or in part, the Company shall give the Lessor prompt written notice thereof. As between the Lessor and the Company, the Company shall have sole right to and control over the use of the Net Proceeds of any insurance settlement. 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 to replace, repair, rebuild or restore the Project Facility if the Company shall notify the Lessor that, in the Company's sole judgment, the Company does not deem it practical or desirable to so replace, repair, rebuild or restore the Project Facility. The Lessor shall have no obligation to rebuild or restore the Project Facility, and upon payment of all payments due pursuant to Section 5.4 hereof, the term of this Lease Agreement shall end and the obligations of the Company hereunder (other than any such obligations expressed herein as surviving termination of this Lease Agreement) shall terminate as of the date of such payment and the Lessor shall transfer to the Company, without recourse or warranty, all right, title and interest of the Lessor in and to the Project Facility.

SECTION 7.2. CONDEMNATION.

If title to, or the use of, the Project Facility shall be taken by Condemnation, the Company shall give the Lessor prompt written notice thereof. As between the Lessor and the Company, the Company shall have sole right to and control over the use of the Net Proceeds of any insurance settlement. The Net Proceeds of any Condemnation award shall not be applied to restore the Project Facility if the Company shall notify the Lessor that, in the Company's sole judgment, the Company does not deem it practical or desirable to restore the Project Facility. The Lessor shall have no obligation to restore the Project Facility, and upon payment of all payments due pursuant to Section 5.4 hereof, the term of this Lease Agreement shall end and the obligations of the Company hereunder (other than any such obligations expressed herein as surviving termination of this Lease Agreement) shall terminate as of the date of such payment and the Lessor shall transfer to the Company, without recourse or warranty, all right, title and interest of the Lessor in and to the Project Facility.

SECTION 7.3. ADDITIONS TO THE 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 and subject to the Leasing Documents as if the same were specifically described herein.

ARTICLE VIII

SPECIAL COVENANTS

SECTION 8.1. NO WARRANTY OF CONDITION OR SUITABILITY BY LESSOR; ACCEPTANCE "AS IS". THE LESSOR 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. THE COMPANY SHALL ACCEPT POSSESSION OF THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE LESSOR FOR ANY CONDITION NOW, HERETOFORE OR HEREAFTER EXISTING. NO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY ARE MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

SECTION 8.2. HOLD HARMLESS PROVISIONS. (A) The Company hereby (i) releases the Lessor and its members, officers, agents (other than the Company) and employees from, (ii) agrees that the Lessor and its members, officers, agents (other than the Company) and employees shall not be liable for, and (iii) agrees to indemnify, defend and hold the Lessor and its members, officers, agents (other than the Company) and employees harmless from and against: any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Lessor's undertaking the acquisition, construction and installation of the Project Facility, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Lessor's financing, acquiring, constructing, installing, owning or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility and any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Project Facility, all liabilities or claims arising as a result of the Lessor's obligations under this Lease Agreement or any of the other Leasing Documents or the enforcement of or defense of validity of any provision of any Leasing Documents, and all liabilities or claims arising out of environmental matters with respect to the Project Facility, and (3) 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 claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Lessor are not incurred or do not result from the intentional wrongdoing of the Lessor or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Lessor or any of its officers, members, agents or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(B) In the event of any claim against the Lessor or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone 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 benefits 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(C) of this Lease Agreement, its liabilities assumed pursuant to this Section 8.2.

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

SECTION 8.3. RIGHT OF ACCESS TO PROJECT FACILITY. The Company agrees that the Lessor and its authorized agents shall have the right at all reasonable times and upon prior reasonable notice to enter upon the Land and to examine and inspect the Project Facility for the sole purpose of ensuring compliance with the provisions of the Act.

SECTION 8.4. THE COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS. The Company agrees that, so long as this Lease Agreement is in effect, it will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets.

SECTION 8.5. AGREEMENT TO PROVIDE INFORMATION. The Company agrees, whenever requested by the Lessor, to provide and certify or cause to be provided and certified such information concerning the Company, its finances and other topics as the Lessor from time to time reasonably consider necessary or appropriate, including, but not limited to, (i) such information as to enable the Lessor to make any reports required by law or governmental regulation, and (ii) within thirty (30) days of receipt by the Company of written request therefor, a complete and accurate listing of all items of personalty which were acquired or leased by the Company based upon an exemption from sales or use tax provided by the Lessor.

SECTION 8.6. BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS; COMPLIANCE CERTIFICATES. 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.

SECTION 8.7. COMPLIANCE WITH ORDERS, ORDINANCES, ETC. (A) The Company agrees that it will, during any period in which this Lease Agreement is in effect, 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 may 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 such laws, ordinances, rules and regulations to be determined as if the Company and not the Lessor were the owner of the Project Facility).

(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Company may in good faith actively contest the validity or the applicability of any requirement of the nature referred to in such subsection (A), provided that the Company (1) first shall have notified the Lessor in writing of such contest, (2) is not in default under any of the Leasing Documents, (3) shall have set aside adequate reserves for any such requirement, and (4) demonstrates to the reasonable satisfaction of the Lessor that noncompliance with such requirement will not materially endanger the Project Facility or any part thereof to loss or forfeiture. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Lessor.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.7, if the Lessor or any of its members, officers, agents, servants or employees may be liable for prosecution for failure to comply therewith, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Lessor.

SECTION 8.8. DISCHARGE OF LIENS AND ENCUMBRANCES. (A) The Company agrees not to create or suffer to be created any other Lien or security interest, except for Permitted Encumbrances, on the Project Facility or any part thereof.

(B) Notwithstanding the provisions of subsection (A) of this Section 8.8, and except as provided for taxes, assessments and utility charges under Section 6.2, the Company may in good faith actively contest any such Lien or security interest, provided that the Company (1) first shall have notified the Lessor in writing of such contest, (2) is not in default hereunder, (3) shall have set aside adequate reserves for the discharge of any such Lien or security interest, and (4) demonstrates to the reasonable satisfaction of the Lessor that the failure to discharge any such Lien or security interest will not subject the Project Facility or any part thereof to loss or forfeiture. Otherwise such Lien or security interest shall be removed promptly by the Company or secured by the Company's posting a bond in form and substance satisfactory to the Lessor.

SECTION 8.9. PERFORMANCE BY LESSOR OF COMPANY'S OBLIGATIONS. Should the Company fail to make any payment or to do any act as herein provided, the Lessor may, but need not, without 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 Lessor, and paying all expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so expended by the Lessor under the authority hereof, together with interest thereon at the rate of two percent (2%) per month or the maximum permitted by law, whichever is less.

SECTION 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 Internal Revenue Code of 1986, as amended (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.

SECTION 8.11. ENVIRONMENTAL WARRANTIES AND COVENANTS. (A) Warranties. The Company makes the following representations and warranties relating to the Project Facility to the best of its knowledge: (i) the Company (or the present owner of the Project Facility, if different) is in compliance in all respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to toxic and hazardous substances and other environmental matters (the "Laws"), (ii) no portion of the Project Facility is being used or has been used at any previous time, for the disposal, storage, treatment, processing or other handling of any hazardous or toxic substances, in a manner not in compliance with the Laws, (iii) the soil and any surface water and ground water which are a part of the Project Facility are free from any solid wastes, toxic or hazardous substance or contaminant and any discharge of sewage or affluent; and (iv) neither the federal government nor the State Department of Environmental Conservation or any other governmental or quasi-governmental entity has filed a lien on the Project Facility, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or threatened in writing, which involve the Project Facility.

(B) Agreement to Comply. If any environmental contamination is found at the Project Facility for which any removal or remedial action is required pursuant to Law, ordinance, order, rule,

regulation or governmental action, the Company agrees that it will at its sole cost and expense take such removal or remedial action promptly and to the Lessor's reasonable satisfaction.

(C) Indemnification. The Company agrees to defend, indemnify and hold harmless the Lessor and its employees, agents, officers and directors, from and against any claims, actions, demand, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, reasonable and actual attorney and consultant fees, investigations and laboratory fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise arising out of or in any way related to: (i) the past or present disposal, release or threatened release of any hazardous or toxic substances on the Project Facility; (ii) any personal injury (including wrongful death or property damage, real or personal) arising out of or related to such hazardous or toxic substances; (iii) any lawsuit brought or threatened, settlement reached or government order given relating to such hazardous or toxic substances; and/or (iv) any violation of any Law, order, regulation, requirement, or demand of any government authority, or any policies or requirements of the Lessor, which are based upon or in any way related to such hazardous or toxic substances.

(D) Other Sites. The Company knows of no on-site or off-site locations where hazardous or toxic substances from the operation of the Facility on the Land have been, except in compliance with the Laws, stored, treated, recycled or disposed of.

(E) Leases. The Company agrees not to lease or permit the lease of the Project Facility to a tenant or subtenant whose operations will knowingly result in contamination of the Project Facility with hazardous or toxic substances in violation of any Law.

(F) Non-Operation by the Lessor. The Company acknowledges that the Lessor does not intend to be involved in the operations of the Project Facility.

(G) Compliance Determinations. The Company acknowledges that any determinations made by the Lessor under this Section regarding the compliance with environmental laws shall be made for the Lessor's benefit only and are not intended to be relied upon by any other party.

(H) Survival of Conditions. The provisions of this Section shall be in addition to any other obligations and liabilities the Company may have to the Lessor at common law, and shall survive the transactions contemplated herein.

(I) Definitions. The term "hazardous substance" shall include, without limit, any substance or material defined in 42 U.S.C. Section 9601 (as the same may be amended from time to time), the Hazardous Materials Transportation Act (as amended from time to time), and the New York Environmental Conservation Law or the Resource Conservation and Recovery Act (as each may be amended from time to time) and in any regulations adopted or publications promulgated pursuant to any of the foregoing.

(J) Further Indemnification. The Company further agrees to indemnify and hold the Lessor harmless from and against any loss, liability, damage, cost or expense (including reasonable and actual attorneys' fees) incurred by the Lessor resulting from (i) the Company's failure to comply with any order, decree, settlement, judgment or verdict (whether arising as a result of the manufacture, holding, handling, transportation, spilling, leaking or dumping of toxic or hazardous wastes or waste products prior to, or during, the Company's ownership of the Land), (ii) the Company's failure to comply with any such statute, rule or regulation, or (iii) the Company's failure to conduct an appropriate inquiry into previous uses and ownership of any portion of the Land, as described in the Superfund Amendment and Reauthorization Act of 1986.

ARTICLE IX

ASSIGNMENTS; MERGER OF LESSOR

SECTION 9.1. RESTRICTION ON TRANSFER OF LESSOR'S INTEREST HEREUNDER. Except as otherwise specifically provided in this Article IX hereof, neither the Lessor nor the Company shall sell, assign or otherwise dispose of any of their rights under this Lease Agreement, without the prior written consent of the Company or the Lessor, as the case may be.

SECTION 9.2. ASSIGNMENT OF THIS LEASE AGREEMENT. Except for any assignment under any of the Leasing Documents, this Lease Agreement may not be assigned by the Company, in whole or in part, absent the prior written consent of the Lessor (which consent shall not be unreasonably withheld, delayed or conditioned), and provided that in any event:

(a) the assignee shall be qualified to transact business in the State of New York and shall assume the obligations of the Company hereunder to the extent of the interest assigned;

(b) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Lessor a true and complete copy of such assignment and the instrument of assumption; and

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

In accordance with its policies and procedures, the Lessor reserves the right to receive and review financial information concerning any prospective assignee.

SECTION 9.3. MERGER OF THE LESSOR. Nothing contained in this Lease Agreement shall prevent the consolidation of the Lessor with, or merger of the Lessor into, or assignment by the Lessor of its rights and interests hereunder (provided that the Agency's rights and interests under the Leasing Documents are simultaneously transferred to such Person) to, any other public benefit corporation of the State or political subdivision thereof which has the legal authority to perform the obligations of the Lessor hereunder and the other Leasing Documents, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Lease Agreement and the other Leasing Documents to be kept and performed by the Lessor shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Lessor's rights and interests hereunder or under this Lease Agreement and the other Leasing Documents shall be assigned.

SECTION 9.4. SALE OR LEASE OF PROJECT FACILITY. Except for the sale or disposition of worn or obsolete items comprising a portion of the Equipment or the sale of other items in the ordinary course of the Company's business, the Company may not otherwise sell, lease, transfer, convey or otherwise dispose of the Project Facility or any part thereof without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1. EVENTS OF DEFAULT DEFINED. The following shall be "Events of Default" under this Lease Agreement, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Lease 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 Section 5.4 (B) hereof, and the continuance thereof for a period of thirty (30) days after written notice thereof.

(b) A default in the performance or observance of any other of the covenants, conditions or agreements on the part of the Company in this Lease Agreement and the continuance thereof for a period of thirty (30) days after written notice is given by the Lessor to the Company; provided, however, that if such default cannot reasonably be cured within said thirty (30) day period and the Lessor or the Company shall have commenced action to cure the breach of covenant within said thirty (30) day period, and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Lessor or the Company shall require, in the exercise of due diligence, to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days provided that the Lessor agrees to consider a request from the Company for an additional extension if such cure cannot be accomplished within said ninety (90) period. If any conflict shall exist between the provisions of this Subsection (b) and the immediately following Subsection (c) as to when an Event of Default has occurred, the provisions of such Subsection (c) shall govern.

(c) Any representation or warranty made by the Company herein proves to have been false in any material manner at the time it was made.

(d) 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.

(e) (a) The filing by the Company (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute, (b) the failure by the Company within one hundred twenty (120) days to lift any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder, (c) 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 one hundred twenty (120) days, (d) 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 (e) 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 one hundred twenty (120) days of such appointment.

(f) If by order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Company or the Project Facility or any part thereof, shall be appointed and such order shall not be discharged or dismissed within one hundred twenty (120) days after such appointment.

(g) The dissolution of the Company.

(h) A failure by the Company to make timely payments in lieu of tax as required under Section 6.6 hereof.

(i) The failure by the Company to maintain the insurance required by Section 6.3 (C) hereof.

SECTION 10.2. REMEDIES ON DEFAULT. (A) Whenever any Event of Default shall have occurred, the Lessor 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, (a) all unpaid payments payable pursuant to Section 5.4(B) hereof, and (b) all other payments due under this Lease Agreement.

(2) 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 and to enforce the obligations, agreements or covenants of the Company under this Lease Agreement.

(3) In the event of (i) a default beyond all applicable cure periods by the Company in the payment of any amounts due and owing hereunder and/or under Section 6.6 hereof and upon forty-five (45) days' prior written notice to the Company or (ii) the occurrence of an Event of Default described in Section 10.1(e), Section 10.1(f), Section 10.1 (g), Section 10.1(h), or Section 10.1(i) hereof, terminate the Lease Agreement and reconvey the Project Facility to the Company. The Company hereby consents to said reconveyance and appoints the Lessor its attorney-in-fact, which appointment is coupled with an interest and is irrevocable, to execute any and all instruments and documents in its name as may be necessary, in the sole discretion of the Lessor, to effectuate such transfer.

SECTION 10.3. REMEDIES CUMULATIVE. No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lessor to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

SECTION 10.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Company should default under any of the provisions of this Lease Agreement and the Lessor should reasonably attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Lessor the reasonable and actual fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

SECTION 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

EARLY TERMINATION OF LEASE AGREEMENT

SECTION 11.1 OPTION TO TERMINATE LEASE AGREEMENT. The Company shall have, if there exists no Event of Default hereunder with respect to any amounts due and owing to the Lessor hereunder or under the other Leasing Documents, the option to cancel or terminate this Lease Agreement, subject to the survival of those obligations of the Company which are intended to survive the term of this Lease Agreement, upon payment of all payments currently due and owing pursuant to Section 5.4 hereof for which a written payment request with respect to has been provided to the Company by the Lessor, and by giving the Lessor notice in writing of such termination and thereupon such termination shall forthwith become effective.

SECTION 11.2. OBLIGATION TO SELL AND PURCHASE THE PROJECT FACILITY. Upon termination of this Lease Agreement in accordance with Section 5.2 or 11.1 hereof or expiration of this lease Agreement in accordance with Section 5.2 hereof, the Lessor shall be obligated to sell to the Company, and the Company shall be obligated to purchase the Project Facility from the Lessor for the purchase price of One Dollar ($1.00) plus payment of all sums due and payable to the Lessor hereunder.

SECTION 11.3. CONVEYANCE OF PROJECT FACILITY UPON PURCHASE. (A) At the closing of any purchase of the Project Facility pursuant to Section 11.2 hereof, the Project Facility shall be conveyed from the Lessor to the Company subject to Permitted Encumbrances. The Company agrees to prepare a termination of this Lease Agreement together with all gains tax affidavits, equalization and assessment forms and other necessary documentation and to forward same to the Lessor at least fifteen (15) days prior to the date that the Project Facility is to be conveyed to the Company. The Company will pay all expenses and taxes, if any, applicable to or arising from such transfers of title.

(B) The sale and conveyance of the Lessor's right, title and interest, if any, in and to the Land and the Facility shall be effected by the execution, delivery and recording by the Lessor of a termination of this Lease Agreement and a Bill of Sale to Company (in substantially the form attached hereto as Exhibit "C" and by this reference made a part hereof).

(C) The Company hereby agrees to pay all expenses, filing and recording fees and taxes, if any, and the reasonable and actual attorneys' fees of the Lessor applicable to or arising from the transfers contemplated by this Section 11.3.

ARTICLE XII

MISCELLANEOUS

SECTION 12.1. RESERVED.

SECTION 12.2. NOTICES. All notices, certificates and other communications hereunder shall be in writing and 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, or by such other means (including overnight delivery) as shall provide the sender with documentary evidence of such delivery, or (B) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Summit at Halfmoon LLC
18 Computer Drive East, Suite 201
Albany, New York 12205
Attention: Frank J. Nigro, III

IF TO THE LESSOR

County of Saratoga Industrial Development Agency
Saratoga County Municipal Center
50 West High Street
Ballston Spa, New York 12020
Attention: Executive Director

WITH A COPY TO:

Lemery Greisler LLC
60 Railroad Place, Suite 502
Saratoga Springs, New York 12866
Attention: James A. Carminucci, Esq.

The Lessor 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.

SECTION 12.3. BINDING EFFECT. This Lease Agreement shall inure to the benefit of the Lessor and the Company, and shall be binding upon the Lessor, the Company and, their respective successors and assigns permitted hereunder, provided, however that except as provided elsewhere herein or in the other Leasing Documents, the interest of the Lessor in this Lease Agreement may not be mortgaged, encumbered, sold, assigned, transferred, conveyed, pledged, sublet or subjected to any lien or otherwise transferred without the prior written consent of the Company.

SECTION 12.4. SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Lessor 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 case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Lease Agreement.

SECTION 12.5. AMENDMENTS, CHANGES AND MODIFICATIONS. This Lease Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 12.6. EXECUTION OF COUNTERPARTS. This Lease 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.

SECTION 12.7. APPLICABLE LAW. This Lease Agreement shall be governed exclusively by the applicable laws of the State.

SECTION 12.8. SURVIVAL OF OBLIGATIONS. (A) The obligations of the Company to make the payments required by Section 5.4(B) hereof and to provide the indemnity required by Section 8.2 hereof shall survive the termination of this Lease Agreement, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Company with respect to the Unassigned Rights shall survive the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the Unassigned Rights 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 Lessor, or its officers, members, agents or employees, relating thereto.

SECTION 12.9. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The table of contents and the headings of the several sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

SECTION 12.10. NO RECOURSE; SPECIAL OBLIGATION. The obligations and agreements of the Lessor contained herein and in the other Leasing Documents and any other instruments or documents executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Lessor, and not of any member, officer, agent (other than the Company) or employee of the Lessor in his or her individual capacity, and the members, officers, agents (other than the Company) and employees of the Lessor 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 Lessor contained herein and therein shall not constitute or give rise to an obligation of the State of New York or the County of Saratoga, New York, and neither the State of New York nor the County of Saratoga, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Lessor, but rather shall constitute limited, special obligations of the Lessor payable solely from the revenues of the Lessor derived and to be derived from the sale or other disposition of the Project Facility (except for revenues derived by the Lessor with respect to the Unassigned Rights). No order or decree of specific performance with respect to any of the obligations of the Lessor hereunder shall be sought or enforced against the Lessor unless (A) the party seeking such order or decree shall first have requested the Lessor in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Lessor shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten [10] days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (B) if the Lessor refuses to comply with such request and the Lessor'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 Lessor an amount or undertaking sufficient to cover such reasonable fees and expenses, and (C) if the Lessor refuses to comply with such request and the Lessor's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify, hold harmless and defend the Lessor and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Lessor, furnish to the Lessor satisfactory security to protect the Lessor and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request. Any failure to provide the indemnity required in this Section 12.10 shall not affect the full force and effect of an Event of Default under any of the Leasing Documents.

SECTION 12.11. SUBMISSION TO JURISDICTION. The Company hereby irrevocably and unconditionally agrees that any suit, action or proceeding arising out of or relating to this Lease Agreement shall be brought in the state courts of the State of New York or federal district court for the Northern District of New York and waives any right to object to jurisdiction within either of the foregoing forums by the Lessor. Nothing contained herein shall prevent the Lessor from bringing any suit, action or proceeding or exercising any rights against any security and against the Company personally, and against any property of the Company, within any other jurisdiction and the initiation of such suit, action or proceeding or taking of such action in any such other jurisdiction shall in no event constitute a waiver of the agreements contained

herein with respect to the laws of the State of New York governing the rights and obligations of the parties hereto or the agreement of the Company to submit to personal jurisdiction within the State of New York.

SECTION 12.12. RECORDING. The Lessor and the Company agree that this Lease Agreement shall be recorded in the office of the Clerk of Saratoga County, New York by the Lessor at the expense of the Company.

IN WITNESS WHEREOF, the Lessor and the Company have caused this Lease Agreement to be executed in their respective names by their respective Authorized Representatives, all as of the day and year first above written.

COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY

By:_____
Rodney Sutton, Chairperson

SUMMIT AT HALFMOON LLC

By:_____
Frank J. Nigro III, Member

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

On this 21st day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **RODNEY SUTTON** 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 on behalf of which the individual acted, executed the instrument.

_____
Notary Public

JAMES A. CARMINUCCI
Notary Public State of New York
Reg. No. 02CA4864025 - Saratoga County
Commission Expires 6/9/2022

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

On this _____ day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **FRANK J. NIGRO III,** 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 on behalf of which the individual acted, executed the instrument.

_____
Notary Public

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COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY

By:_____
Rodney Sutton, Chairperson

SUMMIT AT HALFMOON LLC

By:_____
Frank J. Nigro III, Member

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)SS.:
COUNTY OF SARATOGA)

On this _____ day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **RODNEY SUTTON** 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 on behalf of which the individual acted, executed the instrument.

_____
Notary Public

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

On this 31st day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **FRANK J. NIGRO III,** 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 on behalf of which the individual acted, executed the instrument.

_____
Notary Public

MARY ELIZABETH SLEVIN
Notary Public State of New York
Qualified in Albany County
No. 01SL4926576
Commission Expires March 21, 2022

IN WITNESS WHEREOF, the Lessor and the Company have caused this Lease Agreement to be executed in their respective names by their respective Authorized Representatives, all as of the day and year first above written.

COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY

By:_____
Rodney Sutton, Chairperson

SUMMIT AT HALFMOON LLC

By:_____
Frank J. Nigro III, Member

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

On this 21st day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **RODNEY SUTTON** 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 on behalf of which the individual acted, executed the instrument.

_____
Notary Public

JAMES A. CARMINUCCI
Notary Public State of New York
Reg. No. 02CA4864025 - Saratoga County
Commission Expires 6/9/2022

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

On this _____ day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **FRANK J. NIGRO III,** 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 on behalf of which the individual acted, executed the instrument.

_____
Notary Public

IN WITNESS WHEREOF, the Lessor and the Company have caused this Lease Agreement to be executed in their respective names by their respective Authorized Representatives, all as of the day and year first above written.

COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY

By:_____
Rodney Sutton, Chairperson

SUMMIT AT HALFMOON LLC

By:_____
Frank J. Nigro III, Member

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

On this _____ day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **RODNEY SUTTON** 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 on behalf of which the individual acted, executed the instrument.

_____
Notary Public

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

On this 31st day of December, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared **FRANK J. NIGRO III,** 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 on behalf of which the individual acted, executed the instrument.

_____
Notary Public

MARY ELIZABETH SLEVIN
Notary Public State of New York
Qualified in Albany County
No. 01SL4926576
Commission Expires March 21, 2022

EXHIBIT "A"{tc \l1 "EXHIBIT A"}

PROPERTY DESCRIPTION

PARCEL 1:

All that piece or parcel of land situate in the Town of Halfmoon, County of Saratoga, State of New York, being known as Lot 2 as shown on a map entitled Proposed Subdivision, Boyajian Planned Development District, Commercial/Light Industrial as prepared by ABD Engineers and Surveyors dated October 2002 with a final revision date of February 11, 2003 and filed in the Saratoga County Clerk's Office as Map B465 being more particularly bounded and described as follows:

BEGINNING at a point located on the westerly boundary of NYS Route 9 at its intersection with the division line between Lands now or formerly Fitzgerald L.1612, P.228 on the south and Lot 2 on the north; thence along said division line and Lands now or formerly Halfmoon Properties Associates L.1175, P.352 on the east the following three (3) courses and distances:

1. South 68°-32'-23" West, a distance of 171.96 feet to a point;
2. South 10°-57'-37" East, a distance of 368.98 feet to a point;
3. South 31°-32'-22" East, a distance of 362.93 feet to a point located at its intersection with the division line between Lands now or formerly Murphy L.995, P.495 on the south and said Lot 2 on the north;

thence South 82°-56'-40" West along said division line and Lands now or formerly Greene L.1002, P.31 on the south 474.70 to a point; thence South 07°-46'-10" East along the division line between said Lands now or formerly Greene and Lands now or formerly Town of Halfmoon L.1325, P.217 on the east and said Lot 2 on the west 508.90 feet to a point located on the northerly boundary of Sitterly Road; thence along said northerly boundary the following two (2) courses and distances:

1. South 89°-52'-37" West, a distance of 40.11 feet to a point;
2. North 89°-56'-23" West, a distance of 27.09 feet to a point located at its intersection with the division line between Lands now or formerly Boyajian L.1435, P.371 on the west and said Lot 2 on the east;

thence along said division line and Lands now or formerly Traynor L.1471, P.759, Lands now or formerly LaDue L.923, P.29 and Lands now or formerly Holzhaver L.1441, P.390 on the west and south the following three (3) course and distances:

1. North 06°-55'-29" West, a distance of 144.99 feet to a point;
2. North 24°-55'-13" West, a distance of 159.69 feet to a point;
3. South 81°-02'-47" West, a distance of 324.03 feet to a point located at its intersection with the division line between Lands now or formerly McLaughlin L.1346, P.574 on the west and said Lot 2 on the east;

thence North 07°-46'-10" West along said division line 200.00 feet to a point located at its intersection with the division line between Lands now or formerly D.C.G. Development, Inc. L.943, P.708 on the north and said Lot 2 on the south; thence along said division line the following two (2) courses and distances:

1. North 81°-02'-47" East, a distance of 96.34 feet to a point;
2. North 08°-31'-57" East, a distance of 708.84 feet to a point located at its intersection with the division line between said Lot 2 on the south and Lot 1 on the north;

thence North 74°-39'-06" East along said division line 227.05 feet to a point located at its intersection with the division line between Lands now or formerly Parents & Brothers Two, Inc. L.1188, P.56 on the north and said Lot 2 on the south; thence North 58°-26'-25" East along said division line 374.73 feet to a point located on said westerly boundary of NYS Route 9; thence along said westerly boundary the following two (2) courses and distances:

1. South 28°-35'-53" East, a distance of 48.78 feet to a point;
2. South 29°-51'-38" East, a distance of 79.33 feet to the POINT OF BEGINNING.

FOR INFORMATIONAL PURPOSES ONLY, NOT TO BE INSURED: Containing 12.70± acres, more or less.

PARCEL 2:

ALL THAT CERTAIN PLOT, PIECE, OR PARCEL OF LAND with the buildings and improvements thereon erected, situate, lying, and being in the Town of Halfmoon, County of Saratoga, State of New York, being known as Lot One of Squire Estates and being more particularly described as follows:

BEGINNING at a set iron pin marking the intersection of the northerly right-of-way line of a road now or formerly known as Sitterly Road with the division line between the lands of Thomas F. Galentino and the lands now or formerly of George Hatlee, said iron pin also being North 6° 45' East, 1414.33 feet from an iron pin found in the base of a large oak tree in the southeast corner of a 33 acre lot as described in Deed 792, Page 135; thence extending North 75° 36' West on said northerly right-of-way of Sitterly Road, a distance of 40.11 feet to a point; thence extending North 75° 36' West, on said right-of-way of Sitterly Road, a distance of 26.19 feet to a point; said point marking the true place of beginning for the parcel herein described; thence extending westerly on said right-of-way on a curve to the right a distance of 152 feet more or less having a chord extending North 75° 36' West, a distance of 150.0 feet to a found iron pin; thence extending North 5° 41' East, on the division line between the lands of Thomas F. Galentino and the lands formerly of Ilano Masonary and Construction Corporation, a distance of 274.97 feet to a set iron pin; thence extending South 84° 36' East on the division line between the lands of Thomas F. Galentino and the lands now or formerly of Martinese and Turchik, a distance of 108 feet to a point; thence extending South 10° 34' East, through the lands of Thomas F. Galentino and the lands now or formerly of Martinese and Turchik, a distance of 108 feet to a point; thence extending South 10° 34' East, through the lands of Thomas F. Galentino, a distance of 159.69 feet to a point; thence extending South 7° 25' West, through the lands of Thomas F. Galentino, a distance of 145 feet to the true place of beginning

FOR INFORMATIONAL PURPOSES ONLY, NOT TO BE INSURED: Containing 40,075 square feet of land more or less.

EXHIBIT "B"

DESCRIPTION OF EQUIPMENT

All articles of personal property purchased by County of Saratoga Industrial Development Agency ("Agency") through its agent Summit at Halfmoon LLC (the "Company"), or through any sub-agent of the Agency appointed by the Company, and its subcontractors and vendors, to be incorporated into the age-restricted senior independent living rental facility to be located at 1620 NYS Route 9 in the Town of Halfmoon, County of Saratoga, New York or to be used in connection with the constructing or equipping of said facility, all of which articles of personal property are exempt from sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York by virtue of the Agency's status as a public benefit corporation.

EXHIBIT "C"

FORM OF BILL OF SALE TO THE COMPANY

COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York (the "State") having its office at Saratoga County Municipal Center, 50 West High Street, Ballston Spa, New York 12020 (the "Grantor"), for the consideration of One Dollar ($1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from SUMMIT AT HALFMOON LLC, a limited liability company organized and existing under the laws of the State of New York having an address of 18 Computer Drive East, Suite 201, Albany, New York 12205 (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all those materials, machinery, equipment, fixtures or furnishings which are described in Schedule "A" attached hereto and by this reference made a part hereof, now owned or hereafter acquired by the Grantor, and such additions thereto and substitutions therefor as may be made from time to time.

TO HAVE AND TO HOLD the same unto the Grantee, and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF ANY OF THE EQUIPMENT DESCRIBED ABOVE. THE GRANTEE ACCEPTS TITLE TO SUCH EQUIPMENT "AS IS", WITHOUT RECOURSE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. IN THE EVENT OF A DEFICIENCY OR DEFAULT OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer on the date indicated beneath the signature of such officer and dated as of the _____ day of _____, ____.

COUNTY OF SARATOGA INDUSTRIAL
DEVELOPMENT AGENCY

By:_____
, Chairman

SCHEDULE "A"

DESCRIPTION OF EQUIPMENT

All articles of personal property purchased by County of Saratoga Industrial Development Agency ("Agency") through its agent Summit at Halfmoon LLC (the "Company"), or through any sub-agent of the Agency appointed by the Company, and its subcontractors and vendors, to be incorporated into the age-restricted senior independent living rental facility to be located at 1620 NYS Route 9 in the Town of Halfmoon, County of Saratoga, New York or to be used in connection with the constructing or equipping of said facility, all of which articles of personal property are exempt from sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York by virtue of the Agency's status as a public benefit corporation.

TP-584 (9/19)

Department of Taxation and Finance

Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax

Recording office time stamp

See Form TP-584-I, Instructions for Form TP-584, *before completing this form. Print or type.*

Schedule A – Information relating to conveyance

Grantor/Transferor	Name *(if individual, last, first, middle initial)* (☐ *mark an X if more than one grantor)*			Social Security number (SSN)
☐ Individual	County of Saratoga Industrial Development Agency			
☒ Corporation	Mailing address			SSN
☐ Partnership	Saraotga County Municipal Center			
☐ Estate/Trust	City	State	ZIP code	Employer Identification Number (EIN)
☐ Single member LLC	Ballston Spa	NY	12020	52-1310482
☐ Multi-member LLC	Single member's name if grantor is a single member LLC *(see instructions)*			Single member EIN or SSN
☐ Other				

Grantee/Transferee	Name *(if individual, last, first, middle initial)* (☐ *mark an X if more than one grantee)*			SSN
☐ Individual	Summit at Halfmoon LLC			
☒ Corporation	Mailing address			SSN
☐ Partnership	18 Computer Drive East, Suite 201			
☐ Estate/Trust	City	State	ZIP code	EIN
☐ Single member LLC	Albany	NY	12205	85-3163862
☐ Multi-member LLC	Single member's name if grantee is a single member LLC *(see instructions)*			Single member EIN or SSN
☐ Other				

Location and description of property conveyed

Tax map designation – Section, block & lot *(include dots and dashes)*	SWIS code (six digits)	Street address	City, town, or village	County
278.-1-55	413800	1620 Route 9	Halfmoon	Saratoga

Type of property conveyed *(mark an X in applicable box)*

1 ☐ One- to three-family house
2 ☐ Residential cooperative
3 ☐ Residential condominium
4 ☐ Vacant land
5 ☒ Commercial/industrial
6 ☐ Apartment building
7 ☐ Office building
8 ☐ Four-family dwelling
9 ☐ Other _____

Date of conveyance: 12 (month) / 31 (day) / 2021 (year)

Percentage of real property conveyed which is residential real property 0.00 % *(see instructions)*

Condition of conveyance *(mark an X in all that apply)*

a. ☐ Conveyance of fee interest
b. ☐ Acquisition of a controlling interest (state percentage acquired _____ %)
c. ☐ Transfer of a controlling interest (state percentage transferred _____ %)
d. ☐ Conveyance to cooperative housing corporation
e. ☐ Conveyance pursuant to or in lieu of foreclosure or enforcement of security interest *(attach Form TP-584.1, Schedule E)*
f. ☐ Conveyance which consists of a mere change of identity or form of ownership or organization *(attach Form TP-584.1, Schedule F)*
g. ☐ Conveyance for which credit for tax previously paid will be claimed *(attach Form TP-584.1, Schedule G)*
h. ☐ Conveyance of cooperative apartment(s)
i. ☐ Syndication
j. ☐ Conveyance of air rights or development rights
k. ☐ Contract assignment
l. ☐ Option assignment or surrender
m. ☐ Leasehold assignment or surrender
n. ☒ Leasehold grant
o. ☐ Conveyance of an easement
p. ☒ Conveyance for which exemption from transfer tax claimed *(complete Schedule B, Part 3)*
q. ☐ Conveyance of property partly within and partly outside the state
r. ☐ Conveyance pursuant to divorce or separation
s. ☒ Other *(describe)* IDA Leaseback

For recording officer's use	Amount received	Date received	Transaction number
	Schedule B, Part 1 $ _____		
	Schedule B, Part 2 $		

Schedule B – Real estate transfer tax return (Tax Law Article 31)

Part 1 – Computation of tax due

1	Enter amount of consideration for the conveyance *(if you are claiming a total exemption from tax, mark an X in the Exemption claimed box, enter consideration and proceed to Part 3)* ☒ **Exemption claimed**	1.	0 00
2	Continuing lien deduction *(see instructions if property is taken subject to mortgage or lien)*	2.	
3	Taxable consideration *(subtract line 2 from line 1)*	3.	0 00
4	Tax: $2 for each $500, or fractional part thereof, of consideration on line 3	4.	
5	Amount of credit claimed for tax previously paid *(see instructions and attach Form TP-584.1, Schedule G)*	5.	
6	Total tax due* *(subtract line 5 from line 4)*	6.	0 00

Part 2 – Computation of additional tax due on the conveyance of residential real property for $1 million or more

1	Enter amount of consideration for conveyance *(from Part 1, line 1)*	1.	
2	Taxable consideration *(multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A)*	2.	
3	Total additional transfer tax due* *(multiply line 2 by 1% (.01))*	3.	

Part 3 – Explanation of exemption claimed on Part 1, line 1 *(mark an X in all boxes that apply)*

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

a. Conveyance is to the United Nations, the United States of America, New York State, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) ..... a ☐

b. Conveyance is to secure a debt or other obligation ..... b ☐

c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance ..... c ☐

d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts ..... d ☒

e. Conveyance is given in connection with a tax sale ..... e ☐

f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F ..... f ☐

g. Conveyance consists of deed of partition ..... g ☐

h. Conveyance is given pursuant to the federal Bankruptcy Act ..... h ☐

i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property ..... i ☐

j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than $200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment ..... j ☐

k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, § 1401(e) *(attach documents supporting such claim)* ..... k ☐

* The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Make check(s) payable to the county clerk where the recording is to take place. For conveyances of real property within New York City, use Form TP-584-NYC. If a recording is not required, send this return and your check(s) made payable to the ***NYS Department of Taxation and Finance***, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)

Complete the following only if the interest being transferred is a fee simple interest.
This is to certify that: *(mark an X in the appropriate box)*

1. ☐ The real property being sold or transferred is not subject to an outstanding credit line mortgage.

2. ☐ The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:

   a ☐ The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.

   b ☐ The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).

   c ☐ The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.

   d ☐ The maximum principal amount secured by the credit line mortgage is $3 million or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

   Note: for purposes of determining whether the maximum principal amount secured is $3 million or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

   e ☐ Other *(attach detailed explanation)*.

3. ☐ The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:

   a ☐ A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.

   b ☐ A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.

4. ☐ The real property being transferred is subject to an outstanding credit line mortgage recorded in _____ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is _____. No exemption from tax is claimed and the tax of _____ is being paid herewith. *(Make check payable to county clerk where deed will be recorded.)*

Signature (both the grantors and grantees must sign)

The undersigned certify that the above information contained in Schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

Grantor signature	Title	Grantee signature	Title
COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY		SUMMIT AT HALFMOON LLC	
By: Rodney Sutton	Chairperson	By: Frank J. Nigro III	Member
Grantor signature	Title	Grantee signature	Title

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked *e*, *f*, or *g* in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the ***NYS Department of Taxation and Finance,*** directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)

Complete the following only if the interest being transferred is a fee simple interest.
This is to certify that: *(mark an **X** in the appropriate box)*

1. ☐ The real property being sold or transferred is not subject to an outstanding credit line mortgage.

2. ☐ The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:

   a ☐ The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.

   b ☐ The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).

   c ☐ The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.

   d ☐ The maximum principal amount secured by the credit line mortgage is $3 million or more, and the real property being sold or transferred is **not** principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

   Note: for purposes of determining whether the maximum principal amount secured is $3 million or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

   e ☐ Other *(attach detailed explanation)*.

3. ☐ The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:

   a ☐ A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.

   b ☐ A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.

4. ☐ The real property being transferred is subject to an outstanding credit line mortgage recorded in _____ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is _____. No exemption from tax is claimed and the tax of _____ is being paid herewith. *(Make check payable to county clerk where deed will be recorded.)*

Signature (both the grantors and grantees must sign)

The undersigned certify that the above information contained in Schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

Grantor signature	Title	Grantee signature	Title
COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY		SUMMIT AT HALFMOON LLC	
By: Rodney Sutton	Chairperson	By: Frank J. Nigro III	Member

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked *e*, *f*, or *g* in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the ***NYS Department of Taxation and Finance***, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule D – Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, § 663)

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part 2, mark an *X* in the second box under *Exemption for nonresident transferors/sellers*, and sign at bottom.

Part 1 – New York State residents

If you are a New York State resident transferor/seller listed in Form TP-584, Schedule A (or an attachment to Form TP-584), you must sign the certification below. If one or more transferor/seller of the real property or cooperative unit is a resident of New York State, **each** resident transferor/seller must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

Certification of resident transferors/sellers

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law § 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

Note: A resident of New York State may still be required to pay estimated tax under Tax Law § 685(c), but not as a condition of recording a deed.

Part 2 – Nonresidents of New York State

If you are a nonresident of New York State listed as a transferor/seller in Form TP-584, Schedule A (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law § 663(c), mark an *X* in the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor/seller, that transferor/seller is not required to pay estimated personal income tax to New York State under Tax Law § 663. **Each** nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax,* on Form TP-584-I, page 1.

Exemption for nonresident transferors/sellers

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law § 663 due to one of the following exemptions:

☐ The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from _____ (Date) to _____ (Date) *(see instructions)*.

☐ The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.

☐ The transferor or transferee is an agency or authority of the United States of America, an agency or authority of New York State, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date