

**RESOLUTION NO. 512 -2009, AUTHORIZING THE EXTENSION  
OF THE LEASE OF PREMISES LOCATED AT 124 SILLS  
ROAD, YAPHANK, NY FOR USE BY THE DEPARTMENT OF  
HEALTH SERVICES-ENVIRONMENTAL QUALITY**

**WHEREAS**, the Department of Health Services-Environmental Quality has operated a depot at 124 Sills Road, Yaphank and is desirous of remaining in that location; and

**WHEREAS**, the County entered into a Lease with the Deer Park-based landlord DCVM Realty, which expired on October 4, 2008; and

**WHEREAS**, the County utilizes this facility for the storage of vehicles, equipment and supplies associated with the operations for which the Department is charged; and

**WHEREAS**, the landlord has expressed its willingness to improve the facility as requested by the County at this location and agreed to extend the lease through October 4, 2018; and

**WHEREAS**, the Space Management Steering Committee recommended the approval of this lease on October 16, 2008; and

**WHEREAS**, sufficient funds are included in the 2009 Operating Budget for lease payments to be made in connection with the premises; now, therefore be it

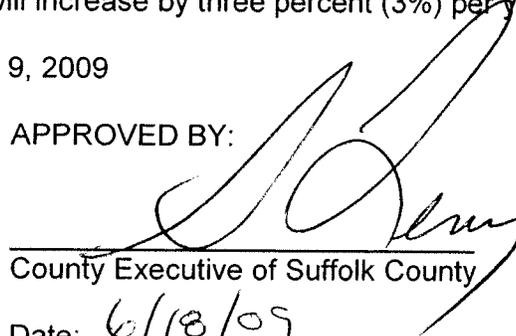
**1<sup>ST</sup>** **RESOLVED**, that this Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.59(c)(20) and (27) of Title 6 of the New York Code of Rules and Regulations (6 NYCRR) and within the meaning of Section 8-109 of the New York Environmental Conservation Law as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. Furthermore, in accordance with Section 1-4(A)(1)(d) of the Suffolk County Charter and Section 279-5(C)(4) of the Suffolk County Code, the Suffolk County Council on Environmental Quality is directed to prepare and circulate all appropriate notices of determination of non-applicability or non-significance in accordance with this law; and be it further

**2<sup>ND</sup>** **RESOLVED**, that the County Executive be and hereby is authorized to execute a ten (10) year Lease in accordance with the terms and conditions of this resolution and in substantial conformance with the form annexed; and be it further

**3<sup>RD</sup>** **RESOLVED**, annual rent for the Premises shall be \$80,000, as of October 5, 2008, which will increase by three percent (3%) per year for the following nine (9) years.

DATED: June 9, 2009

APPROVED BY:

  
County Executive of Suffolk County

Date: 6/18/09

---

(Res 512)

SECOND AGREEMENT OF LEASE

between

DCVM Realty

as LESSOR

and

COUNTY OF SUFFOLK

as COUNTY

Dated for Reference Purposes as of: February 15, 2009

Premises: 124 Sills Road, Yaphank, New York 11788

---

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1: DESCRIPTION .....	4
SECTION 2: PURPOSE.....	4
SECTION 3: TERM .....	5
SECTION 4: RENT .....	5
SECTION 5: REAL ESTATE TAXES .....	7
SECTION 6: UTILITIES .....	8
SECTION 7: PARKING .....	8
SECTION 8: DELIVERY AND CONDITION .....	8
SECTION 9: PREPARATION OF PREMISES BY LESSOR .....	12
SECTION 10: PREVAILING WAGE .....	15
SECTION 11: APPRENTICESHIP PROGRAMS .....	16
SECTION 12: LAWFUL HIRING OF EMPLOYEES IN CONNECTION WITH CONTRACTS FOR CONSTRUCTION OR FUTURE CONSTRUCTION .....	16
SECTION 13: RENT ADJUSTMENT FOR IMPROPER OR ILLEGAL ACTIVITY .....	16
SECTION 14: RIGHT OF ENTRY - INSPECTION.....	17
SECTION 15: EFFECT OF ACCEPTANCE AND OCCUPANCY .....	18
SECTION 16: CARE AND REPAIR OF PREMISES BY COUNTY .....	18
SECTION 17: ALTERATIONS.....	18
SECTION 18: CARE OF PREMISES BY LESSOR.....	19
SECTION 19: INSURANCE .....	20
SECTION 20: INDEMNIFICATION .....	20
SECTION 21: FIRE AND CASUALTY DAMAGE .....	23

SECTION 22: AIR QUALITY.....23

SECTION 23: NEGATIVE COVENANTS.....24

SECTION 24: LESSOR'S DEFAULT REMEDIES/DAMAGES .....24

SECTION 25: COUNTY'S DEFAULT REMEDIES/DAMAGES .....26

SECTION 26: FAILURE IN PERFORMANCE.....27

SECTION 27: LESSOR'S RIGHT TO INSPECT AND REPAIR; ACCESS  
                  GENERALLY .....29

SECTION 28: SURRENDER OF PREMISES; HOLDOVER.....29

SECTION 29: NOTICES .....30

SECTION 30: SUBORDINATION, NONDISTURBANCE AND ATTORNMENT .....31

SECTION 31: ASSIGNMENT AND SUBLETTING .....32

SECTION 32: LESSOR'S RIGHT TO SHOW PREMISES .....35

SECTION 33: EMINENT DOMAIN.....35

SECTION 34: ENVIRONMENTAL RESPONSIBILITIES .....36

SECTION 35: SIGNAGE.....38

SECTION 36: QUIET ENJOYMENT .....38

SECTION 37: NO IMPLIED WAIVER .....38

SECTION 38: SUFFOLK COUNTY LEGISLATIVE REQUIREMENTS .....38

SECTION 39: ADDITIONAL DISCLOSURE REQUIREMENTS.....

SECTION 40: COOPERATION ON CLAIMS .....38

SECTION 41: MISCELLANEOUS.....38

SECTION 42: NOT A CO-PARTNERSHIP .....39

SECTION 43: BROKER.....39

SECTION 44: CERTIFICATION .....39

SECTION 45: NOT IN DEFAULT.....39

SECTION 46: GOVERNING LAW .....39

SECTION 47: WAIVER OF TRIAL BY JURY.....39

SECTION 48: CIVIL ACTIONS .....40

SECTION 49 SUCCESSORS BOUND .....40

SECTION 50: COUNTY REPRESENTATIVES.....40

SECTION 51: INDEPENDENT CONTRACTOR .....40

SECTION 52: EXECUTION BY LESSOR.....40

SECTION 53: SUFFOLK COUNTY LAWS .....40

SECTION 54: IDENTIFICATION NUMBER .....40

SECTION 55: PARAGRAPH HEADINGS.....41

SECTION 56: SEVERABILITY.....41

SECTION 57: ENTIRE AGREEMENT .....41

SECTION 58: NO ORAL CHANGES.....41

SECTION 59: INTERPRETATION .....41

**SECOND AGREEMENT OF LEASE**

**THIS SECOND AGREEMENT OF LEASE** (“Second Lease”) dated for reference purposes as of the 15 day of December, 2008, between DCVM Realty, a corporation, organized and existing under the laws of the State of New York, with an address at 899 Long Island Avenue, Deer Park, NY 11729 (“LESSOR”), and the COUNTY OF SUFFOLK, a municipal corporation with an address at County Center, Riverhead, New York 11901 (“COUNTY”), acting through its duly constituted Department of Public Works (“Department”), located at 335 Yaphank Avenue, Yaphank, New York 11980.

**WITNESSETH:**

**SECTION 1.            DESCRIPTION**

*Section 1.01* LESSOR currently leases a building comprised of approximately 10,000 square feet of building space and related facilities, improvements, and permanent installations constructed and installed or to be constructed and installed therein, thereon, or hereunder in accordance with this Second Lease, located on approximately 6.5 acres at 124 Sills Road, Yaphank, New York, and by this Second Lease the LESSOR and the COUNTY agree to extend the lease term in accordance with the terms hereinafter provided. The property is further identified as:

<u>S.C. Tax Map No.</u>	<u>Dist.</u>	<u>Sect.</u>	<u>Blk</u>	<u>Lot</u>
	0200	739.00	01.00	06

The building and related facilities, property improvements, permanent installations, and the land on which the building is sited hereinafter are collectively referred to as the “Premises.”

**SECTION 2.            PURPOSE**

*Section 2.01* The parties acknowledge that COUNTY is a municipal corporation and is entering into and executing this Second Lease by virtue of the authority of Suffolk County Resolution No. \_\_\_\_ - 2009, dated the \_\_\_\_ day of \_\_\_\_\_, 2009 (the “Resolution”), for the use, purpose, and intent expressed in the Resolution, that the Resolution is incorporated herein by reference, and further that LESSOR has examined the Resolution and is fully aware of its intended purpose. COUNTY acknowledges and agrees to use the Premises as specified in the Resolution for the Department of Health, Environmental Quality, or other lawful municipal purpose.

*Section 2.02* LESSOR warrants that it holds such title to or other interest in the Premises and other property as is necessary to give and fully provide the COUNTY with access to the Premises and full use and enjoyment thereof in accordance with the provisions of this Second Lease.

*Section 2.03* LESSOR warrants that the intended use of the Premises is a permitted use under LESSOR’s title to the Premises and that LESSOR knows of no covenant, restriction, or other agreement which would prevent such use or occupancy. LESSOR further certifies that no covenants, restrictions, or other impediments to title have been added since the date of the issuance of the title insurance policy.

**SECTION 3. TERM**

*Section 3.01* The term of this Second Lease and COUNTY's obligation to pay rent shall be deemed to have commenced on October 5, 2008. (the "Commencement Date"). The "Term" of this Second Lease shall expire on October 4, 2018 (the "Expiration Date"), or on such earlier date as this Second Lease may terminate or expire as provided for herein; provided, however, that if such date does not fall on a "Business Day," defined below, then this Second Lease shall end on the next Business Day.

For the purposes of this Second Lease and all agreements supplemented to this Second Lease, the term "Business Day" means any day except a Saturday, a Sunday, or any day in which commercial banks are required or authorized to close in Suffolk County, New York.

**SECTION 4. RENT**

*Section 4.01* "Annual Base Rent" for the Premises for the first year of the Term shall be \$80,000.00 per year, beginning on the Commencement Date.

*Section 4.02* Commencing on the first anniversary date of the Commencement Date, and on each anniversary date thereafter, Annual Base Rent shall increase by 3% over the Annual Base Rent in the preceding year.

*Section 4.03* [Omitted].

*Section 4.04* [Omitted]

*Section 4.05* The sum of the amounts set forth in *Sections 4.01 and 4.02*, "Total Annual Rent" for the Premises, for the first year of the Term shall be \$80,000.00 per year, payable by the COUNTY to DCVM Realty, at LESSOR's address first set forth above, or at such other place designated by LESSOR in writing, in equal monthly installments, in advance, on the first day of each calendar month during the Term, except, however, the first monthly payment shall be payable within thirty (30) days of the COUNTY's receipt of a signed voucher, in accordance with *Section 4.06* below. Partial months shall be prorated. The Total Annual Rent for the Term of the Second Lease shall be as follows:

<u>Total Annual Rent for the Premises</u>	
Year 1 \$80,000.00	Year 6 \$92,742.00
Year 2 \$82,400.00	Year 7 \$95,524.00
Year 3 \$84,872.00	Year 8 \$98,390.00
Year 4 \$87,418.00	Year 9 \$101,342.00
Year 5 \$90,041.00	Year 10 \$104,382.00

*Section 4.06* LESSOR recognizes that COUNTY is a municipal corporation whose financial obligations are strictly regulated by statute. The duly constituted rules, regulations, and

proceedings of said municipality require that the payment of Total Annual Rent shall only be made in accordance with such statutes. As part of said procedures, it is necessary that LESSOR submit vouchers provided by COUNTY for the payment of Total Annual Rent hereinabove provided, and any other reasonable documentation as may be required by COUNTY for payment of Expenses, as defined in *Section 4.07*, or other charges under the terms of this Second Lease. LESSOR hereby agrees to submit such vouchers and all reasonable documentation of Expenses or other charges timely and as may be reasonably requested by COUNTY's Department of Audit and Control within one hundred eighty (180) days of incurring the cost or expense relating to the request for payment. COUNTY agrees to deliver vouchers to LESSOR at least ten (10) Business Days after a request from LESSOR for a voucher(s) to be submitted for payment of an Expense. Failure to submit the vouchers within one hundred and eighty (180) days of the cost or expense being incurred shall constitute grounds for the COUNTY to deny payment for the same. If COUNTY fails to deliver the vouchers as required hereunder, then LESSOR shall not be required to submit the undelivered vouchers as a condition to its right to receive any payment to which such voucher relates, and the failure of LESSOR to submit such undelivered voucher to COUNTY shall not prevent or constitute a condition to LESSOR's ability to exercise its rights pursuant to Section 23. Once completed by LESSOR, LESSOR shall submit the vouchers to COUNTY. By submitting completed vouchers for Total Annual Rent, LESSOR shall have satisfied its obligation to request payment of Total Annual Rent hereunder for the entire calendar year.

*Section 4.07* Any sums, charges, fees, expenses, or amounts to be paid by COUNTY pursuant to the provisions of this Second Lease, other than Total Annual Rent, shall be designated as and deemed to be "Expense(s)" and shall be payable by COUNTY to LESSOR, as additional rent, within ninety (90) days after LESSOR gives COUNTY written notice that such payment is due, together with a voucher, and any supporting documentation reasonably required by COUNTY, for the amount of such Expense, unless otherwise provided in this Second Lease, except that any Expense submitted for the payment of "Real Estate Taxes," defined at *Section 5.01* shall be payable within sixty (60) days after LESSOR has given COUNTY written notice that such payment is due, together with a voucher and supporting documentation.

## **SECTION 5. REAL ESTATE TAXES**

*Section 5.01* TENANT shall pay all Real Estate Taxes assessed, levied or imposed upon the Premises or any improvements thereon as currently exist or as may hereafter be constructed upon the Premises for the benefit of TENANT. The term "Real Estate Taxes" shall mean and be deemed to include all real property taxes, assessments, county taxes, transit taxes, or any other governmental charge of a similar nature whether general, special, ordinary, or extraordinary, foreseen or unforeseen, of any kind or nature whatsoever, including without limitation, assessments for public improvements or benefits. If, due to a change in the method of taxation, any franchise, income, profit, sales, rental, use and occupancy, or other tax shall be substituted for or levied against the LESSOR or any owner of the building and/or the land in lieu of Real Estate Taxes hereinabove defined, upon or with respect to the building or the land, such tax shall be included in the term "Real Estate Taxes". Nothing contained herein shall be construed to include as "Real Estate Taxes" any inheritance, estate, succession, transfer, gift franchise, corporation, income or profit tax, or capital levy that is or may be imposed upon LESSOR.

*Section 5.02* LESSOR shall promptly deliver to the COUNTY a true and complete copy of each bill, statement or assessment received by it from any taxing authority with respect to any Real

Estate Taxes payable by COUNTY hereunder or which would become a lien on the premises if not paid.

*Section 5.03* If TENANT fails to pay any taxes and assessments when due, TENANT shall be deemed in default in payment of rent, and LANDLORD shall be entitled with respect to the collection thereof, to any and all remedies to which LANDLORD is entitled hereunder, in the event of a default in the payment of rent.

*Section 5.04* Any Real Estate Taxes relating to a fiscal period of the taxing authority, a part of which period is included within the Term and a part of which is included in a period of time either before the Commencement Date or after the Expiration Date, shall be adjusted between LESSOR and COUNTY so that COUNTY shall pay only that portion of such Real Estate Taxes allocable to the portion of such fiscal period which coincides with the Term, and LESSOR shall pay the remainder thereof.

*Section 5.05* COUNTY, at its own cost and expense, upon not less than thirty (30) days prior written notice to LESSOR, and provided LESSOR has not already done so, shall have the right, but not the obligation, to contest or review by legal proceedings, any Real Estate Taxes imposed upon or against the Premises. In the event that such Real Estate Taxes assessments, water rates, or other charges shall, as a result of such proceedings, whether instituted by LESSOR, its proxy, or COUNTY, be reduced, cancelled, set aside or to any extent discharged, COUNTY shall pay its share of the amount that shall be finally assessed or imposed against the Premises or be adjudicated to be due and payable on such disputed or contested claims, and shall receive any refund on such charges previously paid by COUNTY. In the event LESSOR brings such legal proceedings, any amount refunded to COUNTY may be reduced by the actual and customary costs and expenses incurred by LESSOR in instituting the successful proceeding.

*Section 5.06* In the event that COUNTY or LESSOR shall protest or contest any Real Estate Taxes, the contesting party shall provide the other with copies of any application, petition or other papers and pleadings related to such protest or contest. The non-contesting party, at its own cost and expense, may retain co-counsel, attend all hearings and proceedings, present evidence and arguments, and generally participate in any such protest or contest of Real Estate Taxes. In the event either LESSOR or COUNTY shall protest or contest any Real Estate Taxes, the other shall cooperate with all reasonable requests of the party initiating the protest or contest with regard to the prosecution of the protest or contest.

## **SECTION 6. UTILITIES**

*Section 6.01* Provided COUNTY is not in default under any of the covenants of this First Extension, LESSOR shall provide during "Working Hours" (Monday through Friday from 7:00 a.m. to 6:00 p.m. and Saturdays from 7:00 a.m. to 1:00 p.m., holidays excepted: (a) water for ordinary lavatory purposes; and (b) air conditioning/cooling at reasonable temperatures, pressures and degrees of humidity and in reasonable volumes and velocities at suitable locations will be furnish during Working Hours when it may be required for the comfortable use and occupancy of the Premises by COUNTY.

*Section 6.02* All costs, fees, and charges related to utility services directly metered and contracted for by COUNTY during the Term, together with any taxes thereon, shall be a COUNTY charge and shall be paid by COUNTY directly to the applicable utility company. All

other utilities and services shall be paid as indicated on the LANDLORD-TENANT RESPONSIBILITIES SHEET, attached hereto as Exhibit A.

*Section 6.03* The responsibilities of the parties to the First Extension are indicated on Exhibit A.

**SECTION 7.** [Omitted]

**SECTION 8. CONDITION OF PREMISES – LESSOR’S WORK**

*Section 8.01* LESSOR and COUNTY acknowledge and agree that COUNTY has previously used and occupied the Premises for a continuous period and, except for the work to be provided by LESSOR expressly under the terms hereof, COUNTY hereby accepts the Premises in their “as is” condition.

*Section 8.02* LESSOR hereby agrees to perform work described in Exhibit B (“LESSOR’s Work”), attached hereto and made a part hereof, for COUNTY’s continued occupancy and in accordance with any Plans and Specifications, and Work Schedule agreed to by LESSOR and the Department. LESSOR further represents that the construction, reconstruction, renovation, and any preparation or work required to prepare the Premises for occupancy in accordance with the terms of this First Extension will be in a good and workmanlike manner.

*Section 8.03* LESSOR agrees that the Premises and any construction, reconstruction, or renovation of the Premises shall comply with the Americans with Disability Act, and any local and state codes; notwithstanding the foregoing, it is agreed that LESSOR shall have no obligation to update the compliance of the Premises if under applicable law the Premises may remain in its current state. If the standards and guidelines conflict, the more stringent code requirements shall be followed. It is further agreed that any heating, ventilating, and/or air conditioning systems provided in connection with any new construction of the Premises shall conform to the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standards.

*Section 8.04* [Intentionally Omitted]

*Section 8.05* Upon completion of LESSOR’s Work, LESSOR and the Department shall jointly inspect the completed work for the purpose of identifying any Punch List Items to be performed. The performance of Punch List Items shall be commenced and thereafter diligently pursued to completion by LESSOR within ten (10) days of its receipt of a letter and description of the Punch List Items

*Section 8.06* If the Punch List Items can reasonably be completed within thirty (30) days of its receipt of the written Punch List Items and in the event LESSOR fails to complete the Punch List Items within such thirty (30) days (or if LESSOR fails to diligently pursue the completion of a Punch List Item that cannot be reasonably completed within such thirty (30) day period), COUNTY shall be entitled to complete the Punch List Items upon providing LESSOR five (5) business days written notice of its intent to cure the Punch List Items. In the event that COUNTY completes the Punch List Items in accordance herewith, COUNTY may recover from LESSOR the actual costs of completing the same. In addition to the actual costs incurred by COUNTY in connection with completing the Punch List Items, COUNTY may also recover from LESSOR damages, in the amount of five percent (5%) of the actual cost incurred, for the administrative costs incurred in connection with curing the Punch List Items.

*Section 8.07* COUNTY agrees that LESSOR shall not be required to perform any additional work or furnish any additional materials to prepare the Premises for COUNTY's occupancy other than that which is set forth in **Exhibit B** and COUNTY shall accept the Premises in their condition and state of repair and construction.

*Section 8.08* During the Term of this First Extension, LESSOR shall provide any and all necessary exterminating, fumigating, or treatment for a rodent, vermin or insect infestation reported by the COUNTY, or discovered by LESSOR, unless such infestation results from COUNTY's misuse or negligence, in which case such extermination, fumigation or treatment shall be at COUNTY's sole cost and expense. Such extermination, fumigation, or treatment to be performed by a New York State Environmental Conservation certified applicator subject to the provisions of Chapter 380 of the Suffolk County Code.

*Section 8.09* COUNTY agrees that LESSOR shall not be required to perform any additional work or furnish any additional materials to prepare the Premises for COUNTY's occupancy except as set forth in **Exhibit B**, and COUNTY shall accept the Premises in their condition and state of repair and construction, excepting "Latent Defects," defined below, as of the date of Commencement. For purposes of this First Extension, "Latent Defects" means defects in the construction of the Premises which COUNTY could not reasonably be expected to discover in its inspection of the Premises.

*Section 8.10* LESSOR shall cure Latent Defects within sixty (60) days of receipt of a letter from COUNTY identifying the Latent Defects; provided, however, that such sixty-day (60) period shall be extended to the extent of any delays in LESSOR's completion thereof due to or resulting from the actions of the COUNTY.

**SECTION 9.                    INTENTIONALLY OMITTED**

**SECTION 10.                CONFORMITY TO PLANS AND SPECIFICATIONS**

*Section 10.01* Occupancy of the Premises by the COUNTY shall not relieve LESSOR in any respect from full compliance at all times with the Approved Final Plans and Specifications. It is further understood and agreed that any installation not in conformity with the Approved Final Plans and Specifications shall be immediately corrected by the LESSOR at LESSOR's sole cost and expense. In the event LESSOR shall, after notice in writing from the COUNTY requiring the LESSOR to comply with the requirements of this section in regard to a specified condition, fail, refuse or neglect to remedy such conditions, the COUNTY may terminate this Second Lease without further obligation, or as to such specified condition, at its option and in addition to any other remedy the COUNTY may have, withhold rent due and bring the Premises into conformity with the Approved Final Plans and Specifications at its own cost including County Administrative Costs of ten percent (10%) of the actual costs incurred in performing the work, and deduct the amount thereof from the rent that may then be or thereafter become due hereunder.

**SECTION 11.                PREVAILING WAGE**

*Section 11.01* LESSOR's Work constitutes a public works contract under Article 8 of the Labor Law. LESSOR acknowledges and agrees to comply with the prevailing wage requirements for all of LESSOR's Work in connection with the construction and preparation of the entire Premises

(interior and exterior), including, but not limited to, the building, land, parking lot, and all other portions of the Premises in accordance with the Approved Final Plans and Specifications.

*Section 11.02* No person performing, aiding in, or assisting in LESSOR's Work shall be paid less than the said prevailing rates as defined and utilized under Section 220 of the Labor Law. The wages to be paid shall not be less than the prevailing rate of wages and supplements as set forth by law.

*Section 11.03* LESSOR, its contractors, and subcontractors shall file transcripts of original payrolls for the performance of all of LESSOR's Work under this Second Lease, in connection with the construction and preparation of the entire Premises, with the Department, within ten (10) days after its first payroll, and every thirty days thereafter, said payroll transcripts to be subscribed and affirmed as true under penalty of perjury. LESSOR, its contractors and subcontractors, shall keep their books open for inspection by representatives of the Suffolk County Department of Audit and Control and/or its representatives, including the Office of the District Attorney, on a monthly basis during the performance of LESSOR's Work, to ensure that LESSOR, its contractors and subcontractors are in compliance with these terms and conditions, provided that twenty-four (24) hour-notice is given to the LESSOR, its contractors and/or subcontractors prior to the inspection.

*Section 11.04* LESSOR agrees that it shall include clauses in all of its agreements with its contractors and subcontractors for the performance of LESSOR's Work stating that: (i) said contractors and subcontractors shall pay prevailing wages, as agreed to in Lease R-938 between the County of Suffolk and the LESSOR; (ii) said contractors and subcontractors shall file transcripts of original payrolls for all work performed in connection with the construction and preparation of the Premises and performance of LESSOR's Work under this Second Lease with the Department within ten (10) days after its first payroll, and every thirty days thereafter, said transcripts to be subscribed and affirmed as true under penalty of perjury and (iii) LESSOR, its contractors, and subcontractors shall keep their books open for inspection by representatives of the Suffolk County Department of Audit and Control and/or its representatives, including the Office of the District Attorney, on a monthly basis during the performance of LESSOR's Work to ensure that the LESSOR, its contractors and subcontractors are in compliance with these terms and conditions, provided that twenty-four (24) hour-notice is given to the LESSOR, its contractors and/or subcontractors prior to the inspection.

*Section 11.05* During the performance of LESSOR's Work, LESSOR shall maintain at the job site, and with the County Department of Labor a copy of all payrolls or transcripts thereof as would be required to be maintained pursuant to Section 220 of the New York Labor Law.

*Section 11.06* During the performance of LESSOR's Work, LESSOR shall provide to the COUNTY employment attendance sheets for all employees, including employees of subcontractors, for each day on which work is performed on the site, upon a form reasonably acceptable to the COUNTY, containing such information as the Commissioner of the Department of Labor reasonably deems appropriate, including job classification, hours of employment, wage rate and supplements payable, and employer, prior to payments being made by the COUNTY.

## **SECTION 12. APPRENTICE TRAINING PROGRAMS**

*Section 12.01* If the total cost of LESSOR's Work, as defined at *Section 9.02(v)*, is in excess of

\$250,000.00, LESSOR agrees that this Second Lease, with respect to LESSOR's Work, is subject to Chapter 552 of the Suffolk County Code, and although Chapter 552 may not be applicable to LESSOR's Work, LESSOR agrees that, in connection with LESSOR's Work, LESSOR, LESSOR's contractors, and all subcontractors shall participate in registered and approved apprentice training programs. LESSOR and its contractors shall provide evidence of participation in approved apprentice training programs that are appropriate for the type and scope of work to be performed under this Second Lease.

*Section 12.02* After execution of this Second Lease, and at least ten (10) working days prior to the commencement of any of LESSOR's Work performed pursuant to this Second Lease, LESSOR and its contractors shall provide affidavits attesting to participation in the appropriate, approved apprentice training programs.

*Section 12.03* LESSOR or LESSOR's contractor shall also submit an affidavit of participating in an approved apprentice-training program from each subcontractor performing any aspect of LESSOR's Work. The COUNTY will provide affidavit forms.

**SECTION 13. LAWFUL HIRING OF EMPLOYEES LAW IN CONNECTION WITH CONTRACTS FOR CONSTRUCTION OR FUTURE CONSTRUCTION**

*Section 13.01* This Agreement is subject to the Lawful Hiring of Employees Law of the County of Suffolk, Suffolk County Code Chapter 234, as more fully set forth in the Exhibit entitled "Suffolk County Legislative Requirements." In accordance with this law, LESSOR and any subcontractor or owner, as the case may be, agree to maintain the documentation mandated to be kept by this law on the Construction Site at all times. LESSOR and any subcontractor or owner, as the case may be, further agree that employee sign-in sheets and register/log books shall be kept on the Construction Site at all times during working hours and all covered employees, as defined in the law, shall be required to sign such sign in sheets/register/log books to indicate their presence on the Construction Site during such working hours.

**SECTION 14. RENT ADJUSTMENT FOR IMPROPER OR ILLEGAL ACTIVITY**

*Section 14.01* If the Commissioner of the Department or his or her designee reasonably determines that there was a violation by LESSOR, his contractors, subcontractors, employees or agents of the Prevailing Wage requirement, the Apprentice Training Program requirement, the Living Wage requirement; or the Lawful Hiring of Employees Law under this Second Lease, and LESSOR fails to cure the violation within thirty (30) days of LESSOR's receipt of written notice of such violation, at COUNTY's election, it may: (1) terminate the Second Lease, if such breach occurs prior to occupation of the Premises by COUNTY; or (2) accept damages either in the sum of \$500.00 per day for each day that prevailing wages or living wages were not paid, or in an amount equal to the wages determined to have been underpaid, and/or the monetary equivalent of the apprenticeship training not provided, whichever amount is greater.

*Section 14.02* In the event LESSOR agrees to pay damages in the sum of \$500.00 per day for each day that prevailing wages or living wages are not paid, LESSOR shall pay the amount owed as damages, as set forth therein, within forty-five (45) days after receipt by LESSOR of a written statement as to the amounts owed. In the event LESSOR does not remit the total amount owed as damages described herein within the requisite time, COUNTY may withhold any outstanding amounts from the first following monthly installment of Total Annual Rent, subject to the

limitation that, in no event shall the amount withheld in any month exceed 10% of monthly installment of Total Annual Rent. In the event that COUNTY is limited from withholding the entire amount owed in one month, under this *Section 14.02*, COUNTY may continue to withhold up to 10% of the monthly installment of Total Annual Rent from each next succeeding monthly installment, until the total amount of damages accruing as a result of a violation under *Section 11.01* are recouped from LESSOR. No deduction from rent pursuant to this clause shall constitute a default by the COUNTY under this Second Lease. This remedy is not exclusive and is in addition to any other remedies which may be available under this Second Lease or at Law.

*Section 14.03* Prior to making a determination as set forth in *Section 14.01*, the Commissioner of the Department shall provide to LESSOR a written notice of the action being considered and the basis therefore, together with reasonable documentation evidencing such violation(s). LESSOR shall have a period of ten (10) calendar days after receipt of such notice to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The Commissioner of Public Works may, upon good cause shown, determine to deduct less than the above amounts from payments. In the event LESSOR proves it is compliant with such requirements, COUNTY shall promptly reimburse LESSOR for all reasonable costs incurred by LESSOR in proving same.

**SECTION 15. INTENTIONALLY OMITTED**

**SECTION 16. EFFECT OF ACCEPTANCE AND OCCUPANCY**

*Section 16.01* Neither the COUNTY's acceptance of the Premises for occupancy, nor the COUNTY's occupancy thereof, shall be construed either as a waiver of any requirement of or right of the COUNTY under this Second Lease, or as otherwise prejudicing the COUNTY with respect to any such requirement or right.

**SECTION 17. CARE AND REPAIR OF PREMISES BY COUNTY**

*Section 17.01* During the Term of this Second Lease, and subject to the provisions of **Section 19**, COUNTY shall make and be responsible for, at COUNTY's sole cost and expense, all repairs and replacements relating to the Premises which are not caused by or due to a Latent Defect, and in accordance with the **Exhibit A**, and those repairs and/or replacements which are made necessary by: (1) the performance of any "Alterations," defined in *Section 18.01*, made by COUNTY; (2) the negligent use or operation of COUNTY's property or fixtures; (3) the moving of COUNTY's property or fixtures in, out or about the Premises; (4) the negligence or misuse of the Premises by COUNTY or its officers, employees, personnel, agents, representatives, contractors, subcontractors, or invitees. All repairs made by or on behalf of COUNTY shall be at least equal in quality and design to the original construction of the Premises.

**SECTION 18. ALTERATIONS**

*Section 18.01* COUNTY shall have the right, during the term of this Second Lease, to make any "Alterations," meaning any alterations, installations, improvements, additions, or renovations to the Premises or any part or portion thereof, with notice to, but without the prior consent of, LESSOR which are non-structural and do not affect interior and exterior walls, the foundation or roof of the building and which do not affect or pertain to any plumbing, electrical, heating,

ventilation, air-conditioning, mechanical, vertical transport, or other systems and equipment (collectively "Building Systems"). COUNTY may make Alterations that are structural or affect the interior and exterior walls, foundation or roof of the building, or affect or pertain to any Building Systems, with the prior written consent of LESSOR, which consent shall not be unreasonably withheld or delayed. In the event LESSOR does not provide a written objection to the proposed Alterations within fifteen (15) Business Days of receipt of the County's written request to perform such Alterations, then LESSOR shall be deemed to have approved the Alteration.

COUNTY shall deliver to LESSOR a copy of the final plans and specifications showing the actual construction for all Alterations. LESSOR shall have the right, but not the obligation, to review and supervise any Alterations performed at the Premises.

*Section 18.02* All Alterations and LESSOR's Work, excluding COUNTY's trade fixtures, moveable office furniture, and moveable equipment, installed in the Premises, either by COUNTY or by LESSOR on COUNTY's behalf, shall become the property of LESSOR and shall remain upon and be surrendered with the Premises upon the expiration or earlier termination of the Second Lease. In the event this lease terminates prior to the expiration date, COUNTY acknowledges and agrees that it shall remove exposed telephone, data and computer wiring and cabling to the ceiling and/or walls, at its sole expense. Nothing in this Section shall be construed to give LESSOR title to, or to authorize LESSOR to prevent COUNTY's removal of trade fixtures, moveable office furniture and equipment.

## **SECTION 19. CARE OF PREMISES BY LESSOR**

*Section 19.01* The Premises, as a whole, shall be properly constructed and will be delivered to the COUNTY in good condition. Subject to the provisions of **Section 17**, LESSOR shall maintain and promptly repair the Premises, including the building, Building Systems and all equipment, fixtures, and appurtenances furnished by the LESSOR under this Second Lease, to keep same in good repair and condition, and in accordance with general industry practice in the operation of such a building, so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, water, access and other things to the Premises, without reasonably preventable or recurring disruption, as is required for the COUNTY's access to, occupancy, possession, use and enjoyment of the Premises as provided in this Second Lease, at LESSOR's sole cost and expense.

*Section 19.02* Subject to Excusable Delays, and in the absence of gross negligence on the part of the County, LESSOR guarantees that the Premises shall continually have heat, electricity, air conditioning, and plumbing available for use by the COUNTY. It is hereby understood and agreed that the heating and air condition systems will be kept under a uniform and systematic program of service and repair as prescribed according to manufacturer specifications, solely at LESSOR's expense. If any existing heating and air conditioning systems are inadequate to provide a consistent degree of comfort, LESSOR shall, at its own expense, replace or modify the system to assure consistent comfortable temperatures.

*Section 19.03* LESSOR shall have a building superintendent or a locally designated representative available to promptly correct deficiencies and keep the COUNTY notified of the name of that person or persons as well as with all contact information.

*Section 19.04* In addition to the LESSOR's obligations under *Section 19.01*, and subject to the provisions of **Section 17**, LESSOR shall further make all necessary repairs, replacements and perform maintenance, at no additional cost to COUNTY, as follows:

- (i) to the exterior water, gas and electrical services, including drainage structures, cesspools, septic tanks and all connecting piping; it being specifically understood that in no event shall LESSOR be liable for failure of any service provided by an independent utility provider;
- (ii) made necessary by fire or other peril covered by the standard extended coverage endorsement on fire insurance or by reason of war, wind, or Acts of God, contents excepted;
- (iii) landscaping and general maintenance of landscaped areas of the Premises;
- (iv) snow removal on all parking lots and walkways of the Premises;
- (v) **[intentionally omitted]**; and
- (vi) to all items designated as LESSOR responsibility as shown in **Exhibit A**.

*Section 19.05* COUNTY shall give to LESSOR prompt written notice (notice by fax or e-mail being acceptable) of any accidents or damage to or defects in, the roof, the exterior of the building, plumbing, electrical service, electrical lights, or HVAC apparatus. Absent negligence by the County, these defects shall be remedied by LESSOR in a reasonably timely fashion.

*Section 19.06* LESSOR agrees, at its sole cost and expense, to perform all necessary maintenance, repairs, and replacements to the Premises caused by the negligence or willful misconduct of LESSOR, and LESSOR's employees, agents, contractors, and subcontractors. COUNTY shall notify LESSOR of the need for any such repair or replacement promptly after COUNTY becomes aware of the need for the same.

*Section 19.07* LESSOR shall provide timely maintenance testing and inspection of all Premises and building equipment and systems in accordance with applicable codes, and inspection certificates must be displayed as required by law, including annual testing and maintenance of all fire extinguishers and periodic balancing of the HVAC system.

*Section 19.08* [Intentionally omitted].

*Section 19.09* [Intentionally Omitted]

## **SECTION 20.           INSURANCE**

*Section 20.01* [Intentionally Omitted]

*Section 20.02* LESSOR assumes all risks in the construction of the Premises and shall defend, indemnify, and hold harmless the COUNTY, its officials, employees, servants, and agents from and against all liabilities, fines, penalties, actions, demands, losses, claims, costs, judgments, damages, liens, encumbrances, costs, and expenses, including reasonable attorneys' fees, during the time of construction up to the time of Delivery of the entire Premises.

*Section 20.03* **During the Term of this Second Lease:** COUNTY shall procure and keep in full force and effect at its own cost and expense liability insurance in which policy LESSOR or, in the event COUNTY is requested in writing by LESSOR, LESSOR's Mortgagee, or their successors or assigns, shall be named as an additional insured in an amount not less than Two Million

Dollars (\$2,000,000.00) per occurrence for bodily injury and Two Million Dollars (\$2,000,000.00) per occurrence for property damage, and shall furnish LESSOR with proof of same. This insurance is to be excess over any other valid and collectible insurance except insurance that is written specifically as excess over the limits of liability that apply to this policy.

*Section 20.04* In the event that a lease is for less than 100% of the building, the COUNTY shall only provide liability insurance, naming the landlord as an additional insured, for the area which it leases. The LESSOR is required to provide liability insurance, naming the COUNTY as an additional insured, for all common areas or any other areas of the building not leased to the COUNTY. LESSOR shall likewise provide liability insurance for all exterior areas of the premises such as parking areas and walkways, regardless of whether the areas are designated for the COUNTY's use including contractual liability coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and Two Million Dollars (\$2,000,000.00) per occurrence for property damage.

*Section 20.05* Notwithstanding the foregoing, however, COUNTY, at its sole option, subject to COUNTY being in full compliance with all applicable New York State, local and federal regulations regarding COUNTY's self-insurance program and subject to COUNTY's satisfying the Self-Insurance Standard, may elect to be either partially or totally self-insured and thereby assume responsibility for that portion of the liability insurance for which it is insured. In this case, COUNTY must notify LESSOR of its self-insured status by a signed writing. This self-insurance is to be excess over any other valid and collectible insurance.

*Section 20.06* In the event the property is transferred by LESSOR, the Transferee shall immediately provide the Department with the required proof of insurance in accordance with this **Section 20.**

## **SECTION 21. INDEMNIFICATION**

*Section 21.01* LESSOR shall indemnify and hold harmless the COUNTY from and against all claims, costs (including reasonable attorneys' fees), losses, and liabilities of whatsoever nature arising out of any intentional acts, omissions or negligence of the LESSOR, its officers, agents, servants, employees, contractors or subcontracts in connection with the Premises and its obligations under the Second Lease; provided, however, that LESSOR shall not indemnify for that portion of any claim, loss or damage arising under this Second Lease due to the negligent act or failure to act of the COUNTY. LESSOR, at its own cost and expense, and throughout the term of this Second Lease, shall procure and keep in full force and effect Commercial General Liability insurance, including contractual coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and Two Million Dollars (\$2,000,000.00) per occurrence for property damage, in accordance with the provisions of *Section 20.01(b)-(e)*.

## **SECTION 22. FIRE AND CASUALTY DAMAGE**

*Section 22.01* If either the entire Premises, or more than 50% of the Premises is destroyed by fire or other casualty, and cannot be fully restored within one (1) year, this Second Lease will immediately terminate. In case of partial destruction or damage in an amount less than 50% of the Premises, so as to render the entire Premises untenable, as reasonably determined by either LESSOR or the COUNTY, and LESSOR is unable to guarantee the full restoration of the Premises within six (6) months from the date of such partial destruction or damage, either party may terminate the Second Lease by giving written notice to the other party within sixty (60)

calendar days of the fire or other casualty; if so terminated, no rent will accrue to the LESSOR after such partial destruction or damage;

*Section 22.02* As long as the COUNTY is deprived of the use of any or all of the Premises on account of fire or casualty, Total Annual Rent shall be abated in proportion to the usable area of the Premises that are rendered substantially unfit for occupancy by such fire or casualty, unless, in the COUNTY's sole judgment, such fire or casualty renders the undamaged part of the Premises materially unsuitable for use by the COUNTY for the uses contemplated by this Second Lease, in which event the Total Annual Rent shall be abated entirely during such period of deprivation.

*Section 22.03* Unless LESSOR or COUNTY shall serve a termination notice as provided for in *Sections 22.01*, LESSOR shall work diligently to make all repairs and restorations to the Premises, with all reasonable expedition, subject to delays due to adjustment of insurance claims and Excusable Delays. After any such casualty, COUNTY shall cooperate with LESSOR's restoration by removing from the Premises as promptly as reasonably possible any of COUNTY's salvageable inventory and movable equipment, furniture, and other property as requested by LESSOR.

*Section 22.04* The parties agree that this **Section 22** constitutes an express agreement governing any case of damage or destruction of the Premises by fire or other casualty, and that Section 227 of the Real Property Law of the State of New York, which provides for such contingency in the absence of an express agreement, and any other law of like import now or hereafter in force shall have no applicability.

*Section 22.05* All risk of loss from fire or any other peril causing damage or destruction to the Premises or any other real or personal property of LESSOR during the Term shall be borne by LESSOR. Any property insurance policy(s) obtained by LESSOR to cover this exposure shall contain a Waiver of Subrogation against COUNTY. Current proof of insurance indicating that such waiver is in full force must be submitted by LESSOR to COUNTY prior to the Commencement Date. The risk of loss from any peril to the personal property, furniture, fixtures, equipment of COUNTY located on the Premises shall be borne by COUNTY, and COUNTY waives any right of subrogation against LESSOR with respect to such losses.

**SECTION 23. INTENTIONALL OMITTED**

**SECTION 24. NEGATIVE COVENANTS**

*Section 24.01* COUNTY shall not use, occupy, maintain, or operate the Premises, nor suffer or permit the Premises or any part thereof to be used, occupied, maintained, or operated, nor bring into or keep at the Premises, nor suffer or permit anything to be brought into or kept therein, which would in any way (a) violate any term, covenant, or condition of this Second Lease, (b) violate any restrictive covenant, operating covenant, encumbrance, or easement affecting the Premises, (c) violate any Legal Requirements, (d) make void or voidable any insurance policy then in force with respect to the Premises or make any such insurance unobtainable or increase the rate of any insurance with respect to the Premises, (e) cause physical damage to the Premises or any part thereof, (f) permit the excess accumulation of waste or refuse matter, or (g) constitute a public or private nuisance.

*Section 24.02* COUNTY shall not place a load upon any floor or roof of the Premises that exceeds the floor/roof load per square foot that such floor/roof was designed to carry or which is allowed by Legal Requirements.

**SECTION 25. LESSOR'S DEFAULT REMEDIES/DAMAGES**

*Section 25.01* Upon the occurrence, at any time prior to, or during the Term of the Second Lease, in addition to any other remedy available to LESSOR at law or in equity, of any one or more of the following events (referred to as "Events of Default"):

(i) if COUNTY shall default in the payment when due of any installment of Total Annual Rent, and any such default continues for twenty (20) Business Days, except for January of each calendar year, then if such default in January continues beyond twenty-five (25) Business Days, after LESSOR shall give COUNTY a written notice specifying such default; or

(ii) if COUNTY defaults in the keeping, observance or performance of any covenant or agreement (other than a default of the character referred to in (i) above), and if such default continues and is not cured within thirty (30) days after LESSOR gives COUNTY written notice specifying same, or, in the case of a default which for causes beyond COUNTY's reasonable control cannot, with reasonable diligence be cured within such period of thirty (30) days, if COUNTY shall not immediately upon the giving of such written notice, (a) advise LESSOR of COUNTY's intention duly to institute all steps necessary to cure such default and (b) institute and thereafter diligently prosecute to completion all steps necessary to cure the same;

the following Sections shall apply and LESSOR shall have, in addition to all other rights and remedies available at law or in equity, the rights and remedies set forth herein, which rights and remedies may be exercised upon or at any time following the occurrence of an Event of Default unless, prior to such exercise, LESSOR shall agree in writing with COUNTY that the Event(s) of Default has been cured by COUNTY in all respects.

*Section 25.02* By notice to COUNTY, LESSOR shall have the right to terminate this Second Lease as of a date specified in the notice of termination and in such case, COUNTY's rights, including any based on any option to renew, to the possession and use of the Premises shall end absolutely as of the termination date; and this Second Lease shall also terminate in all respects except for the provisions hereof regarding LESSOR's damages and COUNTY's liabilities arising prior to, out of or following the Event of Default and the ensuing termination.

*Section 25.03* Unless and until LESSOR has terminated this Second Lease pursuant to *Section 25.02* above, COUNTY shall remain fully liable and responsible to perform all of the covenants, and to observe all the conditions of this Second Lease throughout the remainder of the Term to the early termination date.

*Section 25.04* LESSOR may enforce and protect the rights of LESSOR hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, and for the enforcement of any other appropriate legal or equitable remedy, including,

without limitation, injunctive relief, and for recovery of all moneys due or to become due from COUNTY under any of the provisions of this Second Lease.

*Section 25.05* Without limiting the generality of the foregoing, if COUNTY shall be in default in the performance of any of its obligations hereunder, other than a default in the payment of rent or in curing an emergency situation, LESSOR, upon second written notice to COUNTY, providing COUNTY with ten (10) additional days to cure or remedy the default, may (but shall not be obligated to do so), in addition to any other rights it may have in law or in equity, cure such default on behalf of COUNTY, and COUNTY shall reimburse LESSOR upon demand for any sums paid or costs incurred by LESSOR in curing such default.

*Section 25.06* LESSOR shall have all rights and remedies now or hereafter existing at law or in equity with respect to the enforcement of COUNTY's obligations hereunder and the recovery of the Premises. No right or remedy herein conferred upon or reserved to LESSOR shall be exclusive of any other right or remedy, but shall be cumulative and in addition to all other rights and remedies given hereunder or now or hereafter existing at law. LESSOR shall be entitled to injunctive relief in case of the violation, or attempted or threatened violation, of any covenant, agreement, condition or provision of this Second Lease, or to a decree compelling performance of any covenant, agreement, condition or provision of this Second Lease.

*Section 25.07* No delay or forbearance by LESSOR in exercising any right or remedy hereunder, or LESSOR's undertaking or performing any act or matter which is not expressly required to be undertaken by LESSOR shall be construed, respectively, to be a waiver of LESSOR's rights or to represent any agreement by LESSOR to undertake or perform such act or matter thereafter. Waiver by LESSOR of any breach by COUNTY of any covenant or condition herein contained (which waiver shall be effective only if so expressed in writing by LESSOR) or failure by LESSOR to exercise any right or remedy in respect of any such breach shall not constitute a waiver or relinquishment for the future of LESSOR's right to have any such covenant or condition duly performed or observed by COUNTY, or of LESSOR's rights arising because of any subsequent breach of any such covenant or condition nor bar any right or remedy of LESSOR in respect of such breach or any subsequent breach. LESSOR's receipt and acceptance of any payment from COUNTY which is tendered not in conformity with the provisions of this Second Lease or following an Event of Default (regardless of any endorsement or notation on any check or any statement in any letter accompanying any payment) shall not operate as an accord and satisfaction or a waiver of the right of LESSOR to recover any payments then owing by COUNTY which are not paid in full, or act as a bar to the termination of this Second Lease and the recovery of the Premises because of COUNTY's previous default.

*Section 25.08* COUNTY hereby expressly waives for itself and any person claiming through or under COUNTY, any and all rights of redemption granted by or under any present or future laws in the event of COUNTY being evicted or dispossessed for any cause, or in the event of LESSOR's obtaining possession of the Premises, by reason of the violation by COUNTY of any of the covenants and conditions of this Second Lease or otherwise.

*Section 25.09* Except for the monetary obligations of either party, LESSOR and COUNTY shall not be in default of this Second Lease because of such party's inability to perform the covenants and obligations set forth herein during the continuance of any period of Excusable Delays, except as may otherwise be expressly specified in this Second Lease.

**SECTION 26. COUNTY'S DEFAULT REMEDIES AND DAMAGES**

*Section 26.01* Each of the following shall constitute a default by LESSOR under this Second Lease: (1) failure to maintain, repair, operate, or service the Premises as and when specified in this Second Lease, provided such failure shall remain uncured for a period of thirty (30) days next following LESSOR's receipt of written notice thereof from the COUNTY, unless such failure is of such a nature that, notwithstanding the best efforts of LESSOR, it cannot be completely cured or remedied within said period of thirty (30) days, in which event, such failure shall not constitute a default by LESSOR so long as LESSOR thereafter diligently continues its efforts to cure or remedy the same; or (2) repeated and unexcused failure by LESSOR to comply with one or more requirements of this Second Lease shall constitute a default notwithstanding that one or all such failures may have been timely cured.

*Section 26.02* With respect to any default of this Second Lease by LESSOR described in *Section 26.01* which is not timely cured or remedied, whether or not economic damage is caused to COUNTY, COUNTY shall send a second written notice to LESSOR, providing LESSOR with ten (10) additional days to cure or remedy the default. Such second notice shall expressly state in bold letters that LESSOR's failure to cure such default within said ten (10) additional day period shall result in a penalty being assessed against LESSOR under *Section 26.02* of this Second Lease. LESSOR agrees to pay \$500.00 in damages, per day, for the period of time such breach continues to exist after the expiration of the ten (10) days. The foregoing penalty shall not apply in the event (and so long as) LESSOR, in good faith, is disputing the existence of any such alleged default.

*Section 26.03* If a default under this **Section 26** continues after the expiration of all notice and cure periods provided for herein, COUNTY may, by written notice to LESSOR, terminate this Second Lease, and if so terminated, COUNTY shall be entitled to damages available under this Second Lease, and any other remedy available to COUNTY in law or equity.

*Section 26.04* The COUNTY shall have all of its common law, equitable, and statutory rights of set-off, subject to the further provisions of this Second Lease, including, without limitation. These rights shall include the COUNTY's option to withhold, for the purposes of set-off, any moneys due to LESSOR under this Second Lease up to any amounts due and owing to the COUNTY with regard to this Second Lease and/or any other lease or contract with any County department or agency, including any lease or contract for a term commencing prior to the term of this Second Lease, plus any amounts due and owing to the COUNTY for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The COUNTY shall exercise its set-off rights in accordance with normal County practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the County agency, its representatives, or the County Comptroller, and only after legal consultation with the County Attorney. Notwithstanding anything to the contrary contained herein, in no event shall the amount set-off and withheld by the COUNTY in any particular month exceed seven and one-half percent (7.5%) of the next monthly installment of Total Annual Rent due and payable under this Second Lease. In the event that COUNTY is limited from withholding the entire amount owed in one month, COUNTY may continue to withhold monies from each next succeeding monthly installment of Total Annual Rent (subject to the above limitation) until the total expenses of the COUNTY are recouped from LESSOR. No deduction from rent in the amount permitted pursuant to this clause shall constitute a default by COUNTY under this Second Lease.

*Section 26.05* The rights and remedies of COUNTY specified hereunder are not exclusive, but are in addition to any other rights and remedies provided by law or equity or otherwise available under this Second Lease. COUNTY may enforce and protect the rights of COUNTY hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, and for the enforcement of any other appropriate legal or equitable remedy, including, without limitation, injunctive relief, and for recovery of all moneys due or to become due from LESSOR under any of the provisions of this Second Lease.

## **SECTION 27. FAILURE IN PERFORMANCE**

*Section 27.01* The covenant to pay rent and the covenant to provide any service, utility, maintenance, repair or replacements required under this Second Lease are interdependent. In the event of any failure by the LESSOR to provide any service, utility, maintenance, repair or replacement required under this Second Lease, COUNTY may, subject to the notice requirement set forth in *Section 27.02* below, by contract or otherwise, perform the requirement and provide LESSOR with a written invoice containing the resulting cost to the COUNTY, including an administrative fee in accordance with the provisions of *Section 27.03*. In the event LESSOR does not remit payment of such invoice to COUNTY within thirty (30) days of LESSOR's receipt of such invoice, then COUNTY may deduct such amount from any payment due under this Second Lease, subject to the limitations set forth in *Section 27.03* below. If the COUNTY elects to perform any such requirement, the COUNTY and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the LESSOR shall afford and facilitate such access. No deduction from Total Annual Rent pursuant to this clause shall constitute a default by COUNTY under this Second Lease. These remedies are not exclusive, but are in addition to any other remedies which may be available under this Second Lease or at law.

*Section 27.02* If LESSOR shall fail to perform any of its obligations under this Second Lease, COUNTY may perform the same at the expense of LESSOR (i) immediately (a) after forty-eight (48) hours written notice in the case of an "Emergency," as defined below; (b) after seven (7) days written notice if such failure unreasonably interferes with the efficient operation of the Premises; (c) after seven (7) days written notice if such failure may result in a violation of any Legal Requirements or in the cancellation of any required insurance and (ii) in any other case if such failure continues after ten (10) days from the date of the giving of written notice of COUNTY's intention to perform the same or, in the case of a failure which, for causes beyond the LESSOR's reasonable control cannot with reasonable diligence be cured within such 10-day period, such 10-day period shall be deemed extended if the LESSOR immediately upon the receipt of such notice, (a) advises the other of its intention to institute all steps necessary to cure such failure and (b) institutes and thereafter diligently prosecutes to completion all steps necessary to cure the same.

An "Emergency" means any situation where the Department, in its reasonable judgment, concludes that a particular action (including, without limitation, the expenditure of funds) is immediately necessary (i) to avoid imminent material damage to all or any material portion of the Premises, (ii) to protect any Person from imminent harm, or (iii) to avoid the imminent unforeseen and unforeseeable suspension of any necessary material service in or to the Premises, the failure of which service would have a material and adverse effect on the Premises or the COUNTY's ability to utilize the Premises for its intended purposes, including but not limited to, supplying heat, air-conditioning, ventilation, light and water to the Premises.

*Section 27.03* If COUNTY performs any of LESSOR's obligations under this Second Lease, LESSOR shall pay COUNTY the costs thereof, together with an administrative fee equal to 5% of such costs, within sixty (60) days after receipt by LESSOR of a written statement as to the amounts of such costs and fee. In the event LESSOR does not remit the total amount of the costs and fee described herein within the requisite time, COUNTY may withhold such amount from the next monthly installment of Total Annual Rent, subject to the limitation that, in no event shall the amount withheld in any month exceed 7.5% of the next monthly installment of Total Annual Rent. In the event that COUNTY is limited from withholding the entire amount owed, COUNTY may continue to withhold monies from each next succeeding monthly installment of Total Annual Rent until the total expenses of the COUNTY and administrative fee are recouped from LESSOR. No deduction from rent pursuant to this clause shall constitute a default by the COUNTY under this Second Lease. This remedy is not exclusive and is in addition to any other remedies that may be available under this Second Lease or at Law.

*Section 27.04* In the event that there is an interruption, curtailment or failure by LESSOR to supply cooled or outside air, heat, elevator, plumbing or electricity for ten (10) consecutive business days after LESSOR has received written notice of such interruption, curtailment or failure (except that, with respect to plumbing or electricity, this *Section 27.04* shall only apply in the event such interruption, curtailment or failure of such services occurs as a direct result of a failure by LESSOR to comply with its repair or maintenance obligations regarding such systems as and to the extent required under this lease), and where (a) such failure is not caused by Excusable Delays or causes reasonably beyond the control of LESSOR, (b) the Premises has been placed in a condition where a reasonable COUNTY could not reasonably be expected to continue to use the Premises as a Health Center, and (c) LESSOR has either not commenced to cure such condition or has not used reasonable diligence in following same to completion, the same shall constitute an actual or constructive eviction, in whole or in part, and COUNTY shall be entitled to a pro rata abatement of rent during the period any such interruption, curtailment or failure continues and until such services are restored.

*Section 27.05* No delay or forbearance by COUNTY in exercising any right or remedy hereunder, or COUNTY's undertaking or performing any act or matter which is not expressly required to be undertaken by COUNTY shall be construed, respectively, to be a waiver of COUNTY's rights or to represent any agreement by COUNTY to undertake or perform such act or matter thereafter. Waiver by COUNTY of any breach by LESSOR of any covenant or condition herein contained (which waiver shall be effective only if so expressed in writing by COUNTY) or failure by COUNTY to exercise any right or remedy in respect of any such breach shall not constitute a waiver or relinquishment for the future of COUNTY's right to have any such covenant or condition duly performed or observed by LESSOR, or of COUNTY's rights arising because of any subsequent breach of any such covenant or condition nor bar any right or remedy of COUNTY in respect of such breach or any subsequent breach. COUNTY's receipt and acceptance of any payment from LESSOR which is tendered not in conformity with the provisions of this Second Lease or following an Event of Default (regardless of any endorsement or notation on any check or any statement in any letter accompanying any payment) shall not operate as an accord and satisfaction or a waiver of the right of COUNTY to recover any payments then owing by LESSOR which are not paid in full, or act as a bar to the termination of this Second Lease.

**SECTION 28. LESSOR'S RIGHT TO INSPECT AND REPAIR: ACCESS  
GENERALLY**

*Section 28.01* In addition to the provisions set forth at *Section 32.01* of this Second Lease, LESSOR may, but shall not be obligated to, enter the Premises at any reasonable time, on reasonable written notice to COUNTY (except that no notice need be given in case of emergency) for the purpose of inspection or the making of such repairs, replacements, and additions in, to, and about the Premises, as necessary or desirable. LESSOR shall not be required to notify COUNTY in connection with any entry into the Premises during normal business hours for purposes of LESSOR's obligations under this Second Lease to maintain or repair the Premises, or to perform scheduled cleaning. LESSOR shall provide telephonic notice at least one hour prior to entering the Premises during non-business hours or to provide unscheduled cleaning services. Notwithstanding anything to the contrary contained in this Section, LESSOR shall use reasonable efforts in its access of the Premises to cause a minimal amount of interference with COUNTY's use of the Premises.

**SECTION 29. SURRENDER OF PREMISES: HOLDOVER**

*Section 29.01* This Second Lease and the tenancy hereby created shall cease and terminate at the end of the above term, without the necessity of any further notice from either the LESSOR or the COUNTY to terminate the same and that continued occupancy of the Premises by the Lessee after the expiration of said term shall not operate to renew the Second Lease for said term or any part thereof.

*Section 29.02* On the Expiration Date, or upon the earlier termination of this Second Lease, COUNTY shall, at its expense, quit, surrender, vacate, and deliver the Premises to LESSOR in good order, condition and repair, ordinary wear and tear and damage for which COUNTY is not responsible under the terms of the Second Lease, or damage by the elements, fire or other casualty beyond COUNTY's reasonable control excepted, together with all improvements therein. COUNTY shall, at its expense, remove from the Premises all COUNTY's personal property and any personal property of Persons claiming by, through or under COUNTY, equipment, furniture, and any Alterations not approved by LESSOR, and shall repair or pay the cost of repairing all damage to the Premises occasioned by such removal. Any COUNTY's personal property or Alterations of COUNTY, which shall remain in the Premises after the termination of this Second Lease, shall be deemed to have been abandoned and either may be retained by LESSOR as its property or may be stored or disposed of as LESSOR may see fit. If property not so removed shall be sold, LESSOR may receive and retain the proceeds of such sale and apply the same, at LESSOR's option, against the reasonable expenses of the sale, moving and storage, arrears of rent and any damages to which LESSOR may be entitled. Any excess proceeds shall be the property of LESSOR.

*Section 29.02* THE COUNTY reserves the absolute right to remain in possession of the Premises after the expiration of the Second Lease Term, or any extension or renewal thereof, on a month to month basis, for a period not to exceed six (6) months. In the event of such holding over by the COUNTY without the execution of a new lease, COUNTY, subject to all of the other terms of this Second Lease, shall be and remain liable to the LESSOR for rent for the Premises at the monthly rate required of the COUNTY during the immediate preceding term prior to the beginning of the holdover period, plus the applicable escalation provided for in *Section 4.02* of this Second Lease; provided, however, that if the last rental amount during the immediate preceding term prior to the beginning of the holdover period included a fixed amount for

Construction Costs, the holdover rent shall be reduced by the amount of the monthly Construction Cost.

*Section 29.03* If, after the six (6) months the COUNTY continues to occupy the Premises as a hold over, the monthly rate shall increase to one hundred five percent (105%) of the monthly rent last payable by COUNTY under *Section 29.02*, above.

*Section 29.04* The provisions of this **Section 29** shall survive the expiration or earlier termination of this Second Lease.

## **SECTION 30.            NOTICES**

*Section 30.01    **Operational Notices:*** Any communication, notice, claim for payment, reports, insurance, or other submission necessary or required to be made by the parties regarding this Second Lease shall be in writing and shall be given to the COUNTY or LESSOR or their designated representative, by regular or certified mail in postpaid envelope or by Courier Service at the following addresses or at such other address that may be specified in writing by the parties and must be delivered as follows: (a) if to COUNTY, to the Suffolk County Department of Public Works, Attention: Commissioner, 335 Yaphank Avenue, Yaphank, New York 11980; with copies to the Suffolk County Department of Law, Attn: Suffolk County Attorney, 100 Veterans Memorial Highway, P.O. Box 6100, Hauppauge, New York 11788-0099; and (b) if to LESSOR, at LESSOR's address first above set forth, with a copy to @, Attention: @, Esq., or at such other address as COUNTY or LESSOR, respectively, may designate in writing.

*Section 30.02    **Notices Relating to Termination and/or Litigation:*** In the event LESSOR receives a notice or claim or becomes a party (plaintiff, petitioner, defendant, respondent, third party complainant, third party defendant) to a lawsuit or any legal proceeding related to this Second Lease, LESSOR shall immediately deliver to the County Attorney, at the address set forth above, copies of all papers filed by or against LESSOR.

a. Any communication or notice regarding termination shall be in writing and shall be given to the COUNTY or the LESSOR or their designated representative at the addresses set forth in *Section 29.01* or at such other addresses that may be specified in writing by the parties and shall be deemed to be duly given only if delivered: (i) personally [personal service on COUNTY must be pursuant to New York Civil Practice Law and Rules Section 311]; (ii) by nationally recognized overnight courier; or (iii) mailed by registered or certified mail in a postpaid envelope addressed: Notice shall be deemed to have been duly given (1) if delivered personally, upon acceptance or refusal thereof, (2) if by nationally recognized overnight courier, the first Business Day subsequent to transmittal and (3) if mailed by registered or certified mail, upon the seventh Business Day after the mailing thereof.

b. Any notice by either party to the other with respect to the commencement of any lawsuit or legal proceeding shall be effected pursuant to and governed by the New York Civil Practice Law and Rules or the Federal Rules of Civil Procedure, as applicable.

*Section 30.03* Each party shall give prompt written notice to the other party of the appointment of successor(s) to the designated contact person(s) or his or her designated successor(s).

**SECTION 31. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT**

*Section 31.01* COUNTY agrees that this Second Lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the Premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect present or subsequent subordination of this lease. COUNTY agrees, however, within fifteen (15) Business Days next following the Suffolk County Attorney's Office receipt of a written demand, to execute such instruments as LESSOR may reasonably request to evidence further the subordination of this Second Lease to any existing or future mortgage, deed of trust or other security interest pertaining to the Premises, and to any water, sewer or access easement necessary or desirable to serve the Premises or adjoining property owned in whole or in part by LESSOR if such easement does not interfere with the full enjoyment of any right granted the COUNTY under this Second Lease, subject to the conditions stated in *Section 31.05*.

*Section 31.02* No such subordination, to either existing or future mortgages, deed of trust or other lien or security instrument shall operate to affect adversely any right of the COUNTY under this Second Lease so long as the COUNTY is not in default under this Second Lease. LESSOR will include in any future mortgage, deed of trust or other security instrument to which this Second Lease becomes subordinate, or in a separate nondisturbance agreement on such lender's standard form, a provision to the foregoing effect. LESSOR warrants that the holders of all notes or other obligations secured by existing mortgages, deed of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the COUNTY promptly upon demand.

*Section 31.03* In the event of any sale of the Premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the COUNTY will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the Premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the LESSOR under this Second Lease, so as to establish direct privity of estate and contract between COUNTY and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the Second Lease had initially been entered into between such purchasers or transferees and the COUNTY; provided, further, that such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this Second Lease, or other writings, as shall be necessary to document the foregoing relationship.

*Section 31.04* Within twenty (20) days next following the COUNTY's receipt of a joint written request from LESSOR and a prospective lender or purchaser of the Premises, the County Attorney's Office shall execute and deliver to LESSOR a letter stating that the same is issued subject to the conditions stated in *Section 31.05*, and, if such is the case, that (1) the Second Lease is in full force and effect; (2) the date to which the rent and other charges have been paid in advance, if any; and (3) whether any notice of default has been issued.

*Section 31.05* Letters issued pursuant to *Section 31.04* are subject to the following conditions: (1) that they are based solely upon a reasonably diligent review of the COUNTY's Second Lease file as of the date of issuance; (2) that the COUNTY shall not be held liable because of any defect in or condition of the Premises; (3) that the COUNTY does not warrant or represent that the Premises comply with applicable Federal, State and local law; and (4) that the LESSOR, and each

prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable pre-purchase and pre-commitment inspection of the Premises and by inquiry to appropriate Federal, State, and local government officials.

**SECTION 32. ASSIGNMENT AND SUBLETTING**

*Section 32.01* Except as otherwise provided in this **Section 32**, COUNTY shall not assign this Second Lease or sublet all or any portion of the Premises without the consent of LESSOR. COUNTY may sublet any part of the Premises with the consent of LESSOR, which consent shall not be unreasonably withheld or delayed, but shall not be relieved from any obligation under this Second Lease by reason of any such subletting. Any assignment of this Second Lease by COUNTY shall be subject to prior written consent of LESSOR, which shall not be unreasonably withheld or delayed.

*Section 32.02* LESSOR shall not unreasonably withhold, delay, or condition its consent in the event such sublease meets the following conditions: (a) no default or event of default has occurred that is continuing beyond any applicable notice and grace periods set forth herein; (b) the sublessee assumes all of the obligations of this Second Lease, to the extent applicable to the portion of the Premises so sublet; (c) COUNTY promptly furnishes LESSOR with an executed copy of the sublease or other agreement pursuant to which such sublessee shall agree to observe and perform, and to be bound by all of the terms, covenants and conditions of this Second Lease on COUNTY's part to be observed and performed; (d) the proposed sublessee is a reputable "Person," defined below, of good character, as reasonably determined by LESSOR, and LESSOR has been furnished with reasonable evidence thereof; (e) the proposed sublessee has a long term, senior, unsecured debt rating from the Rating Agencies at least equivalent to "A" (or its equivalent); and (f) the proposed sublessee shall not be (1) entitled directly or indirectly, to diplomatic or sovereign immunity, unless effectively waived to LESSOR's reasonable satisfaction, and shall be subject to service of process in, and the jurisdiction of the courts of the State of New York, or (2) any foreign government or multi-national organization (or agency, department or division thereof).

For purposes of this Second Lease, the term "Person" means a natural person, a partnership, a limited liability company, a corporation, and any other form of business or legal association or entity.

*Section 32.03* If at any time or from time to time during the term of this Second Lease, COUNTY desires to assign this Second Lease or sublet all or any part of the Premises, COUNTY shall give notice to LESSOR of such desire, including the name, address and contact party for the proposed assignee or subtenant, a description of such party's business history, the effective date of the proposed assignment or sublease (including the proposed occupancy date by the proposed assignee or sublessee), and in the instance of a proposed sublease, the square footage to be subleased, a floor plan drawn to scale depicting the proposed sublease area, and a statement of the duration of the proposed sublease (which shall in any and all events expire by its terms at least one day prior to the scheduled expiration of this Second Lease, and immediately upon any sooner termination thereof and such other information as LESSOR may reasonably require). LESSOR may, at its option, and in its sole and absolute discretion, exercisable by notice given to COUNTY within thirty (30) days next following LESSOR's receipt of COUNTY's notice (which notice from COUNTY shall, as a condition of its effectiveness, include all of the above-enumerated information), elect to recapture the entire Premises for the remainder of the Term if COUNTY is proposing to assign this Second Lease or only such portion for such term as is

proposed by COUNTY to be sublet (and in each case, the parking spaces included in this demise, or a pro-rate portion thereof in the instance of the recapture of less than all of the Premises), and terminate this Second Lease with respect to the space and term being recaptured.

*Section 32.04* If LESSOR elects to recapture the Premises or a portion thereof as aforesaid, then with respect to the space and term being recaptured from and after the effective date thereof as approved by LESSOR, after COUNTY shall have fully performed such obligations as are enumerated herein to be performed by COUNTY in connection with such recapture, and except as to obligations and liabilities accrued and unperformed (and any other obligations expressly stated in this Second Lease to survive the expiration or sooner termination of this Second Lease), COUNTY shall be released of and from all obligations hereunder thereafter otherwise accruing with respect to the portion of the Premises and for the term being recaptured. Such portion of the Premises which LESSOR shall have elected to recapture shall be delivered by COUNTY to LESSOR free and clear of all furniture, furnishings, personal property and removable fixtures, with COUNTY repairing and restoring any and all damage to the Premises resulting from the installation, handling or removal thereof, and otherwise in the same condition as COUNTY is, by the terms of this Second Lease, required to redeliver the Premises to LESSOR upon the expiration or sooner termination of this Second Lease. In the event of a sublease of less than all of the Premises, the cost of erecting any demising walls, entrances and entrance corridors, and any other or further improvements in connection therewith, including without limitation, modifications, if any, to HVAC, electrical, plumbing, fire, life safety and security systems painting, wallpapering and other finish items as may be acceptable to or specified by LESSOR shall be paid by COUNTY. All of the foregoing improvements shall be made in accordance with applicable legal requirements and LESSOR's then standard base building specifications and shall be performed by LESSOR's contractors. Upon the commencement of any recapture and partial termination of this Second Lease as provided herein, the Total Annual Rent, COUNTY's share of Real Estate Taxes and other monetary obligations hereunder shall be adjusted and pro-rated based upon the reduced rentable square footage of the unrecaptured portion of the Premises. From and after any recapture for less than the full remainder Term of the Second Lease, LESSOR, at LESSOR's sole cost and expense, shall deliver possession of the Premises in the condition received from COUNTY at the commencement of the recapture, and the Total Annual Rent and other monetary obligations hereunder shall resume and remain in full force and effect until the expiration or sooner termination of this Second Lease.

*Section 32.05* If LESSOR provides written notification to COUNTY electing not to recapture the Premises (or so much thereof as COUNTY had proposed to sublease), or if the time period within which LESSOR may exercise its right of recapture under *Section 32.03* has expired, then COUNTY may proceed to market the designated space and may complete such transaction and execute an assignment of this Second Lease or a sublease agreement (in each case in form acceptable to LESSOR) within a period of six (6) months next following LESSOR's notice to COUNTY that it declines to recapture such space or expiration of the time period within which LESSOR must exercise its right to recapture under *Section 32.03*, provided that COUNTY shall have first obtained in any such case the prior written consent of the LESSOR to such transaction. If, however, COUNTY shall not have assigned this Second Lease or sublet the Premises with LESSOR's prior written consent as aforesaid within six (6) months next following LESSOR's notice to COUNTY that LESSOR declines to recapture the Premises (or such portion thereof as COUNTY initially sought to sublease), then in such event, COUNTY shall again be required to request LESSOR's consent to the proposed transaction, whereupon LESSOR's right to recapture the Premises (or such portion as COUNTY shall desire to sublease) shall be renewed upon the same terms and as otherwise provided in *Section 32.03* above.

*Section 32.06* Any sums or other economic consideration received by COUNTY as a result of any subletting, assignment or license whether denominated rentals under the sublease or otherwise, which exceed, in the aggregate, the total sums which COUNTY is obligated to pay LESSOR under this Second Lease (prorated to reflect obligations allocable to that portion of the Premises subject to such sublease or assignment) shall be divided evenly between LESSOR and COUNTY, with LESSOR's portion being payable to LESSOR as additional rental under this Second Lease without satisfying or reducing any other obligations of COUNTY hereunder.

*Section 32.07* Regardless of LESSOR's consent, no assignment shall release COUNTY of COUNTY's obligations or alter the primary liability of COUNTY to pay the Total Annual Rent and to perform all other obligations to be performed by COUNTY hereunder. The acceptance of rent by LESSOR from any other person shall not be deemed to be a waiver by LESSOR of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of COUNTY or any successor of COUNTY in the performance of any of the terms hereof, LESSOR may proceed directly against COUNTY without the necessity of exhausting remedies against such assignee or successor.

*Section 32.08* In the event that (i) the Premises or any part thereof are sublet and COUNTY is in default under this Second Lease, or (ii) this Second Lease is assigned by COUNTY, then, LESSOR may collect Total Annual Rent from the assignee or subtenant and apply the net amount collected to the Total Annual Rent herein reserved; but no such collection shall be deemed a waiver of the provisions of this **Section 32** with respect to assignment and subletting, or the acceptance of such assignee or subtenant as "tenant" hereunder, or a release of COUNTY from further performance of the covenants herein contained.

*Section 32.09* COUNTY shall have no claim, and hereby waives the right to any claim, against LESSOR for money damages by reason of any refusal, withholding or delaying by LESSOR of any consent, and in such event, COUNTY's only remedies therefor shall be an action for specific performance, injunction or declaratory judgment to enforce any such requirement.

### **SECTION 33. LESSOR'S RIGHT TO SHOW PREMISES**

*Section 33.01* LESSOR may show the Premises to prospective purchasers and mortgagees, and during the eighteen (18) months prior to the expiration of this Second Lease, to prospective tenants, during "Business Hours," as that term is defined below, upon reasonable notice to COUNTY or by other special arrangement between LESSOR and COUNTY.

For the purposes of this Second Lease, the term "Business Hours" means from 8:30 a.m. to 5:30 p.m. during Business Days.

### **SECTION 34. EMINENT DOMAIN**

*Section 34.01* If there shall be a total taking, a partial taking of more than fifty percent (50%), or a "Constructive Total Taking," as defined below, of the Premises in condemnation proceedings or by any right of eminent domain, this Second Lease and the Term and estate hereby granted shall forthwith cease and terminate as of the date of taking of possession by the condemning authority. In the event of a taking which is less than a Constructive Total Taking: (i) the Term and estate hereby granted with respect to the taken part of the Premises shall forthwith cease and terminate

as of the date of taking of possession by the condemning authority and the Total Annual Rent shall be appropriately abated for the period from such date to the date specified in this Second Lease for the expiration of the Term and (ii) LESSOR shall with reasonable diligence restore the remaining portion of the Premises as nearly as practicable to its condition prior to such condemnation or taking. "Constructive Total Taking" shall mean a taking of such scope that, upon the COUNTY's reasonable determination, the untaken part of the Premises would be uneconomic to operate or which would significantly interfere with COUNTY's business operations at the Premises. In the event of a partial taking of less than 15% of the Premises, this Second Lease shall continue in force and effect, and Total Annual Rent shall be apportioned as to the percentage of space still remaining subsequent to such taking; and (ii) LESSOR shall with reasonable diligence, and if reasonably possible, restore the remaining portion of the Premises as nearly as practicable to its condition prior to such condemnation or taking at no cost to COUNTY.

*Section 34.02* In the event (1) LESSOR cannot restore the Premises for COUNTY's use within fifteen (15) months following receipt of notice of vesting of title; or (2) the part of the Premises so acquired is more than fifteen percent (15%) of the total area of the Premises immediately prior to such acquisition or condemnation and, after such taking, LESSOR and COUNTY agree that the Premises is no longer suitable for COUNTY's use, either party may give to the other party, within sixty (60) days next following the date upon which COUNTY shall have received notice of vesting of title, a sixty (60) days notice of termination of this Second Lease and the Term shall come to an end and expire upon the expiration of said sixty (60) days with the same effect as if that were the date hereinbefore set for the expiration of the Term, and the Total Annual Rent hereunder shall be apportioned as of such date.

*Section 34.03* (i) The term "Net Award" shall mean: (a) all amounts payable as a result of any condemnation or other eminent domain proceeding, less all reasonable expenses for such proceeding not otherwise paid by COUNTY (including, without limitation, all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by LESSOR and any mortgagee in participating in any condemnation or eminent domain proceedings; plus (b) all amounts payable pursuant to any agreement with any condemning authority (which agreement shall be deemed to be a taking) which has been made in settlement of or under threat of any condemnation or other eminent domain proceeding affecting the Premises or COUNTY's access thereto or utilities or facilities serving the Premises, less all expenses incurred as a result thereof not otherwise paid by COUNTY including, without limitation, all costs and expenses (including reasonable attorneys' fees and expenses) incurred by LESSOR or any mortgagee in participating in any condemnation or eminent domain proceedings.

(ii) If a part or all of the Premises shall be taken or condemned, the Net Award shall go to LESSOR and COUNTY shall have no claim thereto (but COUNTY may file a separate claim for any taking of fixtures and improvements owned by COUNTY which have not become LESSOR's property, business interruption, and for moving expenses, provided the same shall in no way affect or diminish LESSOR's award). COUNTY hereby expressly waives, relinquishes and release to LESSOR any claim for damages or other compensation to which COUNTY might otherwise be entitled because of any such taking or limitation of the leasehold estate hereby created, and irrevocably assigns and transfers to LESSOR any right to compensation of all or a part of the Premises or the leasehold estate.

*Section 34.04* Notwithstanding the foregoing, if all or any portion of the Premises shall be condemned or taken for governmental occupancy for a limited period of time, this Second Lease

shall continue in full force and effect (without any abatement of the Rent) and COUNTY shall be entitled to receive the entire Net Award therefore (whether paid as damages, rent or otherwise) unless the period of governmental occupancy extends beyond the expiration of this Second Lease, in which case LESSOR shall be entitled to such part of such Net Award as shall be properly allocable to the cost of restoration of the Premises, and the balance of such Net Award shall be apportioned between LESSOR and COUNTY as of the date of such expiration. If the termination of such governmental occupancy is prior to expiration of this Second Lease, COUNTY shall restore the Premises as nearly as possible to its condition prior to the condemnation or taking.

### **SECTION 35. ENVIRONMENTAL RESPONSIBILITIES**

*Section 35.01* COUNTY shall not use or suffer the use of all or any part of the Premises to treat, generate, store, dispose of, transfer, release, convey or recover any "Hazardous Substances," as that term is defined below. COUNTY shall immediately notify LESSOR of the presence or suspected presence of any Hazardous Substance on or about the Premises and shall deliver to LESSOR any notice received by COUNTY with respect to any Hazardous Substance relating thereto.

For purposes of this Second Lease, the term "Hazardous Substance" means (i) asbestos and any asbestos containing material and any substance that is listed in, or otherwise classified pursuant to any "Environmental Laws," as that term is defined below, or any applicable laws or regulations as "hazardous substance", "hazardous material", "hazardous waste", "infectious waste", toxic substance", "toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or "EP toxicity", (ii) any petroleum and drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas, or geothermal resources and (iii) petroleum product, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, and medical waste. "Hazardous Substance" shall not include normal cleaning and personal household products being used in their intended manner and otherwise in a manner that is in compliance with Environmental Laws.

"Environmental Laws" means any and all present and future federal, state, and local laws, ordinances, rules, regulations, decisions, and standards relating to protection of human health and the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et.seq. ("CERCLA"); the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et.seq. ("RCRA"); the Occupational Safety and Health Act) 29 U.S.C. 651 et.seq. ("OSHA"). Environmental Laws shall also include, but are not limited to, any requirements relating to underground storage tanks, the storage and use of gasoline, diesel fuel, waste oil or other petroleum products.

*Section 35.02* Subject to the provisions of *Section 35.04*, COUNTY, at its expense, shall comply with all Environmental Laws applicable to the Premises and shall give LESSOR prompt notice of any lack of compliance with any of the foregoing and of any notice it receives of the alleged violation of any Environmental Laws. LESSOR shall cooperate with COUNTY's efforts hereunder.

*Section 35.03* LESSOR represents and warrants that to LESSOR's actual knowledge, the Premises has not been used for the generation, treatment, storage, or disposal of hazardous waste,

and LESSOR certifies that, to LESSOR's actual knowledge, the Premises comply with all applicable Federal, State, and local regulations concerning the provision of a safe work environment free from environmental contaminants and hazards.

*Section 35.04* Except to the extent the same are the obligations of COUNTY under the Second Lease, LESSOR shall comply with all Environmental Laws affecting or related to its use or ownership of the Premises, including but not limited to, the construction or demolition of any improvement thereon, and shall give COUNTY prompt notice of any lack of compliance with any of the foregoing of which it obtains knowledge and of any notice it receives of the alleged non-compliance with Environmental Laws. COUNTY shall cooperate with LESSOR's efforts hereunder; provided, however, that COUNTY shall not be required to incur any out of pocket costs in so doing. LESSOR shall indemnify COUNTY against all claims, losses, costs, expenses, fines, penalties and damages which may be imposed by reason of, or arising out of LESSOR's failure to fully and promptly comply with the provisions of this Section.

*Section 35.05* With respect to the existence of any Hazardous Substance which COUNTY has caused or created, COUNTY shall defend, indemnify, and hold harmless LESSOR and its employees, agents, officers, and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release, or threatened release of any Hazardous Substance which is on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance; (c) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance; and/or (d) any violation of Environmental Laws, or any policies or requirements of LESSOR which are based upon or in any way related to such Hazardous Substance, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

*Section 35.06* The provisions of this **Section 35** shall survive the expiration or earlier termination of this Second Lease.

**SECTION 36.            SIGNAGE**

*Section 36.01* If requested, by the COUNTY, LESSOR shall erect and maintain a sign, in conformance with local requirements, located on the exterior of the Premises, during the term of this Second Lease. LESSOR shall take all reasonable steps necessary to obtain any permits or local approvals required for same. Any additional signage which may be requested by COUNTY shall be erected and maintained by LESSOR at COUNTY's sole cost and expense.

**SECTION 37.            QUIET ENJOYMENT**

*Section 37.01* LESSOR covenants that if and so long as COUNTY pays Total Annual Rent and Expenses, and fully and faithfully performs the covenants hereof, COUNTY shall peaceably and quietly have, hold and enjoy the Premises for the Term, subject to the provisions of this Second Lease.

**SECTION 38. NO IMPLIED WAIVER**

*Section 38.01* No failure or delay by either party to insist upon the strict performance of any provision of this Second Lease, or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial rent or other performance by either party during the continuance of such breach shall constitute a waiver of any such provision.

**SECTION 39. SUFFOLK COUNTY LEGISLATIVE REQUIREMENTS**

*Section 39.01* The parties agree to be bound by the terms of Suffolk County Legislative Requirements, annexed hereto as **Exhibit C** and made a part hereof.

**SECTION 40. ADDITIONAL DISCLOSURE REQUIREMENTS**

*Section 40.01* In addition to the requirements set forth under **Exhibit C (1)**, LESSOR represents and warrants that it shall submit to COUNTY verified Public Disclosure Statements ("Statements") required pursuant to the Land Acquisition Public Disclosure Law of Suffolk County (S.C. Code Chapter 342. An updated Land Acquisition Public Disclosure Statements shall be submitted whenever there is a change in any information required pursuant to S.C. Code § 342-6.

*Section 40.02* LESSOR acknowledges that the filing of these statements is a material, contractual and statutory duty and that failure to file the statements shall constitute a material breach of this Second Lease, for which COUNTY shall be entitled, upon a determination that such breach has occurred, to damages, in addition to all other legal remedies, of five percent (5%) of the amount of the Total Annual Rent for the year in which the breach has occurred; provided, however, no penalty shall be due unless and until LESSOR has received a written notice of failure to file the requisite forms and fifteen (15) Business Days to cure. No breach shall be deemed to have occurred in the event that COUNTY has failed to provide the requisite forms to be completed by LESSOR upon LESSOR's request for same. In any event, COUNTY agrees to provide LESSOR with written notice of any anticipated or actual breach of this **Section 40**. Current, completed Statements are annexed hereto as **Exhibit C** for filing with the Clerk of the Legislature, and the Suffolk County Comptroller. LESSOR shall file further revised Statements whenever there is a change in any information set forth therein or annually, as required.

*Section 40.03* LESSOR agrees to notify COUNTY in writing prior to any transfer of title or conveyance by operation of law. In the event of a transfer of title or a conveyance by operation of law which results in a conflict of interest under State or local law, COUNTY shall have the right to cancel this Second Lease upon three (3) months notice to LESSOR from the date of COUNTY's discovery of such transfer or conveyance, unless the consent of the COUNTY to such transfer is obtained prior thereto, which consent shall not be unreasonably withheld. Such consent shall not be required for (i) a transfer between current owners or their spouses, children, or trusts or entities for the benefit of such persons; or (ii) any financial institution or mortgagee following a foreclosure or deed-in-lieu of foreclosure. Incident to such application for consent, new Statements, and an affirmation of the provisions of Local Law No. 32-1980 (relating to the offering of gratuities) shall be submitted by the proposed new owner, in accordance with the requirements of the COUNTY by registered or certified mail, return receipt requested, addressed to the Suffolk County Department of Law, H. Lee Dennison Building, 100 Veterans Memorial Highway, P.O. Box 6100, Hauppauge, New York 11788 or such other address as COUNTY may designate in writing. The failure of the COUNTY to object to such proposed transfer by notice

delivered either personally or by nationally recognized overnight courier to LESSOR within ten (10) business days of receipt of such application shall constitute consent on the part of the COUNTY.

**Section 41. COOPERATION ON CLAIMS**

*Section 41.01* Each of the parties hereto agrees to render diligently to the other party, without additional compensation, any and all cooperation, that may be required to defend the other party, its employees and designated representatives against any claim, demand or action that may be brought against the other party, its employees or designated representatives in connection with this Second Lease.

**SECTION 42. MISCELLANEOUS**

*Section 42.01* Neither LESSOR nor COUNTY shall be permitted to record this Second Lease or a memorandum thereof.

*Section 42.02* Time is and shall be of the essence with respect to this Second Lease and occupancy on the date specified is of the essence of this Second Lease to the COUNTY.

*Section 42.03* References contained herein to Sections, Exhibits and Schedules shall be deemed to be references to the Articles, Exhibits, and Schedules of and to this Second Lease unless specified to the contrary.

**SECTION 43. NOT A CO-PARTNERSHIP OR JOINT VENTURE**

*Section 43.01* Nothing herein contained shall create or be construed as creating a co-partnership or joint venture between the COUNTY and LESSOR or to constitute the LESSOR as an agent or employee of the COUNTY.

**SECTION 44. BROKER**

*Section 44.01* LESSOR hereby represents and warrants that no broker brought about this Second Lease and LESSOR hereby agrees to indemnify and hold the COUNTY harmless against any claim, demand and judgment which may be made or obtained against the COUNTY by any broker claiming a commission for bringing about this Lease. COUNTY shall forthwith notify LESSOR of any such claim, demand or legal action and LESSOR shall be entitled to defend the COUNTY against any such claim, demand or legal action.

**SECTION 45. CERTIFICATION**

*Section 45.01* The parties to this Second Lease hereby certify that, other than the funds provided in this Second Lease and other valid agreements with the COUNTY, there is no known relationship within the third degree of consanguinity, life partner, or business, commercial, economic, or financial relationship between the parties, the signatories to this Second Lease, and any partners, members, directors, or shareholders of more than five per cent (5%) of any party to this Second Lease.

**SECTION 46. NOT IN DEFAULT**

*Section 46.01* LESSOR warrants that, as of the date hereof, it is not in arrears to the COUNTY upon debt or contract and is not in default as a surety, contractor or otherwise on any obligation to or contract with the COUNTY.

**SECTION 47. GOVERNING LAW**

*Section 47.01* This Second Lease shall be governed by the laws of the State of New York. In the event of any dispute or litigation, the venue of any proceeding to determine the rights and liabilities of the respective parties arising under this Agreement shall be in the New York Supreme Court, Suffolk County; or, in the event of a proceeding in the federal courts, in the District Court for the Eastern District of New York.

**SECTION 48. WAIVER OF TRIAL BY JURY**

*Section 48.01* It is mutually agreed by and between LESSOR and COUNTY that the respective parties hereto shall and they hereby do waive any right to trial by jury in any action, proceeding or in any other matter in any way connected with this Second Lease, the relationship of LESSOR and COUNTY, the Premises, and/or any claim of injury or damage, or for the enforcement of any remedy under any statute, emergency or otherwise.

**SECTION 49. CIVIL ACTIONS**

*Section 49.01* LESSOR represents that it shall not use any of the moneys received under this Second Lease, either directly or indirectly, in connection with the prosecution of any civil action against the County of Suffolk or any of its programs, funded by the County, in part or in whole, in any jurisdiction or any judicial or administrative forum.

**SECTION 50. SUCCESSORS BOUND**

*Section 50.01* This Second Lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

**SECTION 51. COUNTY REPRESENTATIVES**

*Section 51.01* It is expressly understood and agreed by and between the parties hereto that the officers, officials, employees and agents of the COUNTY are acting in a representative capacity for the County of Suffolk and not for their own benefit, and that LESSOR shall not have any claim against them or any of them as individuals in any event whatsoever.

**SECTION 52. INDEPENDENT CONTRACTOR**

*Section 52.01* It is expressly agreed that LESSOR's status hereunder is that of an independent contractor. Neither the LESSOR, nor any person hired by LESSOR shall be considered employees of the County for any purpose.

**SECTION 53. EXECUTION BY LESSOR**

*Section 53.01* When the LESSOR is a partnership, the names of the partners composing the firm must be stated in the Statements required under **Section 1** of Exhibit C of this Second Lease. The Second Lease must be signed with the partnership name, followed by the name of the partner signing the Second Lease.

*Section 53.02* Where the LESSOR is a corporation, the Second Lease must be signed with the corporate name, followed by the signature and title of the officer or other authorized person signing the Second Lease on its behalf, and if requested by the COUNTY, the corporate seal.

*Section 53.03* LESSOR warrants that its entry into this Second Lease was duly considered and authorized by its organizational body and pursuant to its by-laws and/or internal procedures.

**SECTION 54. SUFFOLK COUNTY LAWS**

*Section 54.01* A copy of the local laws referenced herein can be reviewed online at <http://www.co.suffolk.ny.us/legis/>

**SECTION 55. IDENTIFICATION NUMBER**

*Section 55.01* All invoices or vouchers submitted to the County for payment of rent and/or Expenses must include the payee's (LANDLORD's) identification number. The number is either the LANDLORD's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or Standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

**SECTION 56. PARAGRAPH HEADINGS**

*Section 56.01* The paragraph headings in this Second Lease are included for convenience only and shall not be taken into consideration in any construction or interpretation of this Second Lease or any of its provisions.

**SECTION 57. SEVERABILITY**

It is expressly agreed that if any term or provision of this Second Lease and/or any amendment hereto, or the application thereof to any person or circumstances, shall be held invalid or unenforceable to any extent, the remainder of this Second Lease and any amendment hereto, or the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of this Second Lease and any amendment hereto shall be valid and shall be enforced to the fullest extent permitted by law.

**SECTION 58. ENTIRE AGREEMENT**

It is expressly agreed that this instrument represents the entire agreement of the parties and that all previous understandings are merged in this Second Lease; and that no modifications hereof shall be valid unless written evidence thereof shall be executed by the parties thereto.

**SECTION 59. NO ORAL CHANGES**

It is expressly agreed that this Agreement represents the entire agreement of the parties, that all previous understandings are merged in this Agreement. No modification of this Agreement shall be valid unless written in the form of an Amendment and executed by both parties.

**SECTION 60. INTERPRETATION**

This Second Lease is to be construed and interpreted without regard to any presumption or other rule requiring construction or interpretation against the party causing this Second Lease to be drafted.

**IN WITNESS WHEREOF**, the parties hereto have caused this Second Lease to be executed and delivered as of the date first set forth above.

**LESSOR**

@

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO LEGALITY:  
**CHRISTINE MALAFI**

Suffolk County Attorney  
By: \_\_\_\_\_  
BASIA DEREN BRADDISH  
Title: Assistant County Attorney  
Date: \_\_\_\_\_

**COUNTY**

**COUNTY OF SUFFOLK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Deputy County Executive and Chief of Staff  
Date: \_\_\_\_\_

**RECOMMENDED  
SPACE MANAGEMENT STEERING  
COMMITTEE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairperson  
Date: \_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2009 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or provided to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2009 before me, the undersigned, personally appeared \_\_\_\_\_, *Deputy County Executive*, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**Summary of Landlord-Tenant Responsibilities – Rev 5/08**

ITEM	LANDLORD	COUNTY
1) UTILITIES – Usage		
A) OIL		X
B) GAS (If separately metered)		X
C) WATER (If separately metered)		X
D) ELECTRICITY (if separately metered)		X
E) SEWER CHARGES/TAXES		N/A
2) H.V.A.C. EQUIPMENT	X	
A) REPAIR & REPLACE	X	
B) ORDINARY PREVENTIVE MAINTENANCE	X	
C) CHANGE AIR FILTER: QUARTERLY		X
3) ELECTRIC EQUIPMENT	X	
A) REPAIR & REPLACE	X	
B) INTERIOR LAMP & BALLAST REPLACEMENT		X
C) EMERGENCY LIGHTING AND EXIT LIGHTING	X	
D) PARKING FIELD & EXTERIOR BUILDING LIGHTING	X	
E) PARKING FIELD LAMP REPLACEMENT	X	
4) PLUMBING	X	
A) REPAIR & REPLACE	X	
B) ORDINARY PREVENTIVE MAINTENANCE	X	
C) CLEAN OUT: DRAINAGE STRUCTURES & SYSTEMS	X	
D) CLEAN OUT: SEWAGE STRUCTURES & SYSTEMS	X	
5) STRUCTURAL REPAIRS * SEE PARAGRAPH ENTITLED "PREPARATION AND CARE OF PREMISES BY LANDLORD"	X	
A) REPAIR: SIDEWALKS, CURBS, RAMPS, DRIVEWAYS, PARKING AREAS, ROOF & ROOFING, INTERIOR (DUE TO FAULTY CONSTRUCTION), DRAINAGE STRUCTURES & SYSTEMS, SEWAGE STRUCTURES & SYSTEMS	X	

ITEM	LANDLORD	COUNTY
B) Repair: BUILDING ENVELOPE	X	
6) CUSTODIAL		X
A) CLEAN OCCUPIED SPACE & SUPPLY SOAP & PAPER PRODUCTS IN OCCUPIED SPACE		X
B) CLEAN WINDOWS - INTERIOR		X
C) CLEAN WINDOWS - EXTERIOR, 1X/year		X
D) CLEAN DRAPES AND/OR BLINDS		X
E) SHAMPOO CARPETS AND WAX FLOORS (TWICE/YEAR)		X
F) TRASH REMOVAL - INTERIOR		X
7) CARTAGE		X
8) SNOW & ICE REMOVAL TO PARKING AREAS, DRIVES, RAMPS & WALKS		X
9) GROUNDS MAINTENANCE		X
A) GRASS & LANDSCAPING MAINTENANCE		X
B) IRRIGATION OF GRASS & LANDSCAPING		X
C) PARKING FIELD		X
D) PARKING FIELD SWEEPING AND DEBRIS REMOVAL		X
10) REPAIRS & MAINTENANCE OF COMMON USE AREAS	X	
11) INTERIOR MAINTENANCE AND REPAIRS (NOT CAUSED BY TENANT MISUSE, ABUSE OR NEGLIGENCE)	X	
12) GLAZING (NOT CAUSED BY TENANT DAMAGE)	X	
13) TAXES SEE PARAGRAPH IV ENTITLED "TAXES AND UTILITIES"		X
14) VERMIN AND RODENT EXTERMINATION	X	
15) FIRE SPRINKLERS & RPZ - MAINTENANCE AND TESTING	X	
16) FIRE AND SECURITY ALARM - MAINTENANCE AND REPAIR	X	
17) FRES CONNECTION - MAINTENANCE AND REPAIR	X	
18) FIRE EXTINGUISHERS	X	
19) FLAG POLE	N/A	

**EXHIBIT B**  
**LESSOR'S WORK**

1. Repair fire and intrusion alarm systems
2. Repair HVAC unit(s) serving the middle and south offices on mezzanine. All filters for units to be replaced
3. All toilet exhaust fans to be replaced and ducted to the exterior
4. Mezzanine toilet leak to be repaired and any water damage from leaks to be repaired.
5. All ceiling tiles on the mezzanine need to be replaced and registers cleaned.
6. Mezzanine carpeting and vinyl tiles to be replaced.
7. All rooms to be repainted
8. Roof leaks need to be repaired or roof replaced, pending roof inspection.
9. Gutters and leaders to be repaired and/or replaced as required.
10. Install rubber treads or other non skid surface to stairways leading to mezzanine level.
11. Repair, reseal and re-stripe parking lot.
12. Repair paving around drywell covers as needed.
13. Repair all exterior lights to working order.
14. 5 Exterior duplex outlets – 110V requested for southwest corner of facility for outdoor storage of diesel trucks
15. Repair fence along northeast quadrant of property. Our Fence?
16. Repair hanging overhead utility wires and trim property line vegetation to ameliorate the problem Done
17. Address existing oil fill cap located on site. If tank remains, the tank and the cap must be properly abandoned or removed.

**EXHIBIT C**  
**SUFFOLK COUNTY LEGISLATIVE REQUIREMENTS**

**1. Contractor's/Vendor's Public Disclosure Statement**

The Contractor represents and warrants that it has filed with the Comptroller of Suffolk County the verified public disclosure statement required by Suffolk County Administrative Code Article V, Section A5-7 and shall file an update of such statement with the said Comptroller on or before the 31st day of January in each year of this Agreement's duration.

**Required Form:** Suffolk County Form SCEX 22; entitled "Contractor's/Vendor's Public Disclosure Statement"

**2. Living Wage Law**

This Agreement is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply all employers (as defined) under service contracts and recipients of County financial assistance, (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk. Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

The Contractor represents and warrants that it has read and shall comply with the requirements of Suffolk County Code Chapter 347, Suffolk County Local Law No. 12-2001, the Living Wage Law.

**Required Forms:** Suffolk County Living Wage Form LW-1; entitled "Suffolk County Department of Labor – Living Wage Unit Notice of Application for County Compensation (Contract)"

Suffolk County Living Wage Form LW-38; entitled "Suffolk County Department of Labor – Living Wage Unit Living Wage Certification/Declaration – Subject To Audit"

**3. Use of County Resources to Interfere with Collective Bargaining Activities  
Local Law No. 26-2003**

The Contractor represents and warrants that it has read and is familiar with the requirements of Chapter 466, Article 1 of the Suffolk County Local Laws, "Use of County Resources to Interfere with Collective Bargaining Activities". County Contractors (as defined) shall comply with all requirements of Local Law No. 26-2003 including the following prohibitions:

- a. The Contractor shall not use County funds to assist, promote, or deter union organizing.
- b. No County funds shall be used to reimburse the Contractor for any costs incurred to assist, promote, or deter union organizing.

- c. The County of Suffolk shall not use County funds to assist, promote, or deter union organizing.
- d. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

If Contractor services are performed on County property the Contractor must adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, nonintimidation agreement and a majority authorization card agreement.

If Contractor services are for the provision of human services and such services are not to be performed on County property, the Contractor must adopt, at the least, a neutrality agreement.

Under the provisions of Local Law No. 26-2003, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

**Required Form:** Suffolk County Labor Law Form DOL-LO1; entitled "Suffolk County Department of Labor – Labor Mediation Unit Union Organizing Certification/Declaration – Subject to Audit"

#### 4. Lawful Hiring of Employees Law

This Agreement is subject to the Lawful Hiring of Employees Law of the County of Suffolk (Local Law 52-2006). It provides that all covered employers, (as defined), and the owners thereof, as the case may be, that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation, payment, tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees (as defined) and with respect to the alien and nationality status of the owners thereof. The affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.

All contractors and subcontractors (as defined) of covered employers, and the owners thereof, as the case may be, that are assigned to perform work in connection with a County contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit to the covered employer a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees and with respect to the alien and nationality status of the owners thereof, as the case may be. The affidavit shall be executed by an authorized representative of the contractor, subcontractor, or owner, as the case may be; shall be part of any executed contract,

subcontract, license agreement, lease or other financial compensation agreement between the covered employer and the County; and shall be made available to the public upon request.

An updated affidavit shall be submitted by each such employer, owner, contractor and subcontractor no later than January 1 of each year for the duration of any contract and upon the renewal or amendment of the contract, and whenever a new contractor or subcontractor is hired under the terms of the contract.

The Contractor acknowledges that such filings are a material, contractual and statutory duty and that the failure to file any such statement shall constitute a material breach of this agreement.

Under the provisions of the Lawful Hiring of Employees Law, the County shall have the authority to terminate this Agreement for violations of this Law and to seek other remedies available under the law.

The Contractor represents and warrants that it has read, is in compliance with, and shall comply with the requirements of Suffolk County Code Chapter 234, Suffolk County Local Law No. 52-2006, the Lawful Hiring of Employees Law.

**Required Forms:** Suffolk County Lawful Hiring of Employees Law Form LHE-1; entitled "Suffolk County Department of Labor --"Notice Of Application To Certify Compliance With Federal Law (8 U.S.C. SECTION 1324a) With Respect To Lawful Hiring of Employees"

"Affidavit Of Compliance With The Requirements Of 8 U.S.C. Section 1324a With Respect To Lawful Hiring Of Employees"  
Form LHE-2.

**5. Gratuities**

The Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of Suffolk County or New York State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement, and that the signer of this Agreement has read and is familiar with the provisions of Local Law No. 32-1980 of Suffolk County (Chapter 386 of the Suffolk County Code).

**6. Prohibition Against Contracting with Corporations that Reincorporate Overseas**

The Contractor represents that it is in compliance with Suffolk County Administrative Code Article IV, §§A4-13 and A4-14, found in Suffolk County Local Law No. 20-2004, entitled "A Local Law To Amend Local Law No. 5-1993, To Prohibit The County of Suffolk From Contracting With Corporations That Reincorporate Overseas." Such law provides that no contract for consulting services or goods and services shall be awarded by the County to a business previously incorporated within the U.S.A. that has reincorporated outside the U.S.A.

**7. Child Sexual Abuse Reporting Policy**

The Contractor agrees to comply with Chapter 577, Article IV, of the Suffolk County Code, entitled "Child Sexual Abuse Reporting Policy", as now in effect or amended hereafter or of any other Suffolk County Local Law that may become applicable during the term of this Agreement with regard to child sexual abuse reporting policy.

**8. Non Responsible Bidder**

The Contractor represents and warrants that it has read and is familiar with the provisions of Suffolk County Code Chapter 143, Article II, §§143-5 through 143-9. Upon signing this Agreement the Contractor certifies that he, she, it, or they have not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under the provision of Section 143-5 of the Suffolk County Code under "Nonresponsible Bidder."

**9. Use of Funds in Prosecution of Civil Actions Prohibited**

Pursuant to the Suffolk County Code Section §590-3, the Contractor represents that it shall not use any of the moneys received under this Agreement, either directly or indirectly, in connection with the prosecution of any civil action against the County of Suffolk or any of its programs, funded by the County, in part or in whole, in any jurisdiction or any judicial or administrative forum.

**10. Suffolk County Local Laws**

Suffolk County Local Laws, Rules and Regulations can be found on the Suffolk County web site at [www.co.suffolk](http://www.co.suffolk.nv.us) <<http://www.co.suffolk.nv.us>>. Click on "Laws of Suffolk County" under "Suffolk County Links."

SUFFOLK COUNTY  
County Legislature  
RIVERHEAD, NY



*This is to Certify That I*, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on June 9, 2009 and that the same is a true and correct transcript of said resolution and of the whole thereof.

*In Witness Whereof, I* have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

A handwritten signature in cursive script that reads "Tim Laube".

Clerk of the Legislature

Intro. Res. 1442 Res. No. 512

June 9, 2009

**Motion:**  
 Romaine, Schneiderman, Browning, Beedenbender, Losquadro,  
 Eddington, Montano, Alden, Lindsay, Vitoria-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Co-Sponsors:**  
 Romaine, Schneiderman, Browning, Beedenbender, Losquadro  
 Eddington, Montano, Alden, Lindsay, Vitoria-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Second:**  
 Romaine, Schneiderman, Browning, Beedenbender, Losquadro,  
 Eddington, Montano, Alden, Lindsay, Vitoria-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE					
2	Jay H. SCHNEIDERMAN					
3	Kate M. BROWNING					
4	Brian BEEDENBENDER					
6	Daniel P. LOSQUADRO					
7	Jack EDDINGTON					
9	Ricardo MONTANO					
10	Cameron ALDEN			/		
11	Thomas F. BARRAGA					
12	John M. KENNEDY, JR.					
13	Lynne C. NOWICK					
14	Wayne R. HORSLEY					
15	DuWayne GREGORY					
16	Steven H. STERN					
17	Lou D'AMARO					
18	Jon COOPER					
5	Vivian VILORIA-FISHER, D.P.O.			/		
8	William J. LINDSAY, P.O.			/		
	Totals	16	1	1	1	

**MOTION**

Approve

Table: \_\_\_\_\_

Send To Committee

Table Subject To Call

Lay On The Table

Discharge

Take Out of Order

Reconsider

Waive Rule \_\_\_\_\_

Override Veto

Close

Recess

APPROVED  FAILED \_\_\_\_\_

No Motion \_\_\_\_\_ No Second \_\_\_\_\_

**RESOLUTION DECLARED**

ADOPTED

NOT ADOPTED

*Tim Laube*

Tim Laube, Clerk of the Legislature

Roll Call \_\_\_\_\_ Voice Vote