

CLOSING ITEM NO.: A-3

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TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY

AND

SHOP-RITE SUPERMARKETS, INC.

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INSTALLMENT SALE AGREEMENT

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DATED AS OF APRIL 1, 2012

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RESPECTING CERTAIN MACHINERY AND EQUIPMENT TO BE  
LOCATED AT 41 VISTA BOULEVARD IN THE TOWN OF  
BETHLEHEM, ALBANY COUNTY, NEW YORK.

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THIS INSTALLMENT SALE AGREEMENT CONSTITUTES A  
SECURITY AGREEMENT UNDER THE UNIFORM COMMERCIAL  
CODE OF THE STATE OF NEW YORK.

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and is not a part of the Installment Sale Agreement.)

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## INSTALLMENT SALE AGREEMENT

THIS INSTALLMENT SALE AGREEMENT dated as of April 1, 2012 (the "Installment Sale Agreement") by and between TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 445 Delaware Avenue, Delmar, New York (the "Agency") and SHOP-RITE SUPERMARKETS, INC., a business corporation organized and existing under the laws of the State of New Jersey having an office for the transaction of business located at 176 North Main Street, Florida, New York (the "Company");

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities, for the purpose of carrying out any of its corporate purposes and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 582 of the Laws of 1973 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in September, 2011, Shop-Rite Supermarkets, Inc. (the "Company"), a business corporation duly organized and validly existing under the laws of the State of New Jersey, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) the acquisition and installation of certain machinery, equipment and other personal property (collectively, the "Equipment") at an approximately 65,000 square foot building located at 41 Vista Boulevard in the Town of Bethlehem, Albany County, New York (the "Land"), said Facility to be utilized as a retail grocery store (the Equipment being hereinafter collectively referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the

Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on October 17, 2011 (the "Public Hearing Resolution"), the Agency agreed to accept the Application and authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; AND

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the "Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on October 19, 2011 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on October 18, 2011 on a bulletin board located outside the Town Clerk's office located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York, (C) caused notice of the Public Hearing to be published on October 20, 2011 in The Times Union, a newspaper of general circulation available to the residents of the Town of Bethlehem, Albany County, New York, (D) conducted the Public Hearing on November 1, 2011 at 6:00 o'clock p.m., local time in Room 107 of the Town of Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York and (E) prepared a report of the Public Hearing (the "Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), (A) on May 9, 2008 the Town of Bethlehem Planning Board (the "Town Board"), acting as "lead agency" with respect to a larger project (the "Vista Project") in which this Project is a part of, accepted a final environmental impact statement (the "FEIS") with respect to the Vista Project, (B) on May 29, 2008, the Town Board adopted findings with respect to the Vista Project, as required by SEQRA, and filed such findings with the Agency, as an involved agency, and the other involved agencies and (C) by resolution adopted by the members of the Agency on June 22, 2011 (the "SEQR Resolution Adopting Findings of Lead Agency"), the Agency adopted the findings of the Town Board with respect to the Vista Project; and

WHEREAS, by resolution adopted by the members of the Agency on November 23, 2011 (the "SEQR Resolution"), the Agency determined, upon review of the Application and other materials submitted by the Company to the Agency with respect to the Project (collectively, the "Reviewed Materials"), that (A) the Project will be carried out in conformance with the conditions and thresholds established for such actions identified in the FEIS and (B) therefore, pursuant to Section 617.10(d)(1) of the Regulations, the Agency determined that no further SEQR compliance is required with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on November 23, 2011 (the "Approving Resolution"), the Agency determined to (A) grant the Financial Assistance and to acquire and install the Equipment, or cause the Equipment to be acquired and installed and (B) sell the Equipment to the Company pursuant to an installment sale agreement dated as of April 1, 2012 (the "Installment Sale Agreement") between the Agency and the Company pursuant to which, among other things, the Company shall be obligated (1) to pay all costs incurred by the Agency with respect to the Project and/or the Project Facility, including all costs of operation and maintenance, all taxes and other governmental charges, any required payments in lieu of taxes, and the reasonable fees and expenses

incurred by the Agency with respect to or in connection with the Project and/or the Equipment and (2) to comply with the provisions of the Act applicable to beneficiaries of financial assistance from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Installment Sale Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain license agreement dated as of April 1, 2012 (the "License Agreement") between the Company and the Agency, which grants to the Agency a license to enter upon the Land for the purpose of undertaking and completing the Project and (2) a bill of sale dated as of April 1, 2012 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance, and (C) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agency for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, since no real property tax exemption is intended to be granted by the Agency with respect to the Project at this time, no New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project under Section 412-a of the Real Property Tax Law) (a "Real Property Tax Exemption Form") will be filed by the Agency with respect to the Project at this time; and

WHEREAS, the providing of the Project Facility and the sale of the Project Facility to the Company pursuant to this Installment Sale Agreement is for a proper purpose, to wit, to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State, pursuant to the provisions of the Act; and

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

NOW, THEREFORE, FOR AND IN CONSIDERATION AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS, TO WIT:



ARTICLE I  
DEFINITIONS

SECTION 1.1. DEFINITIONS. All of the capitalized terms used in this Installment Sale Agreement and the preambles hereto not otherwise defined shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Appendix A and made a part hereof.

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

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

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa;

(D) any headings preceding the texts of the several Articles and Sections of this Installment Sale Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Installment Sale Agreement nor affect its meaning, construction or effect; and

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

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

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

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

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

(C) Pursuant to this Installment Sale Agreement, the Agency will cause the Project Facility to be acquired and installed and will sell the Project Facility to the Company pursuant to this Installment Sale Agreement, all for the purpose of advancing the job opportunities, health, general prosperity and economic welfare of the people of the State and improving their standard of living.

(D) Except as provided herein and in Article IX and Article X hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project Facility or any part thereof and shall maintain the Project Facility free and clear of all Liens or encumbrances except as contemplated or allowed by the terms of this Installment Sale Agreement and the other Basic Documents.

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

(A) The Company is a business corporation duly organized and validly existing under the laws of the New York, is duly authorized to do business in the State, has the power to enter into this Installment Sale Agreement and the other Basic Documents to which the Company is a party and to carry out its obligations hereunder and thereunder, has been duly authorized to execute, deliver and perform this Installment Sale Agreement and the other Basic Documents to which the Company is a party and is qualified to do business in all jurisdictions in which failure to do so would have a material adverse affect on its operations or ownership of Properties. This Installment Sale Agreement and the other Basic Documents to which the Company is a party, and the transactions contemplated hereby and thereby have been duly authorized by all necessary action by the Company's board of directors.

(B) Neither the execution and delivery of the Basic Documents to which the Company is a party, the consummation of the transactions contemplated thereby nor the fulfillment of or compliance

with the provisions thereof will (1) result in a breach of or conflict with any of the terms, conditions or provisions of the Company's [OpAgorInc] or any other corporate restriction or any agreement, instrument, order or judgment to which the Company is a party or by which the Company or any of its property is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any such instrument or agreement, other than the Permitted Encumbrances, (2) require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty or other agreement or instrument to which the Company is a party or by which it or any of its Property may be bound or affected, or (3) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

(C) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York.

(D) The Basic Documents to which the Company is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(E) During the term of this Installment Sale Agreement, the Project is and will continue to be a "project", as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action required by the Basic Documents or which the Agency, together with Special Counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way (1) cause the Project Facility not to constitute a "project", as such quoted term is defined in the Act, or (2) cause the Financial Assistance from the Agency to be applied in a manner contrary to that provided in the Basic Documents.

(F) The Project Facility and the operation thereof will comply with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith. The Company shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project and the operation of the Project Facility, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith.

(G) The Project will not have a "significant impact on the environment" within the meaning of such quoted term in SEQRA and the Company hereby covenants to comply with all mitigating measures, requirements and conditions, if any, enumerated in the SEQR Resolution under SEQRA (and any other environmental determinations issued under SEQRA by any other Governmental Authority) applicable to the acquisition, construction, reconstruction and installation of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project and/or the Project Facility. No material changes with respect to any aspect of the Project Facility have arisen from the date of the adoption of said SEQR Resolution which would cause the determination contained therein to be untrue.

(H) The Company acknowledges receipt of notice of Section 874(8) of the Act, which requires that the Company as agent of the Agency must annually file a statement with the New York State

Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency.

(I) The Company acknowledges receipt of notice of Section 858-b of the Act, which requires that the Company list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)). The Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(J) The Company acknowledges receipt of notice of Section 874(9) of the Act, which requires the Company, as agent of the Agency, to file within thirty (30) days of the date the Company is appointed the agent of the Agency, a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

## ARTICLE III

### CONVEYANCE AND USE OF THE PROJECT FACILITY

SECTION 3.1. AGREEMENT TO CONVEY TO THE AGENCY. (A) Pursuant to the License Agreement, the Company has or will convey, or will cause to be conveyed, to the Agency (1) a license interest in the Land and all improvements located or to be located thereon, and (2) title to the Equipment. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons. The Company shall, however, be entitled to physical possession and control of the Project Facility and shall be liable at all times for all risk, loss and damage with respect to the Project Facility.

(B) Pursuant to the Bill of Sale to Agency the Company has or, will convey, or will cause to be conveyed, to the Agency title to the Equipment. The Company hereby represents and warrants that it has good and marketable title to the portions of the Project Facility that exist on the Closing Date, free and clear from all Liens except for Permitted Encumbrances, and agrees that the Company will defend, indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons. The Company also agrees to pay all reasonable expenses incurred by the Agency in defending any action with respect to title to or a Lien affecting the Project Facility, except for Permitted Encumbrances.

SECTION 3.2. USE OF THE PROJECT FACILITY. Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Basic Documents or the Act, provided such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project Facility into disrepute as a public project; provided, however, that the Project Facility will not be used (1) as facilities used or to be used primarily for sectarian instruction or as a place of religious worship or (2) primarily as in connection with any part of a program of a school or department of divinity for any religious denomination; provided, further, however, that at no time shall any such use of the Project Facility be other than as retail grocery store and other directly and indirectly related activities and uses related thereto, without the written consent of the Agency.

SECTION 3.3. HAZARDOUS MATERIALS. (A) The Company represents, warrants and covenants that the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of the Company's knowledge, no prior owner of the Project Facility or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

(B) The Company shall keep or cause the Project Facility to be kept free of Hazardous Materials. Without limiting the foregoing, the Company shall not cause or permit the Project Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Applicable Laws, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company,

or any tenant or subtenant of the Company, an unlawful release of Hazardous Materials onto the Project Facility or onto any other property.

(C) The Company shall comply with, and ensure compliance by all tenants and subtenants of the Company with, all Applicable Laws regarding Hazardous Materials whenever and by whomever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants of the Company obtain and comply with, any and all approvals, registrations or permits required thereunder.

(D) The Company shall (1) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Material on, from or affecting the Project Facility (a) in accordance with all Applicable Laws, (b) to the satisfaction of the Agency, and (c) in accordance with the orders and directives of all federal, state and local governmental authorities and (2) defend, indemnify, and hold harmless the Agency and its employees, agents, officers and members 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 Materials used, transported, existing, stored, manufactured, refined, handled, produced or disposed of on or in the Project Facility which are on, from or affecting 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 Materials, (c) any lawsuit brought or threatened, settlement reached, or any government order relating to Hazardous Materials, and/or (d) any violations of Applicable Laws of Governmental Authorities which are based upon or in any way related to Hazardous Materials, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses.

(E) In the event the Project Facility is foreclosed or repossessed by the Agency, or the Company tenders a deed in lieu of foreclosure, or a bill of sale in lieu of repossession, the Company shall deliver the Project Facility to the purchaser free of any and all Hazardous Materials (except Hazardous Materials the presence of which do not violate any Federal, State or local laws, ordinances, rules and regulations governing the use and storage of such materials), so that the condition of the Project Facility shall conform with all Applicable Laws affecting the Project Facility.

(F) The Company agrees that the Agency and its officers, agents or representatives, may at any reasonable time and at the Company's expense inspect the Company's books and records and inspect and conduct any tests on the Project Facility, in order to determine that the Company is in compliance with all Applicable Laws.

(G) In the event that insurance shall become available at a reasonable cost to cover the Company's obligations under this Section 3.3, then, at the option of the Agency, the Company shall obtain adequate coverage.

**SECTION 3.4. COMPLIANCE WITH LICENSE TO AGENCY.** (A) Notwithstanding the granting of the license interest created by the License to Agency in the Licensed Premises to the Agency pursuant to the License to Agency, the Company agrees, in consideration of the undertakings of the Agency set forth herein, that the Company will be and remain solely liable under the License to Agency for the performance of all covenants, agreements, obligations and duties of the Agency as licensee under the License to Agency, including but not limited to the making of all payments thereunder, and the Company will perform all of the covenants, agreements and obligations of the Agency as licensee under the License to Agency, at no expense to the Agency, in consideration of the execution and delivery by the Agency of the Basic Documents.

(B) The Company shall, on behalf of the Agency, (1) pay all sums required to be paid by the Agency as licensee under and pursuant to the provisions of the License to Agency and (2) diligently perform and observe all of the terms, covenants and conditions of the License to Agency on the part of the Agency, as licensee thereunder, to be performed and observed, unless such performance or observance shall be waived or not required in writing by the licensor under the License to Agency, to the end that all things shall be done which are necessary to keep unimpaired the rights of the Agency, as licensee, under the License to Agency.

## ARTICLE IV

### UNDERTAKING AND COMPLETION OF THE PROJECT

SECTION 4.1. ACQUISITION AND INSTALLATION OF THE PROJECT FACILITY. (A) The Company shall, on behalf of the Agency, promptly acquire and install the Project Facility or cause the acquisition and installation of the Project Facility.

(B) No material change in the Plans and Specifications shall be made unless the Agency shall have consented thereto in writing (which consent shall not be unreasonably withheld or delayed).

(C) Title to all materials, equipment, machinery and other items of Property presently incorporated or installed in and which are a part of the Project Facility shall vest in the Agency immediately upon execution of the Bill of Sale to Agency. Title to all materials, equipment, machinery and other items of Property acquired subsequent to the Closing Date and intended to be incorporated or installed in and to become part of the Project Facility shall vest in the Agency immediately upon deposit on the Land or incorporation or installation in the Project Facility, whichever shall first occur. The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest title to the above in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(D) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1; provided, however, that the liability of the Agency thereunder shall be limited to the moneys of the Company available therefor and advanced by the Company for such purpose pursuant to Section 4.1(H) hereof.

(E) The Agency hereby appoints the Company and any additional agents as specified in the Agency and Indemnification Agreement as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Basic Documents, and the Company hereby accepts such appointment, (1) to acquire and install the Equipment, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for the acquisition and installation of the Equipment with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefore by the Company and advanced for such purposes by the Company pursuant to this Installment Sale Agreement, (3) to pay all fees, costs and expenses incurred in the acquisition and installation of the Equipment from funds made available therefor in accordance with this Installment Sale Agreement and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the acquisition and installation of the Equipment and to enforce the provisions of any contract, agreement, obligation, or other performance security in connection with the same, said appointment intending by the Agency to be retroactive to November 23, 2011.

(F) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all Applicable Laws, and the Company will defend, indemnify and save the Agency and its officers, members, agents (other than the Company), servants and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.



(G) To the extent required by Applicable Law, the Company, as agent for the Agency, will cause (1) compliance with the requirements of Article 8 of the New York Labor Law, and (2) any contractor, subcontractor and other person involved in the acquisition and installation of the Project Facility to comply with Article 8 of the New York Labor Law. The covenant in this subsection is not intended as a representation that Article 8 of the New York State Labor Law applies to the Project.

(H) The Company agrees, for the benefit of the Agency, to undertake and complete the Project and to pay all such sums as may be required in connection therewith. Title to portions of the Project Facility acquired, constructed and installed at the Company's cost shall immediately upon such acquisition, construction or installation vest in the Agency. The Company shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's title to such portions of the Project Facility.

(I) No payment by the Company pursuant to this Section 4.1 shall entitle the Company to any reimbursement for any such expenditure from the Agency or to any diminution or abatement of any amounts payable by the Company under this Installment Sale Agreement.

SECTION 4.2. COMPLETION OF THE PROJECT FACILITY. The Company will proceed with due diligence to commence and complete the acquisition and installation of the Project Facility. Completion of the same shall be evidenced by a certificate signed by an Authorized Representative of the Company delivered to the Agency stating (A) the date of such completion, (B) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid, (C) that the acquisition and installation of the Project Facility has been completed, (D) that the Company or the Agency has good and valid title to all Property constituting a portion of the Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances and (E) that the Project Facility is ready for use and operation for its intended purposes. Notwithstanding the foregoing, such certificate may state (1) that it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being, (2) that it is given only for the purposes of this Section 4.2, and (3) that no Person other than the Agency may benefit therefrom.

SECTION 4.3. REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUB-CONTRACTORS, MATERIALMEN AND THEIR SURETIES. In the event of a default by any contractor, subcontractor or materialman under any contract made by it in connection with the acquisition and installation of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and the Agency against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Company may, in its own name or, with the prior written consent of the Agency, in the name of the Agency, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety which the Company deems reasonably necessary, and in such event the Agency hereby agrees, at the Company's sole expense, to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Company shall advise the Agency of any actions or proceedings taken hereunder. The Net Proceeds of any recovery secured by the Company as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Project Facility and thereafter be paid to the Company for its own use.

## ARTICLE V

### AGREEMENT TO CONVEY PROJECT FACILITY; INSTALLMENT PURCHASE PAYMENTS

SECTION 5.1. AGREEMENT TO CONVEY THE PROJECT FACILITY. In consideration of the Company's covenant herein to make installment purchase payments hereunder, and in consideration of the other covenants of the Company contained herein, including the covenant to make additional and other payments required hereby, the Agency hereby agrees to sell and convey to the Company, and the Company hereby agrees to purchase and acquire from the Agency, the Project Facility, subject only to Permitted Encumbrances. The obligation of the Agency under this Section to convey the Project Facility to the Company shall be subject to there being no Event of Default existing hereunder, or any other event which would, but for the passage of time, be such an Event of Default.

SECTION 5.2. CONVEYANCE; INSTRUMENTS. (A) The ownership interest of the Agency in the Project Facility shall be conveyed (subject to the terms of the other Basic Documents) from the Agency to the Company on the Title Transfer Date subject to Permitted Encumbrances.

(B) The sale and conveyance of the ownership interest of the Agency in the Project Facility shall be effected by the delivery by the Agency of the Bill of Sale to Company (in substantially the form attached hereto as Exhibit C and by this reference made a part hereof) in accordance with the provisions of this Installment Sale Agreement. The termination of the Agency's license interest in the Project Facility created pursuant to the License to Agency shall be effected by the execution and delivery by the Agency to the Company of the Termination of License to Agency (in substantially the form attached hereto as Exhibit I and by this reference made a part hereof). The Company agrees to prepare the Bill of Sale to Company and the Termination of License to Agency and all schedules thereto, together with all necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that the Project is to be conveyed to the Company.

(C) The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from the transfers contemplated by this Section 5.2.

(D) This Installment Sale Agreement shall survive the transfer of the Project Facility to the Company pursuant to this Section 5.2 and shall remain in full force and effect until all of the Indebtedness shall have been paid in full, and thereafter the obligations of the Company shall survive as set forth in Section 11.7 hereof.

SECTION 5.3. INSTALLMENT PURCHASE PAYMENTS AND OTHER AMOUNTS PAYABLE. (A) The Company shall pay installment purchase payments for the Project as follows:

(1) Within seven (7) days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency any amount payable to the Agency as the reasonable fees and expenses of the Agency for performing its obligations under the Basic Documents, and the sum of the expenses of the Agency reasonably incurred in performing the obligations of the Company under this Installment Sale Agreement; and

(2) Within seven (7) days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the reasonable expenses of the Agency and the officers, members, agents and employees thereof incurred by reason of the Agency's ownership, financing or sale of the Project Facility or in connection with the carrying out of the Agency's

duties and obligations under this Installment Sale Agreement or any of the other Basic Documents and any other fee or expense of the Agency with respect to the Project Facility, the sale of the Project Facility to the Company or any of the other Basic Documents, the payment of which is not otherwise provided for under this Installment Sale Agreement.

(B) The Company agrees to make the above mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.3 for a period of more than thirty (30) days from the date such payment is due, the Company shall pay the same together with interest thereon at a rate of two percent (2%) per month or the maximum permitted by law, whichever is less, from the date on which such payment was due until the date on which such payment is made.

SECTION 5.4. NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER. (A) The obligations of the Company to make the payments required by this Installment Sale Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any right of setoff, recoupment or counterclaim or abatement that the Company may otherwise have against the Agency. The Company agrees it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in, this Installment Sale Agreement, or terminate this Installment Sale Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the acquisition and installation of the Project Facility, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of title to or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Installment Sale Agreement.

(B) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Installment Sale Agreement, and, in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 11.9 hereof); provided, however, that the Company shall look solely to the Agency's estate and interest in the Project Facility for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Company) or employees of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Installment Sale Agreement, the relationship of the Agency and the Company hereunder or the Company's purchase of and title to the Project Facility, or any other liability of the Agency to the Company.

SECTION 5.5. PREPAYMENT OF INSTALLMENT PURCHASE PAYMENTS. The Company, at any time, may prepay moneys due under this Installment Sale Agreement to the Agency. The Company shall notify the Agency, in writing, of any such prepayment.

SECTION 5.6. GRANT OF SECURITY INTEREST. The Company hereby grants the Agency a security interest in all of the right, title and interest of the Company in the Project Facility and in all additions and accessions thereto, all replacements and substitutions therefor and all proceeds thereof, and

all books, records and accounts of the Company pertaining to the Project Facility and all proceeds thereof, as security for payment of the installment purchase payments and all other payments and obligations of the Company hereunder. The Company hereby irrevocably appoints the Agency as its attorney-in-fact to execute and deliver and file any instruments necessary or convenient to perfect and continue the security interest granted herein.

## ARTICLE VI

### MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1. MAINTENANCE AND MODIFICATIONS OF THE PROJECT FACILITY. (A) The Company agrees that, during the term of this Installment Sale Agreement, the Company will (1) keep the Project Facility in good and safe condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen), and (3) operate the Project Facility in a sound and economic manner.

(B) The Company shall not make any additions, modifications or improvements to the Project Facility or any part thereof unless:

(1) the Company shall (a) give or cause to be given all notices and comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on such addition, modification or improvement to the Project Facility, or a part thereof, (b) defend and save the Agency and its officers, members, agents (other than the Company) and employees harmless from all fines and penalties due to failure to comply therewith, (c) promptly procure all permits and licenses necessary for the prosecution of any work described in this Section 6.1(B), and (d) make all payments in lieu of taxes required by Section 6.6 hereof; and

(2) the addition, modification or improvement to the Project Facility shall not constitute a default under any of the Basic Documents.

SECTION 6.2. TAXES, ASSESSMENTS AND UTILITY CHARGES. (A) The Company shall pay or cause to be paid, as the same respectively become due, (1) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility, (2) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, (3) all assessments and charges of any kind whatsoever lawfully made against the Project Facility by any Governmental Authority for public improvements, and (4) all payments required under Section 6.6 hereof; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated hereunder to pay only such installments as are required to be paid during the term of this Installment Sale Agreement.

(B) Notwithstanding the provisions of subsection (A) of this Section 6.2, the Company may withhold any such payment and the Company may in good faith actively contest the validity or the applicability of any payment referred to in such subsection (A) provided that the Company (1) first shall have notified the Agency in writing of such contest, (2) is not in default under any of the Basic Documents, (3) shall have set aside adequate reserves for any such taxes, assessments and other charges, and (4) demonstrates to the reasonable satisfaction of the Agency that the nonpayment of any such items will not subject the Project Facility or any part thereof to loss or forfeiture. Otherwise, such taxes, assessments or charges shall be paid promptly by the Company or secured by the Company's posting a bond in form and substance satisfactory to the Agency.

SECTION 6.3. INSURANCE REQUIRED. During the term of this Installment Sale Agreement, the Company shall maintain insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) (1) During and prior to completion of the Project Facility, builder's risk (or equivalent coverage) insurance upon any work done or material furnished in connection with the acquisition, construction, reconstruction and installation of the Project Facility, issued to the Company and the Agency, as insureds, as their interests may appear, and (2) at such time that builder's risk insurance is no longer available by virtue of completion of the acquisition, construction, reconstruction and installation of the Project Facility, insurance protecting the interests of the Company and the Agency, as insureds, as their interests may appear, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount acceptable to the Company and the Agency.

(B) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility or who are responsible for the acquisition and installation of the Project Facility.

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

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

SECTION 6.4. ADDITIONAL PROVISIONS RESPECTING INSURANCE. (A) All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and having a Best rating satisfactory to the Agency. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall name the Company and the Agency as insureds as their interests may appear, and provide for at least thirty (30) days' written notice to the Company and the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency on or before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4 hereof. At least thirty (30) days prior to the expiration of any such policy, the Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Installment Sale Agreement.

(B) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company; provided, however, that, if the premiums are not timely paid, the Agency may pay such

premiums and the Company shall pay immediately upon demand all sums so expended by the Agency together with interest at a rate of two percent (2%) per month or the highest rate permitted by law, whichever is less.

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

**SECTION 6.6. PAYMENTS IN LIEU OF REAL ESTATE TAXES.** (A) It is recognized that under the provisions of the Act the Agency is required to pay no taxes or assessments upon any of the Property acquired by it or under its jurisdiction, control or supervision or upon its activities. It is not the intention, however, of the parties hereto that the Project Facility be treated as exempt from real property taxation. Accordingly, the parties hereto acknowledge that the Agency has not filed, and does not intend to file a Real Property Tax Exemption Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility, and accordingly the parties hereto understand that the Project Facility is not entitled to any exemption from real property taxation by virtue of the involvement of the Agency with the Project.

(B) In the event that the Project Facility would be subject to real property taxation if owned by the Company but shall be deemed exempt from real property taxation due to the involvement of the Agency therewith, the Agency and the Company hereby agree that the Company, or any subsequent user of the Project Facility pursuant to this Installment Sale Agreement, shall in such event be required to make or cause to be made payments in lieu of real estate taxes to the school district or school districts, city, town, county, village and other political units wherein the Project Facility is located having taxing powers (such political units are hereinafter collectively referred to as the "Taxing Entities") in such amounts as would result from real estate taxes being levied on the Project Facility by the Taxing Entities if the Project Facility were privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, but with appropriate reductions similar to the tax exemptions and credits, if any, which would be afforded to the Company if it were the owner of the Project Facility. It is agreed that the Agency, in cooperation with the Company, (1) shall cause the Project Facility to be valued for purposes of determining the amounts due hereunder as if owned by the Company as aforesaid by the appropriate officer or officers of any of the Taxing Entities as may from time to time be charged with responsibility for making such valuations, (2) shall cause to be appropriately applied to the valuation or valuations so determined the respective real estate tax rate or rates of the Taxing Entities that would be applicable to the Project Facility if so privately owned, (3) shall cause the appropriate officer or officers of the Taxing Entities charged with the duty of levying and collecting such real estate taxes to submit to the Company, when the respective levies are made for purposes of such real estate taxes upon Property privately owned as aforesaid, statements specifying the amounts and due dates of such real estate taxes which the Taxing Entities would receive if such Property were so privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, and (4) shall file with the appropriate officer or officers any accounts or tax returns furnished to the Agency by the Company for the purpose of such filing.

(C) The Company shall pay or cause to be paid to the Taxing Entities when due all such payments in lieu of real estate taxes with respect to the Project Facility required by Section 6.6(B) of this Installment Sale Agreement to be paid to the Taxing Entities, subject in each case to the Company's right to (1) obtain exemptions and credits, if any, which would be afforded to a private owner of the Project Facility, including any available exemption under Section 485-b of the New York Real Property Tax Law with respect to the Project Facility, (2) contest valuations of the Project Facility made for the purpose of

determining such payments therefrom, and (3) seek to obtain a refund of any such payments made. In the event the Company shall fail to make or cause to be made any such payments in lieu of taxes when due, the amount or amounts so in default shall continue as an obligation of the Company until fully paid, and the Company hereby agrees to pay or cause to be paid the same, together with interest thereon, at the greater of (a) two percent (2%) per month, or (b) the same rate per annum as if such amounts were delinquent real estate taxes.



## ARTICLE VII

### DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1. DAMAGE OR DESTRUCTION. (A) If the Project Facility shall be damaged or destroyed, in whole or in part:

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

(2) there shall be no abatement or reduction in the amounts payable by the Company under this Installment Sale Agreement (whether or not the Project Facility is replaced, repaired, rebuilt or restored);

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

(4) except as otherwise provided in subsection (B) of this Section 7.1, (a) the Company shall promptly replace, repair, rebuild or restore the Project Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project", as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency, and (b) (1) the Agency shall make available to the Company (from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any insurance settlement provided by the Agency to the Company are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any insurance settlement, if any, remaining on deposit with the Agency after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be paid to the Company for its own purposes.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, in the event that the damage to the Project Facility exceeds \$250,000, the Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Company shall notify the Agency that in the Company's sole judgment, the Company does not deem it practical or desirable to replace, repair, rebuild or restore the Project Facility. In such event, the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project, together shall be applied to the moneys owing to the Agency.

(C) If there are no moneys due to the Agency and all other amounts due under this Installment Sale Agreement and the other Basic Documents are paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(D) Unless an Event of Default shall have occurred and be continuing, the Company may adjust all claims under any policies of insurance required by Section 6.3(A) hereof.

SECTION 7.2. CONDEMNATION. (A) To the knowledge of the Company, no condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility.

(B) If title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation:

(1) neither the Agency nor the Company shall have an obligation to restore the Project Facility; and

(2) there shall be no abatement or reduction in the amounts payable by the Company under this Installment Sale Agreement (whether or not the Project Facility is restored).

(C) If all amounts due under this Installment Sale Agreement and the other Basic Documents have been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(D) Unless an Event of Default under any of the Basic Documents shall have occurred and be continuing, the Company shall have sole control of any Condemnation proceeding with respect to the Project Facility or any part thereof and may negotiate the settlement of any such proceeding.

(E) The Agency shall, at the expense of the Company, cooperate fully with the Company in the handling and conduct of any such Condemnation proceeding. In no event shall the Agency voluntarily settle, or consent to the settlement of, any such Condemnation proceeding without the written consent of the Company.

SECTION 7.3. ADDITIONS TO THE PROJECT FACILITY. All replacements, repairs, rebuilding or restoration made pursuant to Sections 7.1 or 7.2, whether or not requiring the expenditure of the Company's own money shall automatically become part of the Project Facility as if the same were specifically described herein.

## ARTICLE VIII

### SPECIAL COVENANTS

SECTION 8.1. NO WARRANTY OF CONDITION OR SUITABILITY BY AGENCY; ACCEPTANCE "AS IS". THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT TITLE TO THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

SECTION 8.2. HOLD HARMLESS PROVISIONS. (A) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's financing, acquiring, equipping, installing, owning or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Installment Sale Agreement or any of the other Basic Documents or the enforcement of or defense of validity of any provision of any Basic Documents, (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) hereof, and (4) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

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

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

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

**SECTION 8.3. RIGHT OF ACCESS TO THE PROJECT FACILITY.** The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times with reasonable notice to the Company to enter upon and to examine and inspect the Project Facility. The Company further agrees that the Agency shall have such rights of access to the Project Facility as may be reasonably necessary to cause the proper maintenance of the Project Facility in the event of failure by the Company to perform its obligations hereunder.

**SECTION 8.4. COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS; CONDITIONS UNDER WHICH EXCEPTIONS PERMITTED.** The Company agrees that, during the term of this Installment Sale Agreement, it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another corporation, or permit one or more corporations to consolidate with or merge into it, without notice to the Agency and obtaining the prior written consent of the Agency; provided, however, that, if no Event of Default specified in Section 10.1 hereof shall have occurred and be continuing, the Company may consolidate with or merge into another domestic corporation organized and existing under the laws of one of the states of the United States, or permit one or more such domestic corporations to consolidate with or merge into it, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve, provided that (A) the Agency has received notice of such action, (B) the Agency gives its written consent, which consent shall not be unreasonably withheld, (C) the surviving, resulting or transferee corporation assumes in writing all of the obligations of and restrictions on the Company under this Installment Sale Agreement and the other Basic Documents, and (D) as of the date of such transaction, the Agency shall be furnished with (1) an opinion of counsel to the Company as to compliance with item (B) of this Section 8.4 and (2) a certificate, dated the effective date of such transaction, signed by an Authorized Representative of the Company and of the surviving, resulting or transferee corporation, as the case may be, or the transferee of its assets to the effect that immediately after the consummation of the transaction and after giving effect thereto, no Event of Default exists under this Installment Sale Agreement and no event exists which, with notice or lapse of time or both, would become such an Event of Default.

**SECTION 8.5. AGREEMENT TO PROVIDE INFORMATION.** The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

**SECTION 8.6. BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS; COMPLIANCE CERTIFICATES.** (A) The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company.

(B) As soon as possible after the end of each fiscal year of the Company, but in any event within thirty (30) days after such date, the Company shall furnish to the Agency a certificate of an Authorized Representative of the Company stating that no Event of Default hereunder has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto.

**SECTION 8.7. COMPLIANCE WITH APPLICABLE LAWS.** (A) The Company agrees, for the benefit of the Agency, that it will, during the term of this Installment Sale Agreement, promptly comply with all Applicable Laws.

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

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

**SECTION 8.8. DISCHARGE OF LIENS AND ENCUMBRANCES.** The Company hereby agrees not to create or suffer to be created any Lien on any Properties of the Agency (other than the Project Facility) or on any funds of the Agency applicable to the Project Facility.

**SECTION 8.9. PERFORMANCE BY THE AGENCY OF THE COMPANY'S OBLIGATIONS.** Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, without notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Agency, and paying all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Agency in connection therewith; and the Company shall pay immediately upon demand all sums so incurred or expended by the Agency under the authority hereof, together with interest thereon at the rate of two percent (2%) per month or the maximum rate permitted by law, whichever is less.

**SECTION 8.10. DEPRECIATION DEDUCTIONS AND TAX CREDITS.** The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

**SECTION 8.11. EMPLOYMENT OPPORTUNITIES.** (A) The Company shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

(B) Pursuant to Section 858-b of the Act, except as otherwise provided by collective bargaining contracts or agreements, the Company agrees that except as otherwise provided by collective

bargaining agreements where applicable, (1) to list all new employment opportunities created as a result of the Project with the New York State Department of Labor, Community Services Division ("NYSDOL") and with the administrative entity (collectively with NYSDOL, the "JTPA Referral Entities") of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)) and (2), where practicable, to first consider for such new employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.

(C) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, prior to the effective date of this Installment Sale Agreement, an employment plan, in substantially the form attached hereto as Exhibit D.

(D) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, on an annual basis, reports regarding the number of people employed at the Project Facility and certain other matters, the initial said annual employment report to be in substantially the form annexed hereto as Exhibit E.

SECTION 8.12. SALES AND USE TAX EXEMPTION. (A) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales taxes and use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of New York sales or use taxes. Any exemption from the payment of New York sales or use taxes resulting from the involvement of the Agency with the Project shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of New York sales or use tax. It is the intention of the parties hereto that the Company will receive a sales tax exemption letter with respect to the Project, said sales tax exemption letter to be issued on the date of the execution of this Installment Sale Agreement and in a form similar to the form attached hereto as Exhibit F.

(B) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause any sublessee or other operator of the Project Facility to file annually with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Sales Tax Report"), a statement of the value of all sales and use tax exemptions claimed by the Company and all contractors, subcontractors, consultants and other agents of the Company under the authority granted to the Company pursuant to Section 4.1(E) of this Installment Sale Agreement. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this subsection (B), the Company shall immediately cease to be the agent of the Agency in connection with the Project. A current sample form of such Annual Sales Tax Report required to be completed by the Company pursuant to this Installment Sale Agreement is attached hereto as Exhibit G. For future filings of the Annual Sales Tax Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Annual Sales Tax Report.

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

(D) Pursuant to Section 874(9) of the Act, the Company agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), a statement identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. A current sample form of such Thirty-Day Sales Tax Report required to be completed by the Company pursuant to this Installment Sale Agreement is attached hereto as Exhibit H. For future filings of the Thirty-Day Sales Tax Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Thirty-Day Sales Tax Report.

SECTION 8.13. IDENTIFICATION OF THE EQUIPMENT. All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Installment Sale Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

## ARTICLE IX

### ASSIGNMENTS; MERGER OF THE AGENCY

SECTION 9.1. RESTRICTION ON TRANSFER OF INTERESTS HEREUNDER. Except as otherwise provided in Section 8.4 hereof, this Installment Sale Agreement may not be assigned by the Company, in whole or in part, without the prior written consent of the Agency.

SECTION 9.2. ASSIGNMENT OF INSTALLMENT SALE AGREEMENT. (A) Except for subleases of portions of the Project Facility entered into by the Company in the ordinary course of business and in compliance with the terms of this Installment Sale Agreement and the other Basic Documents and as otherwise provided herein, the Company may not sell, lease, transfer, convey or otherwise dispose of the Project Facility or any part thereof without the prior written consent of the Agency, which consent shall not be unreasonably withheld or delayed; provided, however, that the prior written consent of the Agency shall not be required when the Company proposes to sublease a portion of the Project Facility in the ordinary course of business and such sublease is consistent with Section 3.2 hereof and the provisions of Section 854(4) and Section 862(1) of the Act.

(B) Notwithstanding anything to the contrary contained in this Installment Sale Agreement, in any instance after the Completion Date where the Company reasonably determines that any portion of the Project Facility has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such portion of the Project Facility and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Agency, provided that such removal will not materially impair the value of the Project Facility as collateral and provided the same is forthwith replaced with similar items. At the request of the Company, the Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Property free from the Liens of the Basic Documents. The Company shall pay all costs and expenses (including counsel fees) incurred in transferring title to and releasing from the Liens of the Basic Documents any item of Property removed pursuant to this Section 9.3.

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

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



## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1. EVENTS OF DEFAULT DEFINED. (A) The following shall be "Events of Default" under this Installment Sale Agreement, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Installment Sale Agreement, any one or more of the following events:

(1) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.3(A) hereof;

(2) A default in the performance or observance of any other of the covenants, conditions or agreements on the part of the Company in this Installment Sale Agreement and the continuance thereof for a period of thirty (30) days after written notice is given by the Agency to the Company, provided that if such default cannot reasonably be cured within said thirty-day period and the Agency or the Company shall have commenced action to cure the breach of covenant within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default; and

(3) The occurrence of an "Event of Default" under any of the other Basic Documents.

(4) The Company shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due.

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

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

(7) The removal of the Project Facility, or any portion thereof, outside Town of Bethlehem, New York, without the prior written consent of the Agency, other than in connection with a removal under Section 9.3(B) hereof.

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

(B) Notwithstanding the provisions of Section 10.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Installment Sale Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Agency within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Installment Sale Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Sections 5.3 and 6.2 hereof, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Section 8.2 hereof and to comply with the provisions of Sections 2.2(E), 8.2, 8.4, 8.5 and 8.7(C) hereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of any Governmental Authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

SECTION 10.2. REMEDIES ON DEFAULT. (A) Whenever any Event of Default shall have occurred, the Agency may to the extent permitted by law take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all unpaid installment purchase payments payable pursuant to Section 5.3(A) hereof, and (b) all other payments due under this Installment Sale Agreement or any of the other Basic Documents;

(2) re-enter and take possession of the Project Facility, enforce or terminate this Installment Sale Agreement, sell the Project Facility, subject to Permitted Encumbrances, at public or private sale, as a whole or piecemeal, for such consideration as may be deemed appropriate in the circumstances, and hold the Company liable for the amount, if any, by which the aggregate unpaid amounts due hereunder exceed the Net Proceeds received upon such sale, or manage and operate the Project Facility, collect all or any rents accruing therefrom, let or relet the Project Facility or any part thereof for the Agency's own account or the account of the Company, holding the Company liable for payments due up to the effective date of such leasing and for the difference in the rent and other amounts paid by the lessee pursuant to such lease and the installment purchase payments and other amounts payable by the Company hereunder, cancel or modify leases, evict tenants, bring or defend any suits in connection with the possession of the Project Facility in its own name or in the Company's name, make repairs as the Agency deems

appropriate, and perform such other acts in connection with the management and operation of the Project Facility as the Agency, in its discretion, may deem proper; or

(3) terminate this Installment Sale Agreement and convey to the Company all the Agency's right, title and interest in and to the Project Facility (The conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the execution by the Agency of the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or

(4) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Installment Sale Agreement.

(B) Any sums collected as a consequence of any action taken pursuant to this Section 10.2 shall be paid to the Agency and applied in accordance with the provisions of this Installment Sale Agreement.

(C) No action taken pursuant to this Section 10.2 (including repossession of the Project Facility) shall relieve the Company from its obligations to make all payments required by Sections 5.3 and 8.2 hereof.

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

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

SECTION 10.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI  
MISCELLANEOUS

SECTION 11.1. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Shop-Rite Supermarkets, Inc.  
176 North Main Street  
Florida, New York 10921  
Attention: Tom Urtz

WITH A COPY TO:

Debra Lambek, Esq.  
Segel, Goldman, Mazzotta & Siegel, P.C.  
9 Washington Square  
Albany, New York 12205

IF TO THE AGENCY:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue  
Delmar, New York 12054  
Attention: Chairman

WITH A COPY TO:

Thomas P. Connolly  
McNamee Lochner Titus & Williams P.C.  
677 Broadway  
Albany, New York 12207

and

A. Joseph Scott, III, Esq.  
Hodgson Russ LLP  
677 Broadway, Suite 301  
Albany, New York 12207

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

SECTION 11.2. BINDING EFFECT. This Installment Sale Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and, as permitted by this Installment Sale Agreement, their respective successors and assigns.

SECTION 11.3. SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Installment Sale Agreement.

SECTION 11.4. AMENDMENT. This Installment Sale Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 11.5. EXECUTION OF COUNTERPARTS. This Installment Sale Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 11.6. APPLICABLE LAW. This Installment Sale Agreement shall be governed exclusively by and construed in accordance with the Applicable Laws of the State.

SECTION 11.7. SURVIVAL OF OBLIGATIONS. (A) The obligations of the Company to make the payments required by Section 5.3 hereof and to provide the indemnity required by Section 8.2 hereof shall survive the termination of this Installment Sale Agreement, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Company to the Agency with respect to the Unassigned Rights shall survive the termination of this Installment Sale Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents or employees, relating thereto.

SECTION 11.8. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Installment Sale Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Installment Sale Agreement.

SECTION 11.9. NO RECOURSE; SPECIAL OBLIGATION. (A) The obligations and agreements of the Agency contained herein and in the other Basic Documents and any other instrument or document executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, director, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, directors, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

(B) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or Town of Bethlehem, New York, and neither the State of New York nor Town of Bethlehem, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(C) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten (10) day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, directors, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

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

TOWN OF BETHLEHEM INDUSTRIAL  
DEVELOPMENT AGENCY

BY:   
(Vice) Chairman

SHOP-RITE SUPERMARKETS, INC.

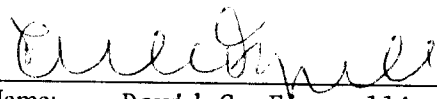
BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

TOWN OF BETHLEHEM INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

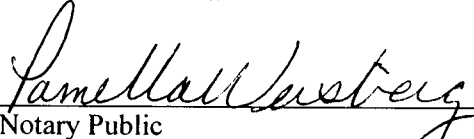
SHOP-RITE SUPERMARKETS, INC.

BY:  \_\_\_\_\_  
Name: David C. Figurelli  
Title: President



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

On the 22<sup>nd</sup> day of December in the year 2011 before me, the undersigned, personally appeared FRANK S. VENEZIA, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

Pamella Weisberg  
Notary Public, State of New York  
Qualified in Rensselaer County  
No. 01WE4943734  
Commission Expires October 31, 2014

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

On the 21 day of December in the year 2011 before me, the undersigned, personally appeared DAVID C. FIGURELLI, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

ROSE M. PAWLICZAK  
Notary Public, State of New York  
Reg. No. 01PA61879-10  
County of Orange  
Commission Expires June 2, 2012

## APPENDIX A

### SCHEDULE OF DEFINITIONS

The following words and terms used in the attached document shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

“Act” means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 582 of the 1973 Laws of the State, constituting Section 909-b of the General Municipal Law of the State, as amended from time to time.

“Agency” means (A) Town of Bethlehem Industrial Development Agency and its successors and assigns, and (B) any public benefit corporation or other public corporation resulting from or surviving any consolidation or merger to which Town of Bethlehem Industrial Development Agency or its successors or assigns may be a party.

“Agency and Indemnification Agreement” means the agency and indemnification agreement dated as of April 1, 2012 by and between the Agency and the Subagent, as said agency and indemnification agreement may be amended or supplemented from time to time.

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

“Approving Resolution” means the resolution duly adopted by the Agency on November 23, 2011, authorizing and directing the undertaking and completion of the Project and the execution and delivery of the Basic Documents to which the Agency is a party.

“Authorized Representative” means the person or persons at the time designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Company and the Agency containing the specimen signature of each such person and signed on behalf of (A) the Agency by its Chairman or Vice Chairman as such other person may be authorized by resolution of the members of the Agency to act on behalf of the Agency, and (B) the Company by any officer or such other person as may be authorized in writing by the Board of directors of the Company to act on behalf of the Company.

“Basic Documents” means the Bill of Sale to Agency, the License Agreement, the Installment Sale Agreement and any other document now or hereafter executed by the Agency or the Company which secures or guarantees any sum due under any of the other Basic Documents.

“Bill of Sale to Agency” means the bill of sale delivered on the Closing Date from the Company to the Agency conveying all of the Company’s interest in the Equipment to the Agency.

“Bill of Sale to Company” means the bill of sale from the Agency to the Company conveying all of the Agency’s interest in the Equipment to the Company, and being substantially in the form attached as Exhibit C to the Installment Sale Agreement.

“Business Day” means a day on which banks located in the in the Town of Bethlehem, New York are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

“Closing” means the closing at which the Basic Documents are executed and delivered by the Company and the Agency.

“Closing Date” means the date of Closing.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations of the United States Treasury Department promulgated thereunder.

“Company” means Shop-Rite Supermarkets, Inc., a business corporation duly organized and existing under the laws of the State of New Jersey, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of the Installment Sale Agreement.

“Completion Date” means such date as to be determined by written communication from the Agency to the Company, or such earlier date as is certified as the date of completion of the Project pursuant to Section 4.2 of the Installment Sale Agreement.

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

“Contractor” means BBL Construction Services, LLC, a limited liability company duly organized and existing under the laws of the State of New York.

“Equipment” means all those materials, machinery, equipment, fixtures or furnishings intended to be acquired with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of the Installment Sale Agreement and such substitutions and replacements therefor as may be made from time to time pursuant to the Installment Sale Agreement, including without limitation, all the Property described in Exhibit B attached to the Installment Sale Agreement.

“Event of Default” means, with respect to any particular Basic Document, any event specified as an Event of Default pursuant to the provisions thereof.

“Facility” means all buildings (or portions thereof), improvements, structures and other related facilities, and improvements thereto, (A) located on the Land, (B) financed with the proceeds of any payment made by the Company pursuant to Section 4.1(H) of the Installment Sale Agreement, and (C) not constituting a part of the Equipment, all as they may exist from time to time.

“Financial Assistance” shall have the meaning assigned to such term in the fifth recital clause to the Installment Sale Agreement.

“Governmental Authority” means the United States of America, the State, any other state and any political subdivision thereof, and any agency, department, commission, court, board, bureau or instrumentality of any of them.

“Gross Proceeds” means one hundred percent (100%) of the proceeds of the transactions in question, including, but not limited to, the settlement of any insurance claim or Condemnation award.

“Hazardous Materials” shall mean all hazardous materials including, without limitation, any flammable explosives, radioactive materials, radon, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), Articles 15 or 27 of the State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule or regulation.

“Indebtedness” means (1) the monetary obligations of the Company to the Agency and its members, officers, agents, servants and employees under the Installment Sale Agreement and the other Basic Documents, and (2) all interest accrued on any of the foregoing.

“Independent Counsel” means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any State and not a full-time employee of the Company or the Agency.

“Installment Sale Agreement” means the installment sale agreement dated as of April 1, 2012 between the Agency and the Company, as said Installment Sale Agreement may be supplemented or amended from time to time.

“Land” means an approximately approximately 7.80 acre parcel of land located at 41 Vista Boulevard in the Town of Bethlehem, Albany County, New York, as more particularly described on Exhibit A to the Installment Sale Agreement.

“License to Agency” means the license agreement dated as of April 1, 2012 and delivered on the Closing Date from the Company to the Agency, pursuant to which the Company has authorized the Agency to enter upon the Land for the purpose of (A) undertaking and completing the Project and (B) enforcing the provisions of the Installment Sale Agreement, as said license agreement may be amended or supplemented from time to time.

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

“Lien Law” means the Lien Law of the State.

“Local Authority” means any Governmental Authority which exercises jurisdiction over the Land or the undertaking of the Project.

“Net Proceeds” means so much of the Gross Proceeds with respect to which that term is used as remain after payment of all fees for services, expenses, costs and taxes (including attorneys’ fees) incurred in obtaining such Gross Proceeds.

“Permitted Encumbrances” means and includes with respect to the Company and its Subsidiaries (if any): (A) utility, access and other easements, restrictions, rights of way, exceptions, encroachments, reservations or defects which, in the aggregate, do not interfere materially with the continued use of such properties for the purposes for which they are used and do not affect materially the value thereof; (B) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens to the extent permitted by Section 8.8(B) of the Installment Sale Agreement; (C) Liens for taxes, assessments and utility charges, to the extent permitted by Section 6.2(B) of the Installment Sale Agreement; (D) any Lien on the Project Facility obtained through any Basic Document and (E) any Lien requested by the Company in writing and consented to by the Agency, which consent of the Agency shall not be unreasonably withheld or delayed.

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

“Plans and Specifications” means the description of the Project Facility appearing in the fifth recital clause to the Installment Sale Agreement.

“Premises” means the Land and any improvements now or hereafter located on the Land.

“Project” shall have the meaning set forth in the fifth recital clause to the Installment Sale Agreement.

“Project Facility” means, collectively, the Land, the Facility and the Equipment.

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

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

“Sales Tax Exemption Letter” shall have the meaning assigned to such term in Section 8.12 of the Installment Sale Agreement.

“SEQRA” means Article Eight of the Environmental Conservation Law of the State and the statewide regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York.

“State” means the State of New York.

“Subagent” means Wakefern Food Corp.

“Subsidiary” means, with respect to any Person, any corporation, the majority of the voting securities of which at any time outstanding is owned directly or indirectly by such Person, or by one or more of such Person’s other Subsidiaries or by such Person in conjunction with one or more of its other Subsidiaries.

“Termination of License to Agency” means the termination of the License to Agency from the Agency to the Company, evidencing termination of the License to Agency, substantially in the form attached as Exhibit I to the Installment Sale Agreement.

“Title Transfer Date” means the earlier to occur of (A) the date requested by the Company for transfer of the Project Facility to the Company or (B) July 1, 2013.

“Unassigned Rights” means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.2, 3.3, 4.1(B), 4.1(C), 4.1(D), 4.1(E)(2), 4.1(F), 4.1(G), 5.3(A), 5.4(B), 5.6, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 9.1, 9.3, 11.4 and 11.9 of the Installment Sale Agreement, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents (other than the Company) and employees of the Agency for their own account pursuant to Sections 2.2(G), 3.3, 4.1, 5.3(B), 6.4(B), 8.2, 10.2 and 10.4 of the Installment Sale Agreement and (C) the right to enforce the foregoing pursuant to Article X of the Installment Sale Agreement.

EXHIBIT A  
DESCRIPTION OF THE LAND  
**- SEE ATTACHED -**



SHOPRITE PARCEL  
VISTA TECHNOLOGY PARK  
BETHLEHEM, NEW YORK

All that certain parcel of land situate in the Town of Bethlehem, County of Albany and State of New York, being more particularly bounded and described as follows:

**Beginning** at a point located on the northerly bounds of Vista Boulevard, said point located the following two (2) courses and distances as measured along the northerly bounds of Vista Boulevard from its intersection with the westerly bounds of Map 13, Parcel 13 on New York State Department of Transportation Acquisition Map Slingerlands Bypass, Part 3, SH No. 2006-1 (NYS Route 85):

1. North 71°02'13" West, a distance of 395.35 feet to a point;
2. North 67°58'02" West, a distance of 98.11 feet to the **Point of Beginning**;

Thence from said **Point of Beginning** along the northerly bounds of Vista Boulevard the following four (4) courses and distances:

1. North 67°58'02" West, a distance of 78.14 feet to a point;
2. North 71°51'50" West, a distance of 147.15 feet to a point;
3. North 67°58'02" West, a distance of 323.32 feet to a point of curvature;
4. Northwesterly, along a curve to the right having a radius of 469.50 feet, included angle of 25°25'44" and a chord of North 55°15'10" West, 206.67 feet for an arc length of 208.37 feet to a point;

Thence through the lands now or formerly of Vista Development Group LLC as described in Book 2949 of Deeds at Page 768 – Portion A the following four (4) courses and distances:

1. North 47°27'43" East, a distance of 47.80 feet to a point;
2. North 39°40'34" East, a distance of 99.84 feet to a point;
3. North 22°02'24" East, a distance of 180.45 feet to a point;
4. North 50°00'43" East, a distance of 175.44 feet to a point on the southerly bounds of a 60 foot gas pipeline easement as described in Book 1988 at Page 77;

Thence South 64°36'41" East, along the southerly bounds of a 60 foot gas pipeline easement as described in Book 1988 at Page 77 for a distance of 590.50 feet to a point;  
Thence South 18°44'40" West, through the lands now or formerly of Vista Development Group LLC as described in Book 2949 of Deeds at Page 768 – Portion A for a distance of 475.40 feet to the **Point and Place of Beginning**.

Containing 339,958 Square Feet or 7.80 Acres of land more or less.

Date: September 22, 2011

File :S:/ docs/greg/110229.doc



## EXHIBIT B

### DESCRIPTION OF THE EQUIPMENT

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed prior to the Completion Date (as defined in the hereinafter defined Installment Sale Agreement) in connection with the acquisition, construction and installation of the Shop-Rite Supermarkets, Inc. Project (the "Project") of Town of Bethlehem Industrial Development Agency (the "Agency") located on the real property described on Exhibit A hereto (the "Land"), said Project to be acquired, constructed and installed by Shop-Rite Supermarkets, Inc. (the "Company") as agent of the Agency pursuant to a installment sale agreement dated as of April 1, 2012 (the "Installment Sale Agreement") by and between the Agency and the Company and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, security system, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery;

(2) The following items of specific machinery:

SEE ATTACHED LIST

(3) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

- Refrigeration / Condensing Units
- Refrigerated and Frozen Cases
- Hot Food Case Fixtures
- Ovens for Bakery and Deli
- Bakery Proofer
- Security Camera's
- Merchandise Handling Equipment
- Dry Fixtures
- Stoves, Refrigerators and Grills
- Shopping Carts
- Rotisserie
- Mixers for Meat and Bakery
- Meat and Produce Wrappers
- Meat Grinders
- Patty Machines for Meat
- Ban Saws
- Fryers
- Blast Chiller
- Pan Washer
- Smallwares for Perishable Departments
- Frontend Equipment
- Millwork
- Signage
- Deli Slicers
- Scales
- Stainless Steel Equipment
- Lighting Fixtures
- Cooler and Freezer Holding Boxes
- Shelving

EXHIBIT C

FORM OF BILL OF SALE  
TO COMPANY

TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at 445 Delaware Avenue, Delmar, New York (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from SHOP-RITE SUPERMARKETS, INC., a business corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 176 North Main Street, Florida, New York (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee, and its successors and assigns, all those materials, machinery, equipment, fixtures or furnishings which are described in Exhibit B attached hereto (the "Equipment"), whether now owned or hereafter acquired by the Grantor, which Equipment is located or intended to be located on a parcel of land (the "Land") located at 41 Vista Boulevard in the Town of Bethlehem, Albany County, New York, which Land is more particularly described on Exhibit A attached hereto.

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

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by the officer described below on the date indicated beneath the signature of such officer and dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

TOWN OF BETHLEHEM  
INDUSTRIAL DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

EXHIBIT D  
INITIAL EMPLOYMENT PLAN

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TYPE OF BUSINESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

Please complete the following chart describing your projected employment plan following receipt of financial assistance (the "Financial Assistance") from Town of Bethlehem Industrial Development Agency (the "Agency").

Current and Planning Full Time Occupations in Company	Current Number Full Time Jobs Per Occupation	Estimated Number of Full Time Jobs After Completion of the <u>Project</u>		
		1 year	2 year	3 year

Please indicate the estimated hiring dates for the new jobs shown above and any special recruitment or training that will be required.

Are the employees of your firm currently covered by a collective bargaining agreement?  
Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, Name and Local

In the event that this application for Financial Assistance is accepted, we agree to schedule a meeting with \_\_\_\_\_ (insert name of Local New York State Job Service Superintendent) and \_\_\_\_\_ (insert name of representative of Agency's area under the Federal Job Training Partnership Act) prior to the closing of the Financial Assistance for the purpose of supplying such information as may be requested in connection with this Employment Plan and to notify the regional office of the Department of Economic Development, in advance, of the time and place of such meeting.

Prepared by: \_\_\_\_\_

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



EXHIBIT E  
FORM OF ANNUAL EMPLOYMENT REPORT  
EMPLOYMENT PLAN STATUS REPORT

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TYPE OF BUSINESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

<u>Occupation</u>	<u>Number of New Jobs</u>	<u>Number Listed</u> <sup>1/</sup>	<u>Number Filled</u>	Job Service Division Applicants	Job Training Partnership Act eligible persons
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<sup>1</sup>With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.

EXHIBIT F

FORM OF SALES TAX EXEMPTION LETTER

TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY

445 Delaware Avenue  
Delmar, New York 12054  
Telephone: 518-439-4955  
Telecopy: 518-439-5808

April \_\_, 2012

To Whom It May Concern:

Re: New York State Sales or Use Tax Exemption  
Town of Bethlehem Industrial Development Agency  
Shop-Rite Supermarkets, Inc. Project

Pursuant to TSB-M-87(7) issued by the New York State Department of Taxation and Finance on April 1, 1987 (the "Policy Statement"), Shop-Rite Supermarkets, Inc. (the "Company") has requested a letter from Town of Bethlehem Industrial Development Agency (the "Agency"), a public benefit corporation created pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 582 of the 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), containing the information required by the Policy Statement regarding the sales tax exemption with respect to the captioned project (the "Project") located at 41 Vista Boulevard in the Town of Bethlehem, Albany County, New York (the "Project Site").

The Company has applied to and been approved for financial assistance from the Agency in the matter of completion of the Project on the Project Site. The Project includes the following: (A) the acquisition and installation of certain machinery, equipment and other personal property (collectively, the "Equipment") at an approximately 65,000 square foot building located at 41 Vista Boulevard in the Town of Bethlehem, Albany County, New York (the "Land"), said Facility to be utilized as a retail grocery store (the Equipment being hereinafter collectively referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real estate transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency. Please be advised that on or about April \_\_, 2012, the Agency executed and delivered an installment sale agreement (the "Installment Sale Agreement"), pursuant to which the Agency appointed the Company as agent of the Agency to acquire and install the Equipment, said appointment intending by the Agency to be retroactive to November 23, 2011.

The Company, as agent of the Agency, is authorized to make purchases of materials to be incorporated in the Project and machinery and equipment constituting a part of the Project, and purchases or rentals of supplies, tools, equipment, or services necessary to acquire, construct, reconstruct or install the Project.

To ensure that the above purchases or rentals are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York, the vendor must identify the Project on each bill and invoice for such purchases and indicate on the bill or invoice that the Company as agent for the Agency was the purchaser (e.g., "Shop-Rite Supermarkets, Inc., as agent for Town of Bethlehem Industrial Development Agency"). In addition, the following procedures should be observed:

1. Each bill and invoice should identify the date of delivery and indicate the place of delivery.
2. Payment should be made by the Company acting as agent, directly to the vendor from a requisition from a special project fund of the payor.
3. Deliveries should be made to the Project Site, or under certain circumstances (such as where the materials require additional fabrication before installation on the Project Site or for storage to protect materials from theft or vandalism prior to installation at the Project Site) deliveries may be made to a site other than the Project Site, providing the ultimate delivery of the materials is made to the Project Site. Where delivery is made to a site other than the Project Site, the purchases should be billed or invoiced by the vendor to the Company as agent of the Agency, identify the date and place of delivery, the Agency's full name and address and the Project Site where the materials will ultimately be delivered for installation.

Pursuant to Section 874(8) of the Act, the Company, as agent of the Agency, must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency. The penalty for failure to file such a statement under Section 874(8) of the Act shall be the removal of authority to act as an agent for the Agency.

Pursuant to Section 874(9) of the Act, the Company, as agent of the Agency, must file within thirty (30) days of the date the Agency designates the Company as agent of the Agency, a statement with the New York State Department of Taxation and Finance, on a form and in such manner as prescribed by the Commissioner of Taxation and Finance, identifying the Company as agent of the Agency.

This letter shall serve as proof of the existence of an agency contract between the Agency and the Company for the SOLE EXPRESS PURPOSE OF SECURING EXEMPTION FROM NEW YORK STATE SALES AND USE TAXES FOR THE PROJECT ONLY. NO OTHER PRINCIPAL/AGENT RELATIONSHIP BETWEEN THE AGENCY AND THE COMPANY IS INTENDED OR MAY BE IMPLIED OR INFERRED BY THIS LETTER.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency, nor the Company as its agent, is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

Under the Policy Statement, a copy of this letter received by any vendor or seller to the Company, as agent for the Agency, may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York State Tax Law Section 1132(c)(1), thereby relieving such vendor or seller from the obligation to collect any sales or use tax on purchases or rentals of such materials, supplies, tools, equipment, or services by the Agency through its agent, the Company.

THIS LETTER SHALL BE IN EFFECT UNTIL \_\_\_\_\_.

In the event you have any questions with respect to the above, please do not hesitate to call Terrence W. Ritz, Executive Director of the Agency, at 518-439-4955.

Very truly yours,

TOWN OF BETHLEHEM INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

## EXHIBIT G

## FORM OF ANNUAL SALES TAX REPORT

New York State Department of Taxation and Finance

**Annual Report of Sales and Use Tax Exemptions  
Claimed by Agent/Project Operator of  
Industrial Development Agency/Authority (IDA)**
**ST-340**

(3/11)

For Period Ending December 31, \_\_\_\_\_ (enter year)

**Project information**

Name of IDA agent/project operator		Federal employer identification number (FEIN)	
Street address		Telephone number	
City	State	ZIP code	
Name of IDA agent/project operator's authorized representative, if any		Title	
Street address		Telephone number	
City	State	ZIP code	
Name of IDA			
Name of project			
Street address of project site			
City	State	ZIP code	

1 Project purpose (mark an X in the appropriate box):

<input type="checkbox"/> Services	<input type="checkbox"/> Construction	<input type="checkbox"/> Agriculture, forestry, fishing
<input type="checkbox"/> Wholesale trade	<input type="checkbox"/> Retail trade	<input type="checkbox"/> Finance, insurance or real estate
<input type="checkbox"/> Transportation, communication, electric, gas, or sanitary services		
<input type="checkbox"/> Manufacturing	<input type="checkbox"/> Other (specify) _____	

2 Date project began (mm/dd/yy): \_\_\_\_\_

3 Beginning date of construction or installation (mm/dd/yy; see instructions): \_\_\_\_\_; ☐ actual ☐ expected4 Completion date of construction phase of project (mm/dd/yy; see instructions): \_\_\_\_\_; ☐ actual ☐ expected5 Completion date of project (mm/dd/yy; see instructions): \_\_\_\_\_; ☐ actual ☐ expected

6 Duration of project (actual or expected; years/months): \_\_\_\_\_

7 Total sales and use tax exemptions (actual tax savings; NOT total purchases) .....	7	\$	
--	---	----	--

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer, employee, or authorized representative signing for the IDA agent/project operator	Title of person signing
Signature	Date

**Failure to annually file a complete report may result in the removal of authority to act as an IDA agent/project operator.**

Mail completed report to: NYS Tax Department, IDA Unit, W A Harriman Campus, Albany NY 12227.

1039

## Instructions

## General information

## Who must file?

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person directly appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operator(s) directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operator(s) should **not** themselves file Form ST-340. However, the agent/project operator(s) must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

## What must be reported?

The report must show the **total value of all state and local sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions obtained by the agent/project operator; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

The report requires only the **total combined** exemptions obtained by the above people. A break down of the total is not required. However, since the report must include the value of the exemptions they obtained, the agent/project operator must keep records of the amounts others report to the agent/project operator.

It is important that the agent/project operator make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available so that the agent/project operator can comply with the annual reporting requirements.

Do not include in this report the amount of any sales and use tax exemptions arising out of other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

See instructions below for additional information required.

## When is the report due?

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

## Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

## Name of IDA agent/project operator

Enter the name, address, federal employer identification number (FEIN), and telephone number of the IDA agent/project operator.

## Name of IDA agent/project operator's authorized representative

Enter the name, address, title (for example, attorney or accountant), and telephone number of the individual authorized by the IDA agent/project operator to submit this report.

## Name of IDA

Enter the name and address of the IDA. If more than one IDA is involved in a particular project, the IDA agent/project operator must file a separate report for the tax exemptions attributable to each IDA.

## Name of project

Enter the name of the project and the address of the project site. If the IDA agent is involved in more than one project, a separate report must be filed by the IDA agent/project operator for each project, even if authorized by the same IDA.

## Line instructions

**Line 1 — Project purpose** — Mark an *X* in the box that identifies the purpose of the project. If you mark *Other*, please be specific in identifying its purpose.

**Line 2** — Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

**Line 3** — Enter the date you, or your general contractor or subcontractor, actually began, or expect to begin, construction or installation on the project. Mark an *X* in the appropriate box to indicate if the date entered is actual or expected. If the project does not involve any construction, enter **Does not apply**.

**Line 4** — Enter the date the construction phase of the project was completed or is expected to be completed. Mark an *X* in the appropriate box to indicate if the date entered is actual or expected.

**Line 5** — Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended or the date the project is expected to be completed. Mark an *X* in the appropriate box to indicate if the date entered is actual or expected.

**Line 6** — Enter the total number of years and months from the project's inception to its completion or expected completion.

**Line 7** — Enter the total amount of New York State and local sales and use taxes exempted during the reporting period (if none, enter 0) as a result of the project's receipt of IDA financial assistance. This includes exemptions obtained at the time of purchase as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases on line 7.

## Signature area

Enter the name and title of the person signing on behalf of the IDA agent/project operator (for example, the IDA agent/project operator's officer, employee, or other authorized representative). The IDA agent/project operator's officer, employee, or authorized representative must sign the report. Enter the date signed.

Mail completed report to: NYS Tax Department, IDA Unit, W A Harriman Campus, Albany NY 12227.

## Need help?



Internet access: [www.tax.ny.gov](http://www.tax.ny.gov)  
(for information, forms, and publications)



Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline  
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082

## Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law, and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

## EXHIBIT H

## FORM OF THIRTY-DAY SALES TAX REPORT



New York State Department of Taxation and Finance

**IDA Appointment of Project Operator or Agent**  
**For Sales Tax Purposes**
**ST-60**  
 (2/11)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

Name of IDA		IDA project number (use OSC numbering system for projects after 1998)	
Street address		Telephone number ( )	
City	State	ZIP code	
Name of IDA project operator or agent		Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or social security number
Street address		Telephone number ( )	Primary operator or agent? <input type="checkbox"/> Yes <input type="checkbox"/> No
City	State	ZIP code	
Name of project		Purpose of project (see instructions)	
Street address of project site			
City		State	ZIP code
Description of goods and services intended to be exempted from sales and use taxes			
Date project operator or agent appointed (mm/dd/yy)		Date project operator or agent status ends (mm/dd/yy)	
		Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>	
Estimated value of goods and services to be exempted from sales and use taxes as a result of the project's designation as an IDA project:			

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA		Print title	
Signature	Date	Telephone number ( )	

**Instructions****Filing requirements**

An IDA must file this form within 30 days of the date the IDA appoints any project operator or other person as agent of the IDA, for purposes of extending any sales and compensating use tax exemptions.

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA need not file this form if the IDA does not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, the IDA must, within 30 days of the change, file a new form with the new information.

If an IDA revokes or cancels the appointment of an agent, or if a form it filed is not valid for any reason, the IDA must send a letter to the address below for filing this form, indicating that it has done so or that the previously filed form is no longer valid, and the effective date of the change. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

**Purpose of project**

For *Purpose of project*, enter one of the following:

- |   |                   |
|---|-------------------|
| - Services  | - Construction    |
| - Agriculture, forestry, fishing                                  | - Wholesale trade |
| - Finance, insurance, real estate                                 | - Retail trade    |
| - Transportation, communication, electric, gas, sanitary services | - Manufacturing   |
|   | - Other (specify) |

**Mailing instructions**

Mail completed form to:

**NYS TAX DEPARTMENT**  
**IDA UNIT**  
**W A HARRIMAN CAMPUS**  
**ALBANY NY 12227**

**Privacy notification**

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 267, 306, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

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 (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

EXHIBIT I

FORM OF TERMINATION OF LICENSE TO AGENCY

THIS TERMINATION OF LICENSE TO AGENCY (the "Termination of License to Agency") dated as of \_\_\_\_\_, \_\_\_\_\_, by and between TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized under the laws of the State of New York having an office for the transaction of business located at 445 Delaware Avenue, Delmar, New York (the "Agency"), and SHOP-RITE SUPERMARKETS, INC., a business corporation organized and existing under the laws of the State of New Jersey having an office for the transaction of business located at 176 North Main Street, Florida, New York (the "Company").

WITNESSETH:

WHEREAS, the Company, as licensor, and the Agency, as licensee, entered into a license agreement dated as of April 1, 2012 (the "License to Agency") pursuant to which the Agency was granted the right to enter into certain real property of the Company for the purpose of undertaking and completing the Project (as defined in the License to Agency); and

WHEREAS, pursuant to Section 5.2 of a certain installment sale agreement dated as of April 1, 2012 (the "Installment Sale Agreement") between the Agency, as landlord, and the Company, as tenant, the Company and the Agency further agreed that the License to Agency would be terminated upon the satisfaction of the conditions set forth in Section 5.1 and Section 5.2 of the Installment Sale Agreement, as appropriate; and

WHEREAS, the conditions set forth in Section 5.1 and Section 5.2 of the Installment Sale Agreement, as appropriate, have been satisfied on or before the date hereof.

NOW, THEREFORE, it is hereby agreed that the License to Agency is terminated as of the dated date hereof.

IN WITNESS WHEREOF, the Company and the Agency have caused this Termination of License to Agency to be executed and delivered by their respective duly authorized officers, and to be dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SHOP-RITE SUPERMARKETS, INC.

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TOWN OF BETHLEHEM INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman



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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

---

Notary Public

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

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public