

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

and

FAMILY DOLLAR SERVICES, INC.

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LEASEBACK AGREEMENT

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Dated July 30, 2012

Oneida County Industrial Development Agency  
2015 Real Estate Lease  
(Family Dollar Services, Inc. Facility)

THIS LEASEBACK AGREEMENT (the "Leaseback Agreement"), dated July 30, 2012, is by and between **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (the "Agency") and **FAMILY DOLLAR SERVICES, INC.**, a North Carolina corporation having an office at 10401 Monroe Road, Matthews, North Carolina 28105 (the "Company").

W I T N E S S E T H:

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 (the "State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, renovate, refurbish, equip, lease, maintain, sell 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 now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, Chapter 372 of the Laws of 1970 of the State of New York (hereinafter collectively, the "Act") created the Agency, which is empowered under the Act to undertake the leasing of the facility described below;

WHEREAS, the Company has applied to the Agency to enter into a transaction in which the Agency will assist in the continued operation of an existing 907,000 square foot distribution facility (the "Improvements") and all equipment installed therein (the "Equipment"), located on an 86.69± acre parcel of land at 640 Perimeter Road, Griffiss Business & Technology Park, City of Rome, Oneida County, New York (the "Land") (the Land, Improvements and Equipment collectively, the "Facility"), which is used for the distribution of general retail merchandise; and

WHEREAS, in order to induce the Company to continue to develop the Facility, the Agency is willing to take a leasehold interest in the Land, Improvements and Equipment constituting the Facility and lease said Land, Improvements and Equipment back to the Company pursuant to the terms and conditions contained herein; and

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

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to construct, renovate and equip the Facility in accordance with the Plans and Specifications presented to the Agency members (the "Project"); and

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

WHEREAS, as is more particularly set forth in Section 9.12 below, all capitalized terms used in this Leaseback Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

## AGREEMENT

NOW THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby formally covenant, agree and bind themselves as follows:

### Section 1.1 Representations and Covenants of Agency.

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

(a) The Agency is duly established and validly existing under the provisions of the Act and has full legal right, power and authority to execute, deliver, and perform each of the Agency Documents and the other documents contemplated thereby. Each of the Agency Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Agency.

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

(c) By resolution adopted on May 3, 2012, the Agency determined that, based upon the review by the Agency of the materials submitted and the representation made by the Company relating to the Facility, the Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQR Act.

(d) Neither the execution and delivery of any of the Agency Documents and the other documents contemplated thereby nor the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Agency Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof or of the Agency's Certificate of Establishment or Bylaws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or (except as hereinafter set forth) result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, Bylaws, restriction, agreement or instrument.

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(e) Each of the Agency Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the rights of creditors in general. The Facility will constitute a "Project" as such quoted term is defined in the Act.

(f) The Agency has been induced to enter into this Leaseback Agreement by the undertaking of the Company to maintain and repair the Facility and create or retain related jobs in Oneida County, New York.

(g) The Agency is authorized by its managing body to enter into this Leaseback Agreement and has the full legal right, power and authority to perform its obligations under this Leaseback Agreement.

(h) The Agency, to the extent of its interest herein, shall not sell, assign, transfer, encumber or pledge as security, the Facility or any part thereof and shall maintain the Facility free and clear of all Liens, except as contemplated or allowed by the terms of the Transaction Documents and except as provided in the Title Report.

(i) The Agency hereby agrees to join in the execution and delivery of any mortgage, as requested by the Company, provided that (i) the Agency's obligations thereunder are limited as provided in Section 5.12 hereof (ii) the Agency retains its Unassigned Rights and (iii) the Company agrees to pay the Agency's reasonable costs and expenses in connection therewith. The Agency will not modify or amend any mortgage without the prior written consent of the Company.

(j) The Agency hereby represents and warrants that, to the best of its knowledge, during the time of its ownership of the "Land" (as defined in Schedule A), by virtue of that certain Quit Claim Deed dated July 20, 2001, recorded January 22, 2003 in the Oneida County Clerk's Office as instrument No. 2003-001613, that the Agency has complied in all material respects with all Environmental Laws and regulations and, except in compliance with Environmental Laws and regulations and except as may be shown in the Phase I Report and/or Phase II Report identified in Section 8.30 of the Master Agreement for Development dated as of April 15, 2005 among the Agency, the Company and others, (i) that no pollutants, contaminants, solid wastes, or toxic or Hazardous Substances has been stored, treated, generated, disposed of, or allowed to exist on the Land except in compliance with all material applicable laws, (ii) the Agency has taken all reasonable and prudent steps to prevent an unlawful release of Hazardous Substances onto the Land or onto any other property, (iii) that no asbestos has been incorporated into or disposed of on the Land, (iv) that no underground storage tanks has been located on the Land, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above has been threatened or is anticipated. The Agency upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Company in writing with full details regarding the same. The Agency hereby releases the Company from liability with respect to, and agrees to defend, indemnify, and hold harmless the Company, its executive director, directors, members, officers, employees, agents (except the Agency), representatives, successors and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants {H1826258.3}

of failure to be accurate of the representations contained in this Section 1.1(j). In the event the Company in its reasonable discretion deems it reasonably necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Land, the Company may perform such due diligence or audit at its own expense. Notwithstanding the foregoing, Company shall be liable for its actions relating to any environmental matters.

#### Section 1.2 Representations and Covenants of Company.

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

(a) The Company is a corporation duly organized and validly existing under the laws of the State of North Carolina and authorized to conduct business in the State of New York, and has full legal right, power and authority to execute, deliver and perform each of the Company Documents and the other documents contemplated thereby to which the Company is a party. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company and each constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the rights of creditors in general.

(b) Neither the execution and delivery of any of the Company Documents and the other documents contemplated thereby nor the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Company Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the certificate of incorporation of the Company, the by-laws of the Company, any law or ordinance of the State or any political subdivision thereof, or any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or (except as hereinafter set forth) result in the creation or imposition of any Lien of any nature upon any of the Property of the Company under the terms of any such law, ordinance, restriction, agreement or instrument.

(c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more commercial or manufacturing plants or facilities of the Company located within the State; and the Agency has found that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

(d) The Facility and the design, construction, equipping and operation thereof will conform in all material respects with all applicable zoning, planning, building and Environmental Laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility as well as applicable deed restrictions, unless Agency and/or Company has obtained variances or waivers from {H1826258.3}

such zoning laws, ordinances, rule regulations, or restrictions. The Company shall defend, indemnify and hold harmless the Agency for expenses, including attorneys' fees, resulting from any failure of the Company to comply with the provisions of this subsection (d).

(e) The Company has caused to be transferred to the Agency a leasehold interest in all those properties and assets contemplated by this Leaseback Agreement and all documents related hereto.

(f) There is no action, litigation, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending, or, to the knowledge of the Company, threatened against or affecting the Company, in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Leaseback Agreement or any of Company Documents or the transactions contemplated therein.

(g) The Company covenants that the materials and substances comprising the Facility that are in the direct control of the Company will comply in all respects with all Environmental Laws and regulations and, except in compliance with Environmental Laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is in existence or to the knowledge of the Company, threatened, anticipated or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties and expenses (including reasonable attorneys' fees and expenses) related in any way to any violation of the covenants or failure to be accurate with respect to the representations contained in this Section which occurs after the effective date of this Agreement at the Facility and is caused by the Company. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Agency may perform such due diligence or audit at its own expense. Notwithstanding the foregoing, Agency shall be liable for its actions relating to any environmental matters.

(h) To the best of the Company's knowledge, the Facility is and will constitute a "Project" as such quoted term is defined in the Act. During the Lease Term, the Company will not take any action, or fail to take any action, which would cause the Facility to not constitute a "Project" as such quoted term is defined in the Act.

## ARTICLE II

### DEMISING CLAUSES AND RENTAL PROVISIONS

#### Section 2.1 Agreement to Convey to Agency.

The Company has conveyed to the Agency a leasehold interest in real property, including any buildings, structures or improvements thereon, described in Exhibit A attached hereto and the Company has or will convey a leasehold interest in the Equipment described in Exhibit B. The Company agrees that the Agency's interest in the Facility resulting from said conveyances will be sufficient for the purposes intended by this Leaseback Agreement and agrees that it will defend, indemnify and hold the Agency harmless from any actual expense or liability arising out of a defect in title or a lien adversely affecting the Facility and will be directly responsible for defending any action with respect to title to or a Lien affecting the Facility. The Agency shall immediately notify the Company of any defect in title or Lien affecting the Facility so that the Company may take any appropriate action to defend or cure such defect or Lien.

#### Section 2.2 Operation of the Facility.

The Company, as agent for the Agency, will undertake the Project. The Company hereby covenants and agrees to annually file with the Department of Taxation and Finance the statement required by General Municipal Law Section 874(8) concerning the value of sales tax exemptions claimed. The Agency shall promptly execute and deliver to the Company all documents, if any, necessary for the Company to make the afore-mentioned filing.

#### Section 2.3 Demise of Facility.

The Agency hereby demises and leases the Facility to the Company and the Company hereby rents and leases the Facility from the Agency upon the terms and conditions of this Leaseback Agreement.

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

In the event of a default by any contractor, subcontractor, materialman or other person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety or other person which the Company deems reasonably necessary, and in such event the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Company shall advise the Agency of any actions or proceedings taken hereunder. The Agency may but shall not be obligated to prosecute or

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defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety or other person which the Agency deems reasonably necessary, at the Company's expense, provided the Agency provides the Company with written notice of its intent to prosecute or defend any action or proceeding or take any other action. If the Agency chooses not to take action with respect to any action or proceedings, then the Company is authorized to take any appropriate action on the Agency's behalf.

Section 2.5 Duration of Lease Term: Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to Sections 5.3 and 7.1 hereof) and the leasehold estate created hereby shall commence on July 1, 2015 and the Company shall accept possession of the Facility on July 1, 2015.

(b) Except as provided in Section 7.1 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on June 30, 2026 or on such earlier date as may be permitted by Section 8.1 hereof.

(c) The period commencing on the date described in Section 2.5(a) herein through the date described in Section 2.5(b) herein shall be herein defined as the Lease Term.

(d) Except as provided in Sections 5.3 and 7.1 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

Section 2.6 Rents and Other Amounts Payable.

(a) The Company shall pay basic rent for the Facility as follows: Five Hundred Dollars (\$500.00) per year commencing on July 1, 2015 and on the First Business Day of each and every July thereafter during the term of this Leaseback Agreement.

(b) In addition to the payments of rent pursuant to Section 2.6(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within ten (10) days of receipt of demand therefore, the expenses of the Agency and the members thereof incurred (i) by reason of the Agency's ownership or leasing of the Facility or (ii) in connection with the carrying out of the Agency's duties and obligations under the Agency Documents, the payment of which is not otherwise provided for under this Leaseback Agreement, provided that the Company agrees to such reimbursement in writing prior to the incurrence of such expense by the Agency. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Agency.

(c) The Company, under the provisions of this Section 2.6, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Company shall fail to timely make any payment required in Section 2.6(a) or 2.6(b), and then further fails to cure such uncontested delinquency within {H1826258.3}

twenty (20) days of receipt of written notice by the Agency, the Company shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the prime rate as established by Bank of America, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due as extended for Company's time to cure until the date on which such payment is made.

Section 2.7 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 2.6 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency or any other Person. The Company agrees it will not (i) suspend, discontinue or abate any payment required hereunder, (ii) fail to observe any of its other covenants or agreement in this Leaseback Agreement or (iii) terminate this Leaseback Agreement for any cause whatsoever except as otherwise herein provided.

Subject to the foregoing provisions, nothing contained in this Section 2.7 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Leaseback Agreement or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance, and the Agency covenants that it will not, subject to the provisions of Section 5.2 hereof, take, suffer or permit any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights or estate of the Company hereunder, except upon written consent of the Company.

Section 2.8 Special Obligation.

(a) The obligations of the Agency under the Agency Documents constitute a special obligation of the Agency, and all charges payable pursuant to or expenses or liabilities incurred thereunder shall be payable solely out of the revenues and other moneys of the Agency derived and to be derived from the leasing of the Facility, any sale or other disposition of the Equipment and as otherwise provided in the Authorizing Resolution, the Lease Agreement, this Leaseback Agreement and the PILOT Agreement. Neither the members, officers, agents (except the Company) or employees of the Agency, nor any person executing the Agency Documents, shall be liable personally or be subject to any personal liability or accountability by reason of the leasing, construction, equipping or operation of the Facility. The obligations of the Agency under the Agency Documents are not and shall not be an obligation of the State or any municipality of the State and neither the State nor any such municipality (including, without limitation, Oneida County) shall be liable thereon.

(b) All payments made by the Agency or on behalf of the Company pursuant to the Agency Documents shall, to the extent of the sum or sums so paid, satisfy and discharge the liability of the Agency for moneys payable pursuant to the Agency Documents.

## ARTICLE III

### MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

#### Section 3.1 Maintenance and Modifications of Facility by Company.

(a) The Company shall not abandon the Facility or cause or permit any waste to the Improvements during the Lease Term. During the Lease Term, the Company shall not remove any part of the Facility (exclusive of vehicles, i.e., trucks, tractors, trailers and other rolling stock) outside of the jurisdiction of the Agency and shall (i) keep the Facility in as reasonably safe condition as its operation shall permit; (ii) make all necessary repairs and replacements to the Facility as it deems in its sole discretion to be reasonable and necessary; and (iii) operate the Facility in a sound and economic manner.

(b) With the written consent of the Agency, which shall not be unreasonably withheld or delayed, the Company at its own expense from time to time may make any structural additions, modification or improvements to the Facility or any part thereof, provided such actions do not adversely affect the structural integrity of the Facility. All such additions, modifications or improvements made by the Company shall become a part of the Facility and the Property of the Agency; provided, however, the Company shall not be qualified for a sales and use tax exemption when making said additions, modifications or improvements except to the extent (i) the Company is acting as agent for the Agency under an Agent Agreement between the Agency and the Company that contemplates said additions, modifications or improvements or (ii) as otherwise provided by law. The Company agrees to deliver to the Agency all documents that may be necessary or appropriate to convey to the Agency title to such Property.

#### Section 3.2 Installation of Additional Equipment.

The Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall become, at the election of the Company, a part of the Facility. The Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur (i) if any Event of Default which has not been cured has occurred; or (ii) if any such removal shall materially and adversely affect the structural integrity of the Facility or materially impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided further, that if any damage is occasioned to the Facility by such removal, the Company agrees to promptly repair such damage at its own expense; or (iii) if any such removal results in the Facility to not constitute a "Project" as such term is defined in the Act.

#### Section 3.3 Taxes, Assessments and Utility Charges.

(a) The Company agrees to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost may be added thereto or becomes due or be imposed by operation of law for the non-payment thereof, (i) all taxes, payments in lieu of taxes and governmental charges of any kind

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whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed, and which is not subject to any lawful exemption, with respect to the Facility or any part or component thereof, or the rental or sale of the Facility or any part thereof and any taxes levied upon or with respect to the income or revenues of the Agency from the Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; and (iv) all payments under the PILOT Agreement; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Leaseback Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company, at its own expense and in its own name and on behalf of or in the name of the Agency but with notice to the Agency, may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings and (ii) the Company shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency.

(c) The Agency agrees that if it or the Company contests any taxes, assessments or other charges provided for in paragraph (b) hereof, all sums returned to the Agency, as a result thereof, will be promptly transmitted by the Agency to the Company and that the Company shall be entitled to retain all such amounts.

(d) Within thirty (30) days of receipt of written request therefor, the Company shall deliver to the Agency official receipts of the appropriate taxing authorities or other proof reasonably satisfactory to the Agency evidencing payment of any tax.

(e) The payments required of the Company in Section 3.3(a) are and shall be a lien and burden upon the Facility and Land underlying the Facility which burden and lien shall run with the Land and be binding upon the Land, the Company and its successors and assigns.

(f) The Agency agrees to forward promptly to the Company a copy of any notice of Lien served on it by any Person making a claim against the Facility or the monies of the Agency applicable to the Facility.

#### Section 3.4 Insurance Required.

(a) At all times throughout the Lease Term, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

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(i) Insurance against loss and/or damage to the Facility under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire, extended coverage, vandalism and malicious mischief, explosion, water damage, demolition cost, debris removal, and collapse in an amount not less than the full insurable replacement value of the Facility, but any such policy may have a deductible amount of up to \$5,000,000.00.

(ii) Comprehensive general public liability insurance, including personal injury liability for injuries to persons and/or property, including any injuries resulting from the operation of automobiles or other motorized vehicles on or about the Facility, in the minimum amount for each occurrence and for each year of \$2,000,000.00.

(iii) Worker's compensation insurance with statutory coverage.

(b) All insurance required by this Section 3.4 to be provided prior to the termination or expiration of this Leaseback Agreement shall be taken out and maintained in responsible insurance companies selected by Company which are authorized under the laws of the State to assume the risks covered thereby. In lieu of separate policies, Company may maintain a single policy, or blanket or umbrella policies, or a combination thereof, which provide the total coverage required herein. The policies required under Section 3.4(a)(i) and 3.4(a)(ii) above shall name the Agency as an additional insured.

(c) Provided this Leaseback Agreement is in effect, in the case of damage to, or destruction of, the Facility or any portion thereof resulting from fire or other casualty, the net proceeds of any such insurance shall be paid directly to Company, and unless Company exercises its rights under Section 8.1, the Company may, at its option, repair, reconstruct and restore the Facility to substantially the same or an improved condition as the Facility existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, Company will apply the net proceeds of any insurance relating to such damage received by Company to the payment or reimbursement of the costs thereof.

Section 3.5 [Intentionally Omitted].

Section 3.6 Application of Net Proceeds of Insurance. The net proceeds of the insurance carried pursuant to the provisions of Section 3.4 hereof shall be applied as set forth in the mortgage, if any, and in any event shall continue to protect the Agency from any liability whatsoever. Once the mortgage has been released, the net proceeds shall be applied as follows: (i) the net proceeds of the insurance required by Sections 3.4(a) and (e) hereof shall be applied as provided in Section 4.1 hereof, and (ii) the net proceeds of the insurance required by Sections 3.4(b), (c), and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 3.7 Right of Agency to Pay Taxes, Insurance Premiums and Other Charges.

If the Company fails (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment {H1826258.3}

thereof that is not being contested in good faith pursuant to the terms of Section 3.3 and/or Section 5.9 hereof, or payments-in-lieu-of-taxes pursuant to the PILOT Agreement, assessment or other governmental charge required to be paid by Section 3.3 hereof, (ii) to maintain any insurance required to be maintained by Section 3.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Facility or by any requirement, order or notice of violation thereof issued by any governmental person that is not being contested in good faith pursuant to the terms hereof, (iv) to pay any mechanic's Lien which is recorded or filed against the Facility or any part thereof (unless contested in accordance with the provision of Section 5.7(b) hereof), (v) to pay any real property transfer gains tax, if applicable, together with any interest and penalties thereon, which is due and payable by reason of a conveyance of the leasehold estate in and to the Facility pursuant to a judicial sale in any foreclosure action or by deed and/or assignment in lieu of foreclosure or (vi) to pay any other amount or perform any act hereunder required to be paid or performed by the Company hereunder, the Agency may but shall not be obligated to pay or cause to be paid such tax or payments-in-lieu-of-tax pursuant to the PILOT Agreement, assessment or other governmental charge or the premium for such insurance or any such other payment or may perform any such act. No such payment shall be made or act performed by the Agency until at least ten (10) days shall have elapsed since written notice shall have been given by the Agency to the Company, and in the case of any tax, assessment or governmental charge or the amounts specified in paragraphs (i) (iii), (iv) and (v) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Leaseback Agreement unless an Event of Default hereunder shall have occurred and be continuing. Notwithstanding the provisions of this Section 3.7, if, because of the Company's failure to make payments as described in this Section 3.7, either the Agency, or any of its respective members, directors, officers, agents (except the Company), or employees, shall be threatened with a fine, liability, expense or imprisonment, then the Agency may immediately make payment on behalf of the Company in avoidance thereof. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Company. The Company shall, within ten (10) days of receipt of written demand, reimburse the Agency for any amount so paid or for reasonable and verifiable expenses or costs incurred in the performance of any such act by the Agency pursuant to this Section (which shall include all legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Agency at one percent above the prime rate as established by Bank of America, but in no event more than to the extent permitted by law.

## ARTICLE IV

### DAMAGE, DESTRUCTION AND CONDEMNATION

#### Section 4.1 Damage or Destruction of the Facility.

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

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated); and

(iii) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid in accordance with the terms of the mortgage, if any, so long as the Company's mortgage is in effect. After the release of the Company's mortgage, the net proceeds derived from the insurance shall be paid to the Company, except as otherwise provided in Section 8.1 and subsection (d) hereof.

(b) Any replacements, repairs, rebuilding, restorations or relocations of the Facility by the Company after the occurrence of such damages or destruction shall be subject to the following conditions, unless otherwise agreed to in writing by Agency and Company:

(i) the Facility shall be in substantially the same condition and value as an operating entity as existed prior to the damage or destruction;

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

(iii) the Facility will be subject to no Liens, other than Permitted Encumbrances.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts, and shall automatically become a part of the Facility as if the same were specifically provided herein.

(d) If the Company shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof such net proceeds shall be applied to the payment of the amounts required to be paid by Section 8.2 hereof. If an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 7.2 hereof such net proceeds shall be applied to the payment of the amounts required to be paid by Section 7.2 and Section 7.4 hereof.

#### Section 4.2 Condemnation.

(a) If title to or use of the Facility shall be taken by Condemnation (in whole or in part) at any time during the Lease Term:

(i) the Agency shall have no obligation to replace, repair, rebuild, restore or relocate the Facility or acquire, by construction or otherwise, facilities of substantially the same nature as the Facility ("Substitute Facilities"); and

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Leaseback Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated or Substitute Facilities acquired); and

(iii) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid in accordance with the terms of the mortgage, if any, so long as the mortgage is in effect. After the release of the mortgage, the Net Proceeds derived therefrom shall be paid to the Company except as otherwise provided in Section 8.1 and subsection (d) hereof.

(b) Any replacements, repairs, rebuilding, restorations, relocations of the Facility by the Company after the occurrence of such Condemnation or acquisitions by the Company of Substitute Facilities shall be subject to the following conditions, unless otherwise agreed to in writing by Agency and Company:

(i) the Facility or the Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to the Condemnation;

(ii) the Facility or the Substitute Facilities shall continue to constitute a "project" as such term is defined in the Act; and

(iii) the Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts, and shall automatically become a part of the Facility as if the same were specifically described herein.

(d) If the Company shall exercise its option to terminate this Leaseback Agreement pursuant to Section 8.1 hereof such Net Proceeds shall be applied to the Payment of the amounts required to be paid by Section 8.2 hereof. If any Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 7.2 hereof such net proceeds shall be applied to the payment of the amounts required to be paid by Section 7.2 and Section 7.4 hereof.

Section 4.3 Condemnation of Company-Owned Property. The Company shall be entitled to the proceeds of any Condemnation award or portion thereof made for damage to or taking of any Property, which, at the time of such damage or taking, is not part of the Facility.

## ARTICLE V

### SPECIAL COVENANTS

Section 5.1 No Warranty of Condition or Suitability by Agency.

{H1826258.3}

EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE FACILITY. THE AGENCY MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 5.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agree to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Facility or the Land or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, renovating, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, and all causes of action and attorneys' fees and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency, or any of its directors, members, agents (except the Company) or employees. The foregoing indemnities shall apply only to the extent that any such liability, damage, or loss arises from activities occurring after April 1, 2005 by the Company.

(b) Notwithstanding any other provisions of this Leaseback Agreement, the obligations of the Company pursuant to this Section 5.2 shall remain in full force and effect after the termination of this Leaseback 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 payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and verifiable charges incurred by the Agency, or its respective members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents or employees by any employee or 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 obligation of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts. In no event shall the Company be liable to the Agency hereunder for any indirect, incidental, special or consequential damages caused by or arising out of any act or omission of the Agency hereunder.

Section 5.3 Right to Inspect Facility.

{H1826258.3}

The Agency and the duly authorized agents of the Agency shall have the right on reasonable written notice at all reasonable times during regular business hours of the Company to inspect the Facility. The Agency shall honor and comply with any restricted access policy of the Company relating to the Facility, and its inspection will not interfere with the Company's activities, use and enjoyment of the Facility.

#### Section 5.4 Company to Maintain Its Existence.

The Company agrees that during the Lease Term it will maintain its existence, will not dissolve, liquidate or otherwise dispose of 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, except as otherwise provided for in the Leaseback Agreement. Notwithstanding the foregoing, Company shall be entitled to consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it provided there is a commonality of officers and directors and the new entity assumes all of the obligations and liabilities of the Company hereunder.

#### Section 5.5 Qualification in State.

The Company throughout the Lease Term shall continue to be duly authorized to do business in the State.

#### Section 5.6 Agreement to File Annual Statements and Provide Information.

The Company shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Section 874(8) of the New York State General Municipal Law. The Company further agrees whenever reasonably requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations and its affairs necessary to enable the Agency to make any report required by law, governmental regulation or any of the Agency Documents.

#### Section 5.7 Books of Record and Account; Financial Statements.

The Company at all times agrees to maintain proper accounts, records and book in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and affairs of the Company.

Section 5.8 Compliance With Orders, Ordinances, Etc.

(a) The Company, throughout the Lease Term, agrees that it will promptly comply in all material respects, and shall use its best efforts to cause any sublessee or occupant of the Facility to comply in all material respects, with all statutes, codes, laws, acts, ordinances, orders, judgments, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof or to the acquisition, construction, renovation and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers and companies or associations insuring the premises having jurisdiction of the Facility or any part thereof, or to the acquisition, construction, renovation and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) The Company shall construct, renovate, equip, use, operate and manage the Facility, in accordance in all material respects with all applicable Environmental Laws and Environmental Permits (as such terms are defined in the Environmental Compliance and Indemnification Agreement), and shall use its best efforts to cause all operators, tenants, subtenants, licensees and occupants of the Facility to construct, renovate, equip, use, operate and manage the Facility in accordance with any applicable Environmental Laws and Environmental Permits, and shall not cause, allow or permit the Facility or any part thereof to be operated or used for the storage, treatment, generation, transportation, processing, handling, production, management or disposal of any Hazardous Substances other than in material compliance with all applicable Environmental Laws and Environmental Permits. The Company shall obtain and comply with, and shall cause all contractors, subcontractors, operators, tenants, subtenants, licensees and occupants of the Facility to obtain and comply with, all Environmental Permits. The Company shall not cause or permit any change to be made in the present or intended construction, renovation, equipping, use or operation of the Facility which would (i) involve the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance other than in accordance in material compliance with any applicable Environmental Law, or the construction, renovation, equipping, use or operation of the Facility as a landfill or waste management or disposal site or for manufacturing or industrial purposes or for the storage of Hazardous Substances other than in material compliance with any applicable Environmental Law, (ii) violate any applicable Environmental Laws in any material respect, (iii) constitute a violation or non-compliance with any Environmental Permits in any material respect or (iv) increase the risk of a Release of any Hazardous Substance (as such terms are defined in Schedule A) on or from the Facility in violation of any applicable Environmental Laws or Environmental Permits. Each party shall promptly provide the other party with a copy of all notifications which first party gives or receives with respect to the violation of any Environmental Laws at the Facility, any past or present Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility. As each party receives or becomes aware of any such notification that is not in writing or otherwise capable of being copied, such party shall promptly advise the first party of such verbal, telephonic or electronic notification and confirm such notice in writing. The Company shall undertake and complete all necessary investigations, studies, sampling and testing and all removal or remedial actions necessary to contain, remove and clean up all Hazardous Substances, to the extent that such Hazardous Substance was released by the Company or any of its contractors or subcontractors and is required to be removed and/or remediated in accordance with all applicable Environmental Laws and all Environmental Permits. Upon the Agency's reasonable suspicion that a violation of Environmental Laws

{H1826258.3}

by the Company has occurred, the Company shall allow the Agency, its officers, members, employees, agents, representatives, contractors and subcontractors reasonable access to the Facility upon advance written notice that includes the basis for the Agency's entry, during regular business hours of the Company for the purposes of ascertaining the environmental conditions at, on or in the vicinity of the Facility, including, but not limited to, subsurface conditions. Any reasonable costs or expenses incurred by the Agency with respect to such environmental inspection shall be reimbursed by the Company, but only in the event that such inspection reveals a violation of the provisions of this section by the Company. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Company may have to the Agency at common law or otherwise, and shall survive the transactions contemplated herein.

(c) The Company hereby covenants and agrees, at its sole cost and expense, to indemnify, protect, defend, save and hold harmless the Agency, its officers, directors, members, employees, agents and representatives acting in their official capacity, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or reasonable expenses (including, without limitation, reasonable attorneys' and experts' fees, verifiable expenses and disbursements, and attorneys' fees incurred to enforce the terms, conditions and provisions of this agreement) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Agency, its officers, members, employees, agents (except the Company), representatives, contractors and subcontractors relating to, resulting from or arising out of (i) the construction, renovation, equipping, operation or use of the Facility by the Company after the April 1, 2005 in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, (ii) a Release or Disposal of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance or waste on, at or from the Facility caused by the Company and occurring after April 1, 2005, (iii) a violation of any applicable Environmental Law by the Company occurring after the April 1, 2005, or (iv) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company in this Agreement (collectively, the "Indemnified Matters").

(d) Notwithstanding the provisions of subsections (a), (b) and (c) hereof, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a), (b) and (c) above by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be mutually satisfactory to the Agency and Company. If at any time the then existing use or occupancy of the Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Company shall use its best efforts to not cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency.

(e) If the Company breaches or violates the provisions of subsections (a), (b) or (c) hereof (without giving effect to subsection (d) hereof), the Agency or any of its members, directors, officers, agents, or employees, shall be threatened with a criminal fine, liability, expense or imprisonment, then, upon written notice from the Agency, the Company shall immediately provide legal protection and/or pay amounts necessary in the opinion of the Agency and its members, directors, officers, agents and employees deem sufficient, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment, reasonable legal protection as determined by the Company.

(f) Notwithstanding any provisions of this Section, the Agency retains the right to defend itself in any action or actions which are based upon or in any way related to Company's violation of such Environmental Laws. In any such defense of itself, the Agency shall select its own counsel reasonably acceptable to the Company, and any and all costs of such defense, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, shall be paid by the Company, provided that Company agrees to such costs in writing prior to such costs being incurred, except in the case where both the Agency and the Company are parties to the same action in which case the Company's selected counsel shall represent both parties upon the Company's acknowledgement of indemnification pursuant to Section 5.8 (c) above.

#### Section 5.9 Discharge of Liens and Encumbrances.

(a) The Company and Agency, throughout the Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) hereof, the Company or Agency may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by nonpayment of any such item or items, the Facility or any part thereof may be subject to loss or forfeiture, in which event the Company shall promptly secure payment of all such unpaid items by any appropriate method, including, but not limited to, filing a bond, in form and substance satisfactory to the Agency, thereby causing such Lien to be removed or by taking such other actions as may be mutually satisfactory to the Agency to protect their respective interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days after receipt of written notice by the Company of such filing or perfection.

#### Section 5.10 Depreciation Deductions and Investment Tax Credit.

The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility and to any investment credit with respect to any part of the Facility.

#### Section 5.11 Employment Opportunities, Notice of Jobs.

The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective  
{H1826258.3}

bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively the "Referral Agencies"). The Company also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party or by law, first consider for such new employment opportunities persons eligible to participate in federal job training partnership (PL 97-300) programs who shall be referred by the Referral Agencies.

Section 5.12 Limitation of Liability of the Agency.

The liability of the Agency to the Company under this Leaseback Agreement shall be enforceable only out of the Agency's interest under this Leaseback Agreement, and there shall be no other recourse against the Agency, its officers, members, agents and employees, past, present or future, or any of the property now or hereafter owned by it or them.

ARTICLE VI

RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING;  
PLEDGE OF INTERESTS

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

(a) Except as otherwise specifically provided in this Article VI and in Article VII hereof, the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Leaseback Agreement, without the prior written consent of the Company and GLDC, provided that GLDC shall not withhold such consent if such transaction does not adversely affect GLDC with respect to its obligations with the GLDC Lenders.

(b) With the prior written consent of GLDC, provided that GLDC shall not withhold such consent if such transaction does not adversely affect GLDC with respect to its obligations with the GLDC Lenders, the Agency and the Company together upon mutual agreement in writing from time to time may release from the provisions of this Leaseback Agreement and the leasehold estate created hereby any part of, or interest in, the Land which is not necessary, desirable or useful for the Facility. In such event, the Agency, at the Company's sole cost and expense, shall execute and deliver, any and all instruments necessary or appropriate to so release such part of, or interest in, the Land and convey such title thereto or interest therein to the Company or such other Person as the Company may designate.

(c) Except for any agreement executed by the Agency and the Company pursuant to Section 6.1(b) above, no conveyance of any part of, or interest in the Land affected under the provisions of this Section 6.1 shall entitle the Company to any abatement or diminution of the rents payable by it under this Leaseback Agreement.

Section 6.2 Removal of Equipment.

{H1826258.3}

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company in its sole discretion determines that any item of Equipment (except for the fixtures) has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company with the prior written consent of the Agency (which consent may not be unreasonably withheld or delayed but may be subject to such conditions as the Agency may deem appropriate), may remove such items from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, and retain for its own account any proceeds derived therefrom, provided that such removal will not materially impair the operation of the Facility for the purpose for which it is intended or change the nature of the Facility so that it does not constitute a "project" under the Act.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including counsel fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 6.2.

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

#### Section 6.3 Assignment and Subleasing.

(a) This Leaseback Agreement may not be assigned, in whole or in part by either party, and the Facility may not be subleased, in whole or in part, without the prior written consent (which consent may not be unreasonably withheld or delayed) of the Agency in each instance. A transfer in excess of 50% of the equity voting interests of the Company (other than a transfer to a family member) shall be deemed an assignment and require the prior written consent of the Agency. Any assignment or sublease shall be on the following conditions, as of the time of such assignment or sublease:

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

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

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

(iv) neither the validity nor the enforceability of the Leaseback Agreement shall be adversely affected thereby; and

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

(b) If the Agency shall reasonably request in writing, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 6.3, the Company at its cost {H1826258.3}

(as such costs are reasonably charged with respect to this type of opinion) shall furnish the Agency, with an opinion, in form and substance satisfactory to the Agency, (i) of Transaction Counsel as to item (v) above, and (ii) of Independent Counsel as to item (iv) above.

Section 6.4 Pledge of Agency's Interests to Bank. The Agency may be requested by the Company to pledge and assign its rights to and interest in this Leaseback Agreement and in all amounts payable by the Company pursuant to Section 2.3 hereof and all other provisions of this Leaseback Agreement (other than Unassigned Rights), to a lending institution. The Agency shall not unreasonably withhold its consent to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall subsequent to such pledge and assignment continue to run to the Agency for its benefit.

#### Section 6.5 Merger of Agency.

(a) Nothing contained in this Leaseback Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of title to the entire Facility to any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility, provided that (i) upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Leaseback 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 Facility shall be transferred, (ii) such successor shall be afforded the same exemptions from property and sales tax as the Agency currently possesses, (iii) the Facility shall continue to constitute a "Project" as defined in the Act; and (iv) such assumption in writing shall immediately be delivered to Company. Any such assumption will not affect Company's rights hereunder.

(b) Prior to the date of any such consolidation, merger or transfer of title, and only upon written request by the Company, the Agency shall give notice thereof in reasonable detail to the Company and shall furnish to the Company, at the sole cost and expense of the Company, a favorable opinion of Independent Counsel as to compliance with the provisions of Section 6.6(a) hereof. The Agency promptly shall furnish such additional information with respect to any such transaction as the Company may reasonably request.

## ARTICLE VII

### EVENTS OF DEFAULTS AND REMEDIES

#### Section 7.1 Events of Default Defined.

(a) The following shall be "Events of Default" under this Leaseback Agreement:

(i) the failure by the Company to pay or cause to be paid on the date due, the amount specified to be paid pursuant to Section 2.6(a) and (b) hereof and upon failure to cure such default within five (5) days of receipt of notice as herein provided;

(ii) the failure by the Company to observe and perform any covenant contained in Sections 5.6 and 6.3 hereof, but only if such failure adversely affects the rights or remedies of Agency under this Agreement, or otherwise materially affects the business of the Agency, and such failure is not cured by the Company within thirty (30) days of receipt of written notice;

(iii) any representation or warranty of the Company herein or in any of the Company's Documents shall prove to have been false or misleading in any material respect;

(iv) the failure by the Company to observe and perform any covenant, condition or agreement hereunder on their part to be observed or performed (except obligations referred to in 7.1(a)(i), (ii), and (iii)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or if such covenant, condition or agreement is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence;

(v) the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor in such case or proceeding, or such case or proceeding is consented to by the Company or remains undismissed for forty (40) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;

(vi) the termination, invalidity, illegality or unenforceability of the PILOT Agreement or the failure of the Company to make payments thereunder when due, provided that the prompt satisfaction of any payment under the PILOT Agreement by Family Dollar Stores, Inc. as guarantor shall constitute payment for the Company and shall remedy such nonpayment by Company;

(vii) a breach of any covenant or representation contained in Section 5.8 hereof with respect to environmental matters, but only if such breach adversely affects the rights or remedies of Agency under this Agreement or otherwise materially affects the business of the Agency; or

(viii) failure to maintain insurance as provided for in Section 3.4 and Section 3.5 herein; or

(ix) a breach of the Company's obligation to fix the assessment of the Facility for the duration of the Lease Term contained in Section 3.3(e) hereof.

(b) Notwithstanding the provisions of Section 7.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 2.2 and 3.1 of this Leaseback Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Leaseback Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 7.1. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, acts of terrorism, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness and at its own cost and expense. 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 and other industrial disturbances by acceding to the demands of the opposing party or parties.

#### Section 7.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred and shall continue beyond any applicable notice and cure period, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) 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 installments of rent payable pursuant to Section 2.6(a) and (b) hereof and (B) all other payments due under this Leaseback Agreement; provided, however, that if an Event of Default specified in Section 7.1(a)(v) hereof shall have occurred, such installments of rent and other payments due under this Leaseback Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;

(ii) terminate, on ten (10) days written notice to the Company the Lease Term and all rights of the Company under this Leaseback Agreement and, without being

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liable for any prosecution or damages therefor, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from such other Person under the new lease;

(iii) terminate the leasehold interest in the Facility and terminate the PILOT Agreement. The Agency shall have the right to execute an appropriate termination of leaseback agreement with respect to the Facility and to place the same on record in the Oneida County Clerk's Office, at the expense of the Company, and in such event the Company waives delivery and acceptance of such termination of leaseback agreement. The Company does hereby appoint the Agency as its true and lawful agent to execute such instruments and documents as may be necessary and appropriate to effectuate such termination as aforesaid. Such appointment of the Agency as the agent of the Company shall be deemed to be an agency coupled with an interest and such appointment shall be irrevocable;

(iv) take any other action at law or in equity which is necessary or desirable to collect the payments then due or thereafter to become due hereunder, to secure possession of the Facility, and to enforce the obligations, agreements or covenants of the Company under this Leaseback Agreement.

(b) In the event the Facility is subleased or leased to another Person pursuant to Section 7.2(a)(ii) or (iii) hereof, the Agency may (but shall be under no obligation to) make such repairs or alterations in or to the Facility as it may deem necessary or desirable for the implementation of such sublease or lease, and the Company shall be liable and agrees to pay the costs of such repairs or alterations and the expenses incidental to the effecting of such sublease or lease, together with such interest on such costs and expense paid by the Agency at the rate of two percent (2%) in excess of the prime rate as set by Bank of America, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such costs and expenses were incurred until the date on which such payment is made, notwithstanding that the Lease Term and all rights of the Company under this Leaseback Agreement may have been terminated pursuant to Section 7.2(a)(iii) hereof.

(d) No action taken pursuant to this Section 7.2 or under the PILOT Agreement shall relieve the Company from its obligation to make all payments required hereunder, subject to the rents and other amounts payable by any sublessee.

(e) After an Event of Default shall have occurred, the Company shall have the right upon notice to the Agency to enter the Facility with agents or representatives of the Agency to remove any equipment or other personalty owned by the Company if such equipment or personalty is not part of the Facility.

### Section 7.3 Remedies Cumulative.

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Leaseback Agreement or now or hereafter existing at law or in

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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 VII, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Leaseback Agreement and the PILOT Agreement.

Section 7.4 Agreement to Pay Attorneys' Fees and Expenses.

In the event the Company should default under any of the provisions of this Leaseback 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 written demand therefore, pay to the Agency the reasonable fees of such attorneys and such other verifiable expenses so incurred, but only in the event that the Agency prevails in such actions against the Company.

Section 7.5 No Additional Waiver Implied by One Waiver.

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

Section 7.6 Recapture.

(a) If the Company shifts production or operations to a facility outside of Oneida County and, as a result, fails to achieve the economic benefits projected, then the Agency may declare this Leaseback Agreement to be in default and require the value of the incentives utilized to date to be repaid, with interest (determined as the New York State legal interest rate), and future incentives to be reduced, but, in each case, only in proportion to the amount of economic benefits not achieved and maintained by the Company due to such shift of production.

(b) If it is determined that the economic benefits projected by the Company have not been achieved for reasons other than described in subsection (a) above, then the Agency will afford the Company a hearing where the Company will have the opportunity to present its case as to relevant issues. The following criteria will be used to determine if a valid exemption exists for failure to achieve the economic benefits projected by the Company:

(i) Natural Disaster: if a natural disaster such as fire, flood or tornado disrupts the business.

(ii) Industry Trends: an evaluation of industry trends will be made relevant to the Company, and a determination reached as to whether the Company is in a market that is declining. International and national data will be used in the evaluation. An industry is considered in decline when, measure by the appropriate SIC code, it experiences employment or revenue declines – beyond its control – of 10% or more over 3 years.

(iii) Loss of Major Supplier or Customer: if the loss of a customer or supplier represents 15% or more of the sales of the Company.

(iv) Productivity Improvements: if new technology, equipment or general productivity improvements result in the need for less than projected employees or investment.

(v) Unfair Competition: if an international competitor utilizes an unfair competitive advantage to acquire market share.

(c) If the Agency determines that the Company's failure to meet the economic benefit projections is attributable to a shift in Company production or operations to a facility outside of Oneida County (as described in subsection (a) above) and/or for a reason other than one of the causes described in clauses (i)-(v) of subsection (b) above, then the Company, at its sole cost and expense, may present its case to an independent third party arbitrator. If the arbitrator determines that the Company's failure to meet the economic benefit projections is attributable to a shift in Company production or operations to a facility outside of Oneida County (as described in subsection (a) above) and/or for a reason other than one of the causes described in clauses (i)-(v) of subsection (b) above, then the Agency may declare this Leaseback Agreement to be in default and require the value of the incentives utilized to date to be repaid, with interest, and future incentives to be reduced, but, in each case, only in proportion to the amount of economic benefits not achieved and maintained by the Company. If the arbitrator finds that the Company has failed to achieve the economic benefits projected on account of one of the causes set forth in clauses (i)-(v) of subsection (b) above, the Agency may not declare this Leaseback Agreement in default and shall reinstate all benefits thereunder.

(d) The Agency in granting the benefits retains all rights to impose, delay or waive the recapture provisions provided in this section.

(e) No violation of these provisions in Section 7.6 will, in and of itself, constitute a default of any financing debt instrument.

## ARTICLE VIII

### EARLY TERMINATION OF LEASEBACK AGREEMENT; OPTION IN FAVOR OF COMPANY

#### Section 8.1 Early Termination of Leaseback Agreement.

(a) The Company shall have the option to terminate this Leaseback Agreement at any time upon filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and the date upon which such payments required by Section 8.2 hereof shall be made (which date shall not be less than 45 nor more than 90 days from the date such certificate is filed) and upon compliance with the requirements set forth

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in Section 8.2 hereof. The Company acknowledges that exercising its option to terminate pursuant to this Section shall constitute an Event of Default under the Jobs Creation Agreement.

(b) The Agency shall have the option at any time to terminate this Leaseback Agreement and to demand immediate payment in full of any unpaid PILOT Payments and other sums due pursuant to the PILOT Agreement, as well as the rental reserved and unpaid as described in Section 2.6 hereof upon written notice to the Company of the occurrence of an Event of Default hereunder and the continuation thereof beyond any applicable notice and cure periods.

(c) The Company's obligations contained in Section 3.3(e) shall immediately cease upon early termination of this Leaseback Agreement.

#### Section 8.2 Conditions to Early Termination of Leaseback Agreement.

In the event the Company exercises its option to terminate this Leaseback Agreement in accordance with the provisions of Section 8.1 hereof, the Company shall make the following payments:

(a) To the Agency or the Taxing Authorities (as such term is defined in the PILOT Agreement), as appropriate pursuant to the terms of the PILOT Agreement: all amounts due and payable under the PILOT Agreement as of the date of the conveyance described in Section 8.3 hereof.

(b) To the Agency: an amount certified by the Agency sufficient to pay all unpaid fees and reasonable and verifiable expenses of the Agency incurred under the Agency Documents pursuant to a request by the Company to terminate the Lease Agreement under Section 8.1.

#### Section 8.3 Conveyance on Early Termination of Leaseback.

Upon early termination of this Leaseback Agreement, the Agency shall, upon receipt of the purchase price, deliver to the Company all necessary documents (i) to terminate the Agency's leasehold interest in and to the Property, as such Property exists, subject only to the following: (A) any Liens to which title to such Property was subject when the leasehold interest was conveyed to the Agency, (B) any Liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances and (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Leaseback Agreement or the PILOT Agreement or arising out of an Event of Default hereunder, and (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance or Condemnation awards with respect to the Facility (but not including any Unassigned Rights). Upon the termination of the Agency's leasehold interest in the Facility pursuant to this Article VIII, the PILOT Agreement shall terminate and the Company shall immediately pay to the Agency any sums remaining to be paid thereunder.

### ARTICLE IX

#### MISCELLANEOUS

Section 9.1 Notices.

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

To the Agency: Oneida County Industrial Development Agency  
584 Phoenix Drive  
Rome, New York 13441  
Attn.: Chairman

With a Copy To: Bond, Schoeneck & King, PLLC  
501 Main Street  
Utica, New York 13501  
Attn.: Linda E. Romano, Esq.

To the Company: Family Dollar Services, Inc.  
10401 Monroe Road  
Matthews, North Carolina 28105

With a Copy To: Heather Adams, Assistant General Counsel  
Family Dollar Stores, Inc.  
PO Box 1017  
Charlotte NC 28201-1017

With a Copy To: Hancock Estabrook LLP  
1500 AXA Tower I  
100 Madison Street  
Syracuse NY 13202  
Attn.: Richard W. Cook, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

Section 9.2 Binding Effect.

This Leaseback Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 9.3 Severability.

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

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Section 9.4 Amendments, Changes and Modifications.

This Leaseback Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto.

Section 9.5 Execution of Counterparts.

This Leaseback 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 9.6 Applicable Law.

This Leaseback Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 9.7 List of Additional Equipment; Further Assurances.

[Intentionally Omitted]

Section 9.8 Survival of Obligations.

This Leaseback Agreement shall survive the performance of the obligations of the Company to make payments hereunder and all indemnities shall survive the foregoing and any termination or expiration of this Leaseback Agreement.

Section 9.9 Table of Contents and Section Headings not Controlling.

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

Section 9.10 No Broker.

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

Section 9.11 Recording and Filing.

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

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Section 9.12 Definitions.

All capitalized terms used in this Leaseback Agreement and not otherwise defined shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

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

FAMILY DOLLAR STORES, INC.

By: \_\_\_\_\_  
Michael Bloom, President

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
David C. Grow  
Chairman



EXHIBIT A

ALL THAT TRACT, PIECE OR PARCEL OF LAND situate in the City of Rome, County of Oneida and State of New York more particularly bounded and described as follows (the "Property"):

Beginning at a capped iron pipe set at a point in the lands of the Oneida County Industrial Development Agency; said point being South 54° 30' 53" East 2,196.56 feet from a capped iron rod stamped "AFRL-43";

thence through the lands of the Oneida County Industrial Development Agency the following two (2) courses and distances;

1. North 43° 28' 17" East 2,420.83 feet to a capped iron pipe set;
2. South 46° 31' 43" East 1,560.00 feet to a capped iron pipe set at the intersection with the proposed division line between the herein described parcel on the northwest and the lands of the County of Oneida on the southeast;

thence South 43° 28' 17" West along said proposed division line 2,420.83 feet to a capped iron pipe set;

thence North 46° 31' 43" West through the lands of the Oneida County Industrial Development Agency (reputed owner) 1,560.00 feet to the place of beginning, being 3,776,496.0± square feet or 86.696 acres, more or less.

BEING the same premises described in a deed from the Oneida County Industrial Development Agency, Inc. to Family Dollar Services, Inc. dated July 30, 2012, and subject to the same terms, covenants, and restrictions therein.

EXHIBIT B

EQUIPMENT

All fixtures, building materials and items of personal property acquired by the Company, constructed and installed in connection with the completion of the Company's Facility located in the City of Rome, Oneida County, New York, including but not limited to the following:

## SCHEDULE A

### SCHEDULE OF DEFINITIONS

"Act" means, collectively, Title 1 of Article 18-A of the General Municipal Law of the State enacted into law as Chapter 1030 of the Laws of 1969 of the State, as amended together with Chapter 372 of the Laws of 1970 of the State, as amended.

"Agency" means the (i) Oneida County Industrial Development Agency, its successors and assigns, and (ii) any local governmental body resulting from or surviving any consolidation or merger to which the Agency or its successors may be a party.

"Agency Documents" means the Lease Agreement, the PILOT Agreement, the Master Agreement for Development, the Bill of Sale and the Bargain and Sale Deed to the Company.

"Authorized Representative" means, in the case of the Agency, the Chairman, Vice Chairman, Secretary, Assistant Secretary or Executive Director of the Agency; in the case of the Company, the President or Executive Vice President; and in the case of both, such additional persons as, at the time, are designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Agency or the Company, as the case may be, containing the specimen signature of each such person and signed on behalf of (i) the Agency by the Chairman, Vice Chairman, Secretary, Assistant Secretary or Executive Director of the Agency, or (ii) the Company by the President.

"Authorizing Resolution" means the resolution adopted by the Agency on the 15th day of June 2012 authorizing the execution and delivery of the Agency Documents as such resolution may be amended and supplemented from time to time.

"Business Day" means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions in New York, New York are authorized by law or executive order to remain closed.

"Business Park" means the Griffiss Business and Technology Park, Rome, New York.

"Company" means Family Dollar Services, Inc. a North Carolina corporation with an address of 10401 Monroe Road, Matthews, North Carolina 28105, and its successors and assigns.

"Company Documents" means the Lease Agreement, the Leaseback Agreement, the PILOT Agreement and the Master Agreement for Development.

"Completion Date" means the date of completion of the Facility.

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

"Distribution Center Project" means the acquisition of the Land, the construction thereon of the Improvements including, without limitation, a 907,000 square foot  
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industrial/commercial warehouse and related improvements and the acquisition and installation of the Equipment upon the Land and/or in the Improvements.

“Environmental Laws” mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection, preservation or remediation of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations and written and published policies of federal, state and local governmental agencies and authorities with respect thereto.

“Environmental Permits” mean all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Laws in connection with the ownership, construction, equipping, use and/or operation of the Facility, for the storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Facility.

“Equipment” means all machinery, equipment and other personal property used and to be used in connection with the Facility as described in Exhibit B to the Leaseback Agreement.

“Event of Default” means any of the events defined as Events of Default by Section 7.1 of the Leaseback Agreement.

“Facility” means the Land, the Improvements and the Equipment leased to the Company under the Leaseback Agreement as such may be constructed by the Company.

“Facility Services” means all services necessary for the Facility.

“GLDC” means Griffiss Local Development Corporation, a New York local development corporation with offices at 153 Brooks Road, Rome, New York 13441 and its successors and permitted assigns.

“GLDC Lenders” means the lenders who make the GLDC Loans to GLDC including, with respect to internal borrowings made by GLDC, GLDC itself.

“Hazardous Substance” means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined 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. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), Articles 15 and 27 of the New York State Environmental Conservation Law or any other applicable Environmental Law and the regulations promulgated thereunder.

“Improvements” means all those buildings, improvements, structures and other related facilities (i) affixed or attached to the Land and (ii) not part of the Equipment, all as they may exist from time to time.

"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 of the United States of America or in the District of Columbia and not a full time employee of the Agency or the Company.

"Land" means the property leased by the Agency to the Company pursuant to the Leaseback Agreement and more particularly described in Exhibit A attached thereto.

"Lease Agreement" means the Lease Agreement dated July 30, 2012 by and between the Company, as lessor, and the Agency, as lessee, with respect to the Facility, as the same may be amended from time to time.

"Lease Term" means the duration of the leasehold estate created in the Lease Agreement as specified in Section 3 of the Lease Agreement and shall be coterminous with the term of the Leaseback Agreement.

"Leaseback Agreement" means the Leaseback Agreement dated July 30, 2012 by and between the Agency, as lessor, and the Company, as lessee, with respect to the Facility, as the same may be amended 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, the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservation, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics', materialman's, warehousemen's, carriers' and other similar encumbrances, affecting real property. For the purposes of this definition, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

"Permitted Encumbrances" means (i) exceptions to title set forth in the Title Report, (ii) the Leaseback Agreement, (iii) utility, access and other easements and rights-of-way, restrictions, encroachments and exceptions that do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (iv) artisans', mechanics', materialmen's, warehousemen's, carriers', landlords', bankers', workmens compensation, unemployment compensation and social security, and other similar Liens to the extent permitted by Section 3.3 of the Lease Agreement, (v) Liens for taxes (1) to the extent permitted by the Lease Agreement or (2) at the time not delinquent, (vi) any Lien on the Facility obtained through any Transaction Document, (vii) Liens of judgments or awards in respect of which an appeal or proceeding for review shall be pending (or is pending within ten (10) days after entry) and a stay of execution shall have been obtained (or is obtained within ten (10) days after entry), or in connection with any claim or proceeding, (viii) Liens on any Property hereafter acquired by the Company or any subsidiary which Liens are created contemporaneously with such acquisition to secure or provide for the payment or financing of any part of the purchase price thereof, provided that each such Lien shall attach only to the Property so acquired, (ix) Liens consisting solely of restrictions under any applicable laws or any negative covenants in any applicable agreements (but only to the extent that such restrictions and covenants do not prohibit the execution, delivery and performance by the Company of the Lease Agreement and the mortgage, if any, and (x) existing mortgages or encumbrances on the Facility as of the Closing Date or thereafter incurred with the consent of the Agency .

"Person" or "Persons" means an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision or branch thereof.

"PILOT Agreement" means the Payment-in-Lieu-of-Tax Agreement dated July 30, 2012 between the Company and the Agency, as amended from time to time.

"PILOT Payment" or "PILOT Payments" shall have the meanings ascribed to such terms in the PILOT Agreement.

"Plans and Specifications" means the plans and specifications for the Improvements, prepared for the Company and approved by the Agency, as revised from time to time in accordance with the Leaseback Agreement.

"Project" shall have the meaning ascribed to such term in the Enabling Act.

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

"Public Purposes" shall mean the State's objective to create industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and to empower such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living.

"Release" has the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), and the regulations promulgated thereunder.

"Schedule of Definitions" means the words and terms set forth in this Schedule of Definitions attached to the Leaseback Agreement, as the same may be amended from time to time.

"SEQR Act" means the State Environmental Quality Review Act and the regulations thereunder.

"State" means the State of New York.

"Substitute Facilities" shall have the meaning assigned to such term in Section 4.2 (a) hereof.

"Taxing Authorities" means the County of Oneida, the City of Rome and the Rome City School District.

"Title Report" means that certain title commitment or proforma policy issued by Commonwealth Land Title Insurance Company bearing commitment No. A60-853228 (REV4).

"Transaction Counsel" means the law firm of Bond, Schoeneck & King, PLLC.

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"Transaction Documents" means the Agency Documents and the Company Documents.

"Unassigned Rights" means the rights of the Agency and moneys payable pursuant to and under Sections 2.6(b), 3.4(b) and (c), 3.7, 5.2, 5.8, 7.2(a)(v), 7.2(a)(vii), 7.4(a) and 8.2(b) of the Leaseback Agreement.