

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

and

CREE, INC.

LEASEBACK AGREEMENT

Dated as of May 22, 2020

Oneida County Industrial Development Agency
2020 Real Estate Lease
(Cree, Inc. Facility)

THIS LEASEBACK AGREEMENT (the "Leaseback Agreement"), dated as of May 22, 2020, by and between **CREE, INC.**, a corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina, with offices at 4600 Silicon Drive, Durham, North Carolina 27703 (the "Company") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 584 Phoenix Drive, Rome, New York 13441 (the "Agency").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (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, improve, renovate, refurbish, equip, lease, maintain, furnish, 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") the Agency is empowered under the Act to undertake the leasing of the facility described below;

WHEREAS, the Company has requested the Agency assist in the (i) acquisition of an interest in a 55.25± acre parcel of land situate at Edic Road in the Town of Marcy, Oneida County, New York (the "Land"), (ii) construction on the Land of three buildings with 656,100± square feet of floor area consisting of (a) a three-story general administrative building containing approximately 75,000 square feet of administrative office space; (b) a three level, 200 mm SiC cleanroom with approximately 100,000 to 135,000 gross square feet of cleanroom space; (c) a central utility building with approximately 70,000 square feet of space; (d) a bulk gas yard consisting of approximately 30,000 square feet and an electrical service yard consisting of approximately 60,000 square feet; (e) a warehouse building containing approximately 35,000 square feet of space; and (f) all associated site utilities and related improvements including but not limited to: driveways, interior access roads, sidewalks, parking lots, landscaping and signage (collectively, the "Improvements"); and (iii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all for the purpose of providing a state of the art wafer fabrication plant to support the substantial growth of the Company in its target markets (the Land, the Improvements and the Equipment is referred to collectively as the

“Facility” and the construction, renovation and equipping of the Improvements is referred to as the “Project”); and

WHEREAS, The People of the State of New York, acting by and through the State University of New York (“SUNY”), owns in fee a 53.76± acre portion of the Land (the “State Land”) and leases the State Land to Fort Schuyler Management Corporation (“FSMC”) pursuant to an Amended and Restated Ground Lease dated as of May 1, 2010, as has been or may be amended from time to time (the “First Ground Lease”); and

WHEREAS, FSMC has ground subleased or will ground sublease the State Land to Economic Development Growth Enterprises Corporation (“EDGE”) pursuant to a Ground Sublease dated May 22, 2020, as may be amended from time to time (the “Second Ground Sublease”); and

WHEREAS, EDGE owns in fee a 1.49± acre portion of the Land (the “EDGE Land”); and

WHEREAS, EDGE has leased and/or sub-subleased or will lease and/or sub-sublease the Land to the Company pursuant to a Ground Sublease dated May 22, 2020, as may be amended from time to time (the “Third Ground Sublease”); and

WHEREAS, EDGE has agreed to finance a portion of the costs of the Facility by undertaking certain site work in furtherance of the Project (the “EDGE Project Related Debt”); and

WHEREAS, NBT Bank, National Association (the “Bank”), together with a consortium of other lenders to be identified at a later date (collectively, the “EDGE Lenders,” and together with the Bank, collectively, the “Lenders”) have agreed to finance the EDGE Project Related Debt by extending one or more loans to EDGE in the principal sum of up to \$9,250,000.00, to be secured by one or more mortgages and/or other documents deemed necessary by the Lenders to secure their respective interests (the “Lenders' Financing Documents”); and

WHEREAS, the Company will make payments-in-lieu-of-taxes (the “PILOT Payments”) to the Agency pursuant to a Payment-In-Lieu-of-Tax Agreement dated as of May 22, 2020 (the “PILOT Agreement”), which PILOT Payments are to be allocated by the Agency in accordance with the terms of an Agreement Approving PILOT Terms and Allocating PILOT Payments dated as of October 1, 2013 by and among the County of Oneida, Whitesboro Central School District, the Town of Marcy, Maynard Fire District, Dunham Public Library (each an “Affected Tax Jurisdiction” and collectively, the “Affected Tax Jurisdictions”), the Agency and EDGE (the “Allocation Agreement”); and

WHEREAS, the PILOT Payments will be secured by a PILOT Mortgage dated as of May 22, 2020 (the “PILOT Mortgage”) from the Agency and the Company to the Agency, for the benefit of EDGE and the Affected Tax Jurisdictions; and

WHEREAS, PILOT Payments collected for the benefit of, and, pursuant to the Allocation Agreement allocated to, EDGE are intended to enable EDGE to pay and/or otherwise service the EDGE Project-Related Debt each year (and maintain a minimum debt service coverage ratio of 1.15 to 1.0), and in the event of termination of the PILOT Agreement for any reason, provision has been made in the Third Ground Sublease for the Company to pay to EDGE Early Termination Payment(s) (as such term is defined in the Third Ground Sublease), which provision for Early Termination Payment(s) shall take immediate effect upon termination of the PILOT Agreement and shall not require notice by the Agency; and

WHEREAS, in order to induce the Company 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 acquire, construct and equip the Facility in accordance with the Plans and Specifications presented to the Agency members; 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.

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) Pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations"), and by resolution duly adopted on September 27, 2019, the Agency determined that the Facility will not have a significant impact on the environment and the Agency will not require the preparation of an environmental impact statement with respect to the Facility. The Agency prepared a Statement of Findings dated September 27, 2019 with respect to the Facility which describes the basis for its decision that the Facility will not have a significant impact on the environment, and which, together with its attachments, shall serve as the equivalent of a negative declaration.

(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 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.

(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.

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

(g) The Agency hereby confirms its appointment of the Company effective September 27, 2019 as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Agency Documents, and the Company hereby confirms its acceptance of such appointment effective as of such date: (1) to acquire, construct, install and complete the Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for the acquisition, construction, installation and completion of the Facility, with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefore by the Company and advanced for such purposes by the Company pursuant to this Leaseback Agreement, (3) to pay all fees, costs and expenses incurred in the

acquisition, construction, installation and completion of the Facility from funds made available therefor in accordance with this Leaseback Agreement, and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the acquisition, construction, installation and completion of the Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same. Without limiting the generality of the foregoing, the Company's appointment as agent includes the authority to purchase, rent, lease, and otherwise use tools, machinery and equipment in connection with constructing and installing the Facility, to purchase, rent, lease, use and consume supplies, materials and services of every kind and description in connection with the construction and installation of the Facility, and to purchase, rent, lease, and use equipment, machinery and other tangible personal property (including without limitation installation costs) installed or placed in, on, under or over the Facility.

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 is authorized to do 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. 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.

(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 Bylaws 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 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 with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. 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, and has not transferred to the Agency any properties and assets not contemplated by this Leaseback Agreement.

(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, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Leaseback Agreement or any of Company Documents or the transactions contemplated therein.

(g) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations and, except in compliance with environmental laws and regulations, (i) that no pollutants, 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 commercially reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (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) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expense shall be deemed to be additional rent.

(h) In its Application for Financial Assistance dated September 24, 2019, the Company projected that, as a result of the Project, it will create the following full time equivalent (“FTE”) positions at the Facility, as a result of undertaking the Facility (the “Employment Obligation”):

Year 1	37
Year 2	270
Year 3	321
Year 4	350
Year 5	414
Year 6	488
Year 7	564
Year 8	614
Year 9	614
Year 10	614

(the “Employment Obligation”). The Company acknowledges that the financial assistance granted by the Agency in connection with the Facility is conditioned upon achieving the Employment Obligation.

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 all of the 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 expense or liability arising out of a defect in title or a lien adversely affecting the Facility and will pay all reasonable expenses incurred by the Agency in defending any action with respect to title to or a lien affecting the Facility.

Section 2.2 Construction and Equipping of the Facility.

The Company, as agent for the Agency, will undertake and complete 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.

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 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.

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 the Closing Date and the Company shall accept possession of the Facility on the Closing Date.

(b) Except as provided in Section 7.1 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on December 31, 2068 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: Seven Hundred Fifty Dollars (\$750.00) per year commencing on the Closing Date and on the First Business Day of each and every January 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. 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), 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 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, the PILOT Agreement and the PILOT Mortgage. 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, renovation, 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, and except as provided in Section 6.2 herein, the Company shall not remove any part of the Facility 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 (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); 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 conditioned or delayed, the Company at its own expense from time to time may make any structural additions, modifications 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 not become, or be deemed to become, 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 adversely affect the structural integrity of the Facility or 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 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 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, 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.

Section 3.4 Insurance Required.

At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, the Company shall, at its sole cost and expense, maintain or cause to be maintained (and cause any permitted sublessees to maintain, where appropriate) 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:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against in an all risk policy with special form perils (TRIA coverage is optional), such insurance to provide for the full replacement cost coverage of the completed Improvements, exclusive of footings and foundations, with self-insured retentions, sub limits, and aggregate limits as determined by Company consistent with industry standards. During the Construction Period, such policy shall be written in accordance with ACE/CHUBB form ACE0728 (10/15) which insures the Project on a completed value basis..

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance that the Company (or in the case of insurance maintained by any permitted sublessee, the sublessee) is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company (or in the case of insurance maintained by any permitted sublessee, employees of the sublessee) who are located at or assigned to the Facility. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Company, any permitted sublessee, any contractor or subcontractor first occupy the Facility.

(c) Commercial general liability (CGL) insurance protecting the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 5.2 hereof) subject to and in accordance with the policy form, and arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or occurrence with a limit of liability of not less than \$8,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage), and comprehensive automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than \$8,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage) protecting the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. The required insurance limits may be established by any combination of base, excess and umbrella coverages. The Agency shall be an additional insured under the CGL and the auto liability policies. Additional insured status

under the CGL coverage will be in accordance with additional insured endorsement CG D2 46 04 19, as issued by Company's insurance carrier or an endorsement providing substantially equivalent coverage to the Agency. This coverage shall also be in effect during the Construction Period.

(d) During the Construction Period (and for at least two years thereafter in the case of Products and Completed Operations as set forth below), the Company shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

(i) Workers' compensation and employer's liability with limits in accordance with applicable law.

- (ii) Comprehensive general liability providing coverage for:
- Premises and Operations
 - Products and Completed Operations
 - Contractual Liability
 - Personal Injury Liability
 - Broad Form Property Damage
(including completed operations)
 - Explosion Hazard
 - Collapse Hazard
 - Underground Property Damage Hazard

Such insurance shall provide both bodily injury (including death) and property damage insurance in a limit not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate, and a minimum Eight Million Dollars (\$8,000,000) umbrella. The CGL coverage, including any excess or umbrella liability coverage, maintained by the general contractor shall provide coverage for all subcontractors to the extent that their respective commercial general liability policy limits are insufficient to pay a claim in full.

(iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$4,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage, which may be evidenced by any combination of base, excess or umbrella coverage).

(e) A policy or policies of flood insurance in the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Agency that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

Section 3.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 3.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies

selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Section 3.4 hereof shall provide for at least thirty (30) days' prior written notice of the cancellation, termination or reduction in coverage below required limits thereof to the Agency. The policy evidencing the insurance required by Section 3.4(c) hereof shall name the Agency (and Company if insurance is obtained by a sublessee) as additional insured on a primary & non-contributory basis. All policies evidencing the insurance required by Sections 3.4(d)(ii) and (iii) shall name the Agency and Company as additional insured on a primary and non-contributory basis for the ongoing construction phase and for two years following completion during the completed operations phase. The policies under Section 3.4 (d) shall contain appropriate waivers of subrogation in favor of the Agency and Company. The policies under Section 3.4 (a), (b), and (c) shall contain appropriate waivers of subrogation in favor of the Agency (and Company, if insurance is obtained by a sublessee).

(b) All policies or certificates (or binders) of insurance required by Sections 3.4 hereof shall be submitted to the Agency on or before the Closing Date. Attached to the certificate of insurance shall be a copy of the additional insured endorsement from the Company's General Liability policy. The Company shall deliver to the Agency within ten (10) business days following the renewal date of each policy a certificate reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 3.4 hereof and complying with the additional requirements of Section 3.5(a) hereof. Upon request, the Company shall furnish the Agency within one (1) business day following renewal with evidence that such policy has been renewed or replaced or is no longer required by this Leaseback Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Leaseback Agreement as the Agency may from time to time reasonably require.

Section 3.6 Application of Proceeds of Insurance. The proceeds of the insurance carried pursuant to the provisions of Section 3.4 (a) hereof shall be applied as set forth in the Third Ground Sublease, and in any event shall continue to protect the Agency from liability as provided in this Agreement.

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 thereof, 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, (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, 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 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 (iii), (v) and (vi) 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, on demand, reimburse the Agency for any amount so paid or for 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. If the Allocation Agreement is set aside, voided or terminated for any reason, the Agency has the right, but not the obligation, to terminate the PILOT Agreement and enter into a new PILOT Agreement with the Company. In such case, the Company agrees to execute a new PILOT Agreement so long as it does not amend the rate at which PILOT Payments are calculated.

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 Third Ground Sublease.

(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:

(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 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 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) unless the whole of the Facility is taken in condemnation; and

(iii) upon the occurrence of such Condemnation, the proceeds derived therefrom shall be paid in accordance with the terms of the Third Ground Sublease.

(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:

(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 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 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 owned by the Company but is not part of the Facility.

ARTICLE V

SPECIAL COVENANTS

Section 5.1 No Warranty of Condition or Suitability by Agency.

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, 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.

(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 expenses and 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.

Section 5.3 Right to Inspect Facility.

The Agency and the duly authorized agents of the Agency shall have the right, upon reasonable advanced notice to the Company, to inspect the Facility. The Agency shall honor and comply with any restricted access policy of the Company relating to 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, the Company shall not complete a Change of Control of the Company, without the written approval of the Agency which shall not be unreasonably withheld, conditioned or delayed. For the purposes of this Agreement, a Change of Control of the Company shall be deemed to have occurred upon the happening of any of the following events:

(a) Any "Person" as defined in Section 3(a)(9) of the Securities and Exchange Act of 1934, as now in effect or as hereafter amended (the "Act"), including a "group" (as that term is used in Sections 13(d)(3) and 14(d)(2) of the Act), but excluding the Company or any of its Affiliates and any employee benefit plan sponsored or maintained by any Company Affiliate (including any trustee of such plan acting as trustee), who together with its "affiliates" and "associates" (as those terms are defined in Rule 12b-2 under the Act) becomes the "Beneficial Owner" (within the meaning of Rule 13d-3 under the Act) of more than 50% of the then-outstanding shares of common stock of the Company or the combined voting power of the then-outstanding securities of the Company entitled to vote generally in the election of its directors. For purposes of calculating the number of shares or voting power held by such Person and its affiliates and associates under this clause (i), there shall be excluded any securities acquired by such Person or its affiliates or associates directly from any Company affiliate;

(b) A sale or other disposition of all or substantially all of the Company's assets is consummated, other than such a sale or disposition that would not have constituted a Change of Control under clause (iv) below had it been structured as a merger or consolidation;

(c) The shareholders of the Company approve a definitive agreement or plan to liquidate Cree;

(d) A merger or consolidation of the Company with and into another entity is consummated, unless immediately following such transaction (1) more than 50% of the members of the governing body of the surviving entity were Incumbent Directors (as defined in clause (v) below) at the time of execution of the initial agreement providing for such transaction, (2) no "Person" (as defined in clause (i) above), together with its "affiliates" and "associates" (as defined in clause (i) above), is the "Beneficial Owner" (as defined in clause (i) above), directly or indirectly, of more than 50% of the then-outstanding equity interests of the surviving entity or the combined voting power of the then-outstanding equity interests of the surviving entity entitled to vote generally in the election of members of its governing body, and (3) more than 50% of the then-outstanding equity interests of the surviving entity and the combined voting power of the then-outstanding equity interests of the surviving entity entitled to vote generally in the election of members of its governing body is "Beneficially Owned", directly or indirectly, by all or substantially all of the individuals and entities who were the

“Beneficial Owners” of the shares of common stock of the Company immediately prior to such transaction in substantially the same proportions as their ownership immediately prior to such transaction; or

(e) During any period of 24 consecutive months prior to the execution of a definitive agreement for a potential Change of Control of the Company, the individuals who, at the beginning of such period, constitute the Board (the “Incumbent Directors”) cease for any reason other than death to constitute at least a majority thereof; provided, however, that a director who was not a director at the beginning of such 24 month period shall be deemed to have satisfied such 24 month requirement, and be an Incumbent Director, if such director was elected by, or on the recommendation of or with the approval of, at least two-thirds of the directors who then qualified as Incumbent Directors either actually, because they were directors at the beginning of such 24 month period, or by prior operation of this clause (v), but excluding for this purpose any such individual whose initial assumption of office is in connection with an actual or threatened election context subject to Rule 14a-11 of Regulation 14A promulgated under the Act or other actual or threatened solicitation of proxies or consents by or on behalf of a “Person” (as defined in clause(i) above) other than the Board.

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 shall provide annually, to the Agency, a certified statement and documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. If the Company does not provide said annual certified statement to the Agency by the stated due date, a \$500.00 late fee will be charged to the Company for each thirty (30) day period the report is late beyond the due date, up until the time the report is submitted. The Company further agrees whenever 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, and cause any sublessee or occupant of the Facility to comply, 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, 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, equip, use, operate and manage the Facility, in accordance with all applicable Environmental Laws and Environmental Permits (as such terms are defined in the Environmental Compliance and Indemnification Agreement), and shall cause all operators, tenants, subtenants, licensees and occupants of the Facility to construct, 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 accordance 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, 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 with any applicable Environmental Law, or the construction, 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 petroleum or petroleum based products other than in accordance with any applicable Environmental Law, (ii) violate any applicable Environmental Laws, (iii) constitute a violation or non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance (as such terms are defined in the Environmental Compliance and Indemnification Agreement). The Company shall promptly provide the Agency with a copy of all notifications which the Company gives or receives with respect to environmental conditions at, or to its actual knowledge in the vicinity of, 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. If the

Company receives or becomes aware of any such notification that is not in writing or otherwise capable of being copied, the Company shall promptly advise the Agency of such verbal, telephonic or electronic notification and confirm such notice in writing. The Company shall undertake and complete all investigations, studies, sampling and testing and all removal or remedial actions necessary to contain, remove and clean up all Hazardous Substances that are or may become present at the Facility and are required to be removed and/or remediated in accordance with all applicable Environmental Laws and all Environmental Permits. The Company shall allow the Agency, its officers, members, employees, agents, representatives, contractors and subcontractors reasonable access to the Facility 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. If at any time the Agency obtains any notice or information that the Company or the Facility or the construction, equipping, use or operation of the Facility may be in violation of an Environmental Law or in non-compliance with any Environmental Permit or standard, the Agency may require that a full or supplemental environmental inspection and audit report with respect to the Facility of a scope and level of detail reasonably satisfactory to the Agency be prepared by a professional environmental engineer or other qualified environmental scientist acceptable to the Agency, at the Company's sole cost and expense. Said audit may, but is not required to or limited to, include a physical inspection of the Facility, a records search, a visual inspection of any property adjacent to or within the immediate vicinity of the Facility, personnel interviews, review of all Environmental Permits and the conduct of a scientific testing. If necessary to determine whether a violation of an Environmental Law exists, such inspection shall also include subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a Release or Disposal (as such terms are defined in the Environmental Compliance and Indemnification Agreement) or the threat of a Release or Disposal of any Hazardous Substance on, at or from the Facility, the Company shall promptly undertake and diligently pursue to completion all necessary, appropriate investigative, containment, removal, clean up and other remedial actions required by any Environmental Law, using methods recommended by the professional engineer or other environmental scientist who prepared said audit report and acceptable to the appropriate federal, state and local agencies or authorities. For purposes of this Section, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Superfund Amendments and Reauthorization Act of 1986 (Pub.L. No. 99-499, 100 stat. 1613 (1986), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation. 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 expenses (including, without limitation, attorneys' and experts' fees, 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 environmental conditions at or on the Facility, (ii) the acquisition, construction, equipping, operation or use of the Facility 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, (iii) the presence 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, (iv) the failure to promptly undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility, required by any Environmental Law, (v) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Facility or the acquisition, construction, equipping, ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law, (vi) a violation of any applicable Environmental Law, (vii) non-compliance with any Environmental Permit or (viii) 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 the Environmental Compliance and Indemnification 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) and (b) 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 satisfactory to the Agency. 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) Notwithstanding the provisions of this Section 5.8, if, because of a breach or violation of 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 fine, liability, expense or imprisonment, then, upon 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.

(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 such Hazardous Materials and Hazardous Substances. In any such defense of itself, the Agency shall select its own counsel, and any and all costs of such defense, including, without limitation, reasonable attorney and reasonable consultant fees, investigation and laboratory fees, court costs, and litigation expenses, shall be paid by the Company.

Section 5.9 Discharge of Liens and Encumbrances.

(a) The Company, 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 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 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 satisfactory to the Agency to protect their respective interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the filing or perfection thereof.

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 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 following link may be used to post jobs with NYSDOL: <https://labor.ny.gov/businessservices/services/perm.shtm>. The following link may be used to determine the local administrative entity:

<https://labor.ny.gov/career-center-locator/>. The Company also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, 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.

(b) The Agency and the Company 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) 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.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such items and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, provided that such removal will not 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, and the Facility may not be subleased, in whole or in part, without the prior written consent of the Agency in each instance, which consent shall not be unreasonably withheld or delayed. A transfer in excess of 50% of the equity voting interests of the Company shall be deemed an assignment and subject to the provision of Section 5.4 above. 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 so request, 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 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 Lenders.

(a) The Agency is being requested to mortgage, pledge and assign to the Lenders 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). The Agency is also being requested to join in the

mortgage from EDGE to the Lenders, to be secured by EDGE's interest, as sublessee, in the Second Ground Sublease. The Company consents to such mortgage, pledge and assignment by the Agency, conditioned upon the delivery of a subordination non-disturbance agreement in a form substantially similar to that which is attached hereto as Exhibit C. Notwithstanding the foregoing, all indemnities herein contained shall subsequent to such pledge and assignment continue to run to the Agency for its benefit.

(b) The Agency may be requested to further mortgage, 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) (or to join in a mortgage secured by the Second Ground Sublease or Third Ground Sublease) to other lending institutions. The Company shall not unreasonably withhold its consent to such mortgage, pledge and assignment by the Agency conditioned upon the delivery of a subordination non-disturbance agreement in a form substantially similar to that which is attached hereto as Exhibit C and the determination by the Company that such additional mortgage(s) pledge(s) or assignment(s) do not materially alter the obligations of the Company in the context of the Early Termination Payment(s) provisions under the Third Ground Sublease. 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 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.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, 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 Lease 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 ten (10) 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;

(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, if the default pursuant to paragraph cannot be reasonably cured within such thirty day period, Grantee commences to cure such default within the thirty day cure period and cures the default within a reasonable amount of time but in no event later than ninety (90) days thereafter;

(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 failure of the Company to make payments under the PILOT Agreement when due;

(vii) a breach of any covenant or representation contained in Section 5.8 hereof with respect to environmental matters; or

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

(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 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, 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, pandemic, 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. 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, 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 the leasehold interest in the Facility and terminate the PILOT Agreement, in which event the Early Termination Payment(s) provisions contained in the Third Ground SubLease shall become operative. 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;

(iii) exercise any remedy afforded the Agency under the Recapture Agreement;

(iv) foreclose on the PILOT Mortgage to recover any unpaid PILOT Payments;

(v) take any other action at law or in equity which may appear 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) No action taken pursuant to this Section 7.2 shall relieve the Company from its obligation to make all payments required hereunder.

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 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.

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 demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

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.

The financial assistance granted by the Agency and the lease of the Facility are subject to a Jobs Creation and Recapture Agreement dated as of May 22, 2020 (the "Recapture Agreement"), which is incorporated herein by reference.

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

(b) The Agency shall not have the option to terminate this Leaseback Agreement and to demand immediate payment in full of the rental reserved and unpaid as described in Section 2.6 hereof unless the Company fails to cure an Event of Default after appropriate written notice from the Agency to the Company and after the expiration of the applicable cure period.

(c) The Agency shall have the option, but not the obligation, to terminate this Leaseback Agreement in the event of the invalidity, illegality or unenforceability of the PILOT Agreement or the Allocation Agreement and in the event the Agency and the Company do not enter into a mutually agreeable document or documents to replace the PILOT Agreement and/or the Allocation 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:

(i) all amounts due and payable under the PILOT Agreement as of the date of the conveyance described in Section 8.3 hereof;

(ii) all amounts due and payable resulting from a default under the Recapture Agreement, if any; and

(iii) an amount certified by the Agency sufficient to pay all unpaid fees and expenses of the Agency incurred under the Agency Documents.

(b) To EDGE:

(i) all payments of Early Termination Payment(s) as required under the Third Ground Sublease.

Section 8.3 Obligation to Terminate Leasehold Interest. Upon termination or expiration of the Lease Term, in accordance with Sections 2.5 or 8.1 hereof, the Lease Agreement and Leaseback Agreement shall terminate. The Agency shall have the right to execute an appropriate termination or terminations 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 or terminations. 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.

Section 8.4 Conveyance on Termination.

Upon termination pursuant to Section 8.3 hereof, the Agency shall 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 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 pursuant to this Article VIII, all Agency Documents shall terminate.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices.

All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (i) mailed by United States registered or certified mail, postage prepaid, return receipt requested or (ii) when delivered by a commercial overnight courier that guarantees next day delivery and provides a receipt, to the Agency or the Company, as the case may be, 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: Rick McFarland
Senior Vice President, Global Operations
4600 Silicon Drive
Durham, NC 27703
(919) 407-4600
rmcfarland@cree.com

With a copy to: Brad Kohn
General Counsel
4600 Silicon Drive
Durham, NC 27703
(919) 407-4600
bkohn@cree.com

With a Copy To: Barclay Damon LLP
Barclay Damon Tower
125 East Jefferson Street
Syracuse, NY 13202
Attn.: Kevin R. McAuliffe, Esq.

To EDGE: Economic Development Growth Enterprises Corporation
584 Phoenix Drive
Rome, New York 13441-4105
Attn.: President

With a Copy To: Saunders Kahler, L.L.P.
185 Genesee Street, Suite 1400

Utica, New York 13501
Attn.: Joseph E. Saunders, Esq.

To the Bank: NBT Bank, National Association
52 S. Broad Street
Norwich, New York 13815
Attn.: Commercial Lending Department

With a Copy to: Kowalczyk & Deery, LLP
185 Genesee Street
Utica, New York 13501
Attn.: Andrew S. Kowalczyk III, 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.

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.

(a) Upon the Completion Date with respect to the Facility and the installation of all of the Equipment therein, the Company shall prepare and deliver to the Agency a schedule listing all of the Equipment not previously described in this Leaseback Agreement. If requested by the Agency, the Company shall thereafter furnish to the Agency within sixty (60) days after the end of each calendar year, a schedule listing all of the Equipment not theretofore previously described herein or in the aforesaid schedule.

(b) The Agency and the Company shall execute and deliver all instruments and shall furnish all information necessary or appropriate to perfect or protect any security interest created or contemplated by this Leaseback Agreement.

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.

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.

Section 9.13 Subordination to Lenders' Financing Documents. This Leaseback Agreement and the rights of the Company and the Agency hereunder (other than with respect to the Unassigned Rights) are subject and subordinate to the Lien of the Lenders' Financing Documents and all extensions, renewals or amendments thereof conditioned upon the delivery of a subordination non-disturbance agreement in a form substantially similar to that which is attached hereto as Exhibit C. The subordination of this Leaseback Agreement to the Lenders' Financing Documents shall be automatic, without execution of any further subordination agreement by the Company or the Agency. Nonetheless, if the Lenders require a further written subordination agreement, the Company and the Agency hereby agree to execute, acknowledge and deliver the same.

Section 9.14 Rights of Lenders.

(a) Lenders are hereby given the right by the Agency, in addition to any other rights herein granted, without any requirement to obtain the Agency's consent, to mortgage the mortgagors' respective interests in the Facility and, in the case of the Company, to assign and grant a security interest in the Company's rights under the Company Documents as collateral security for its obligations to the Lenders, upon the condition that all rights acquired by Lenders shall be subject to all rights and interests of the Agency herein and in the other Company Documents, none of which covenants, conditions or restrictions is or shall be waived by the Agency by reason of this right to mortgage or grant a security interest in the Facility and the Company Documents, including Unassigned Rights.

(b) Except where the Agency is required by law or by policy, there shall be no renewal, cancellation, surrender, acceptance of surrender, material amendment or material modification of this Leaseback Agreement or any other Company Document by joint action of the Agency and the Company alone, without, in each case, the prior consent in writing of Lenders, nor shall any merger result from the acquisition by, or devolution upon, any one entity of any fee and/or leasehold estates or other lesser estates in the Facility.

(c) If the Agency serves a notice of default upon the Company, it shall also serve a copy of such notice upon Lenders at the address set forth in Section 9.1.

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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.

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
David C. Grow
Chairman

STATE OF NEW YORK)
 : ss.:
COUNTY OF ONEIDA)

On the 6th day of May 2020 before me, the undersigned a notary public in and for said state, personally appeared **David C. Grow**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.


Notary Public



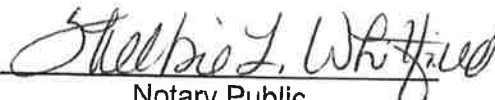
SECOND SIGNATURE PAGE OF
LEASEBACK AGREEMENT BETWEEN
ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY AND CREE, INC.

CREE, INC.

By: 
Gregg Lowe
Chief Executive Officer and President

STATE OF NORTH CAROLINA)
: ss.:
COUNTY OF ~~WADE~~ Durham)

On the 22 day of May, 2020 before me, the undersigned a notary public in and for said state, personally appeared **Gregg Lowe**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

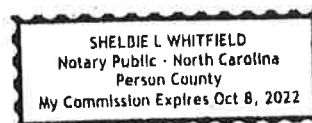


EXHIBIT A

LEGAL DESCRIPTION OF LAND

ALL THAT TRACT OR PARCEL OF LAND being part of Lots 2, 3 and 4 of Cosby's Manor, Town of Marcy, County of Oneida, State of New York, and shown on map entitled "Survey Map Showing Lands of The People of the State of New York and Economic Development Growth Enterprises Corporation, Marcy Site – Lease Parcel 1, Town of Marcy, Oneida County, State of New York", prepared by LaFave, White & McGivern L.S., P.C., dated November 6, 2014, last revised April 17, 2020 and to be filed in the Oneida County Clerk's Office, which tract or parcel of land is more particularly bounded and described as follows:

Commencing at a set 5/8" rebar and cap on the northwest boundary line of Edic Road at the northeast corner of the lands acquired by The People of the State of New York, acting by and through the Trustees of the State University of New York from Helen Kogut (Property 24 Map 11) pursuant to a Notice of Appropriation recorded in the Oneida County Clerk's Office on December 14, 1970 in Book 1924 of Deeds at Page 616: thence along said road boundary line and the northwest boundary line of the Marcy – SUNY Parkway S 29 degrees 02 minutes 27 seconds W, 267.90 feet to the Point of Beginning of the tract or parcel of land herein described; thence continuing along said road boundary line the following four (4) courses and distances: 1) S 29 degrees 02 minutes 27 seconds W, 603.26 feet to a point; 2) N 60 degrees 50 minutes 03 seconds W, 15.00 feet to a point; 3) S 29 degrees 09 minutes 55 seconds W, 79.93 feet to a point; 4) S 29 degrees 31 minutes 54 seconds W, 337.66 feet to a point; thence through the lands of The People of the State of New York N 60 degrees 40 minutes 31 seconds W, 2165.93 feet to a point on the east boundary line of the lands acquired by Economic Development Growth Enterprises Corporation (Instr. No. 2012-000218); thence through the lands of Economic Development Growth Enterprises Corporation N 60 degrees 40 minutes 31 seconds W, 248.30 feet to a point

on the proposed right-of-way boundary line of the Ring Road; thence along said right-of-way boundary line the following fourteen (14) courses and distances:

- 1) N 48 degrees 37 minutes 49 seconds E, 159.36 feet to a point
- 2) N 61 degrees 50 minutes 23 seconds E, 311.15 feet to a point;
- 3) N 62 degrees 33 minutes 54 seconds E, 62.85 feet to a point on the west boundary line of the lands of The People of State of New York, thence continuing along said right-of-way boundary line;
- 4) N 62 degrees 33 minutes 54 seconds E, 572.02 feet to a point;
- 5) N 62 degrees 58 minutes 46 seconds E, 324.39 feet to a point;
- 6) N 71 degrees 16 minutes 17 seconds E, 63.61 feet to a point;
- 7) S 38 degrees 02 minutes 10 seconds E, 153.81 feet to a point;
- 8) on a curve to the left with a radius 577.38 feet, and arc length of 208.83 feet and having a chord of S 49 degrees 08 minutes 36 seconds E, 207.69 feet to a point;
- 9) S 60 degrees 14 minutes 21 seconds E, 795.22 feet to a point;
- 10) S 54 degrees 34 minutes 18 seconds E, 46.41 feet to a point;
- 11) S 47 degrees 51 minutes 57 seconds E, 163.16 feet to a point;
- 12) S 38 degrees 05 minutes 52 seconds E, 172.85 feet to a point;
- 13) S 63 degrees 01 minutes 15 seconds E, 87.81 feet to a point;
- 14) S 26 degrees 39 seconds 20 minutes E, 52.82 feet to the Point of Beginning, containing 55.25 ± acres.

EXHIBIT B

EQUIPMENT

All fixtures, building materials and items of personal property acquired, constructed and installed and/or to be acquired, constructed and installed in connection with the completion of the Cree, Inc. Facility located in the Town of Marcy, Oneida County, New York.

EXHIBIT C

FORM OF SNDA

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of the _____ day of April 2020, by and among **[INSERT LENDER]**, having an office at _____, ("Lender"), **ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION**, a New York not-for-profit corporation with its principal offices at 584 Phoenix Drive, Rome, New York 13441 ("EDGE"), and **CREE INC.**, a North Carolina corporation authorized to do business in the state of New York with its principal offices at 4600 Silicon Drive, Durham, North Carolina 27703 ("Cree"). Lender, EDGE and Cree may be referred to herein each individually as a "Party" and collectively as the "Parties".

RECITALS:

WHEREAS, the New York State Legislature (the "Legislature") has recognized the need for developing, constructing and operating a technology oriented industrial park, to be used for nanotechnology development and manufacturing semiconductor chip development and manufacturing, micro-electronics development and manufacturing, and/or other similar high technology development and manufacturing, and any service, business, technical and other facilities related to any of the foregoing (the "Marcy Project") on a portion of the lands now designated as the Marcy Campus (the "Campus" or "SUNY Poly Campus") of the State University of New York Polytechnic Institute ("SUNY Poly"); and

WHEREAS, the development, construction and operation of the Marcy Project fulfills a necessary and desirable public purpose and promotes employment and educational opportunities within the area of New York State served by SUNY Poly; and

WHEREAS, the Legislature enacted Chapter 953 of the Laws of 1983, as amended by Chapter 462 of the Laws of 2001 (collectively, the "Enabling Act") which enables the SUNY to enter into any agreements necessary or appropriate for the development of the Marcy Project on a portion of the SUNY Poly Campus, including the lease of lands on such portion of the SUNY Poly Campus for the development, construction and operation of the Marcy Project; and

WHEREAS, in furtherance of the Marcy Project, The People of the State of New York, acting by and through SUNY ground leases to FSMC, a New York not-for-profit corporation, a 380.04 ± acre portion of the SUNY Poly Campus (the "Ground Leased Premises") pursuant to

that certain Amended and Restated Ground Lease dated as of May 1, 2010 (the "Existing Ground Lease"); and,

WHEREAS, the Existing Ground Lease has been extended, or prior to the Commencement Date (as such term is hereinafter defined) will be extended, up to 11:59 p.m. on May 1, 2080 as to that certain 322.58 ± acre portion of the Ground Leased Premises (the "Extension Premises") pursuant to that certain First Amendment to Amended and Restated Ground Lease effective as of October 1, 2019 (the "First Amendment") (the Existing Ground Lease, as amended by the First Amendment, being the "SUNY/FSMC Ground Lease"); and

WHEREAS, FSMC ground subleases to EDGE that certain 53.76± acre portion of the Extension Premises (the "SUNY Fee-Owned Parcel") pursuant to that certain Ground Sublease Number 2 dated as of _____, 2020 (the "FSMC/EDGE Ground Sublease"), attached hereto as **Exhibit A**; and

WHEREAS, the SUNY/FSMC Ground Lease and FSMC/EDGE Ground Lease are hereinafter referred to as the "Prime Leases"; and

WHEREAS, EDGE is the fee owner of that certain 1.49± acre parcel of land adjoining the Extension Premises (the "EDGE Fee-Owned Parcel"); and

WHEREAS, EDGE ground leases the EDGE Fee-Owned Parcel and ground sub-leases the SUNY Fee-Owned Parcel (the EDGE Fee-Owned Parcel and the SUNY Fee-Owned Parcel consists of 55.25± acres of land in the aggregate, collectively, "Lease Parcel 1") to CREE pursuant to a Ground Sublease dated as of _____, 2020 (the "EDGE/CREE Ground Sublease"), attached hereto as **Exhibit B**; and

WHEREAS, Lease Parcel 1, together with any Improvements now or hereafter located thereon, are hereinafter referred to as the "Demised Premises"; and

WHEREAS, Cree intends to construct, own and occupy an approximately 557,000-square-foot, multi-structure facility which is expected to include 448,000 square-foot dedicated to manufacturing, including approximately 100,000 – 135,000 square-foot of multi-level cleanroom space. The remaining facility footprint will include administrative functions as well as central utilities and chemical and other storage; related improvements include driveways, interior access roads, sidewalks, parking lots, landscaping and signage (the "Cree Marcy Project"); and

WHEREAS, Lender is the present owner and holder of a certain mortgage, collateral assignment of leases and rents and security agreement dated as of _____, 2020 (collectively, the "Security Instrument"), given by EDGE to Lender which encumbers Lease Parcel 1 and which secures the payment of certain indebtedness owed by EDGE to Lender evidenced by a

certain promissory note dated _____, _____, given by EDGE to Lender (the "Note"); and

WHEREAS, Cree has agreed to make certain payments in lieu of taxes to the Oneida County Industrial Development Agency (the "Agency") with respect to the facility pursuant to a Payment in Lieu of Tax Agreement dated as of May __, 2020 between the Agency and Cree (the "PILOT Agreement") and provide a first priority PILOT mortgage (the "PILOT Mortgage") on the Mortgaged Property (as such term is defined under the PILOT Mortgage) in favor of the Agency for the benefit of the affected tax jurisdictions; and **WHEREAS**, Cree has agreed to subordinate the EDGE/CREE Ground Sublease to the lien of the Security Instrument and Lender has agreed to grant non-disturbance to Cree under said Sublease subject to the terms and conditions hereinafter set forth.

AGREEMENT:

For good and valuable consideration, Cree, Lender and EDGE agree as follows:

1. Subordination. The EDGE/CREE Ground Sublease is and shall remain subordinate at all times to the mortgages, leasehold mortgages, security agreements, spreaders, consolidation agreements and other similar documents and instruments, which may now or hereafter affect the real property of which the SUNY Fee-Owned Parcel forms a part and to all renewals, modifications, consolidations, replacements, extensions, assignments, spreaders, and refinancings thereof and to all advances made or hereafter to be made thereunder (each, individually, a "Superior Interest" and, collectively, "Superior Interests"), provided that the leasehold interest and right of possession of Cree under said Sublease shall not be disturbed by any Superior Interest holders.

2. Non-Disturbance. Lender agrees that, if the Lender exercises any of its rights under the Security Instrument, including an entry by Lender pursuant to the Security Instrument or a foreclosure of the Security Instrument, Lender shall (a) not terminate or disturb Cree's use, possession, occupancy or right of quiet enjoyment of the Demised Premises under the EDGE/Cree Ground Sublease; (b) in the event of acquisition of title by such Lender through foreclosure proceedings or otherwise, accept Cree as tenant of the Demised Premises under the terms and conditions of the EDGE/Cree Ground Sublease and agrees to perform the EDGE's obligations thereunder; (c) not join or name Cree as a party defendant to any foreclosure of the lien of the Security Instrument for the purpose of terminating the EDGE/Cree Ground Sublease or otherwise; and (d) not foreclose from Cree its rights under said Sublease.

3. Attornment. If Lender or any other subsequent purchaser of the Demised Premises shall become the owner of the Demised Premises by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being

hereinafter referred as “Purchaser”), and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Demised Premises, the EDGE/Cree Ground Sublease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Purchaser and Cree upon all of the terms, covenants and conditions set forth in the Sublease and in that event, Cree agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Demised Premises shall be deemed to have agreed to accept such attornment, provided, however, that Purchaser shall not be (a) liable for the failure of any prior landlord (any such prior landlord, including Landlord and any successor landlord, being hereinafter referred to as a “Prior Landlord”) to perform any of its obligations under the EDGE/Cree Ground Sublease which have accrued prior to the date on which Purchaser shall become the owner of the Demised Premises, provided that the foregoing shall not limit Purchaser’s obligations under the Sublease to correct any conditions of a continuing nature that (i) existed as of the date Purchaser shall become the owner of the Demised Premises and (ii) violate Purchaser’s obligations as landlord under the Sublease; (b) subject to any offsets, defenses, abatements or counterclaims which shall have accrued in favor of Cree against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Demised Premises, provided that the foregoing shall not apply where the underlying circumstances giving rise to such offset, defense, abatement or counterclaim, are of a continuing nature that (i) existed as of the date Purchaser shall become the owner of the Demised Premises and (ii) violate Purchaser’s obligations as landlord under the Sublease; (c) liable for the return of rental security deposits, if any, paid by Cree to any Prior Landlord in accordance with the Lease, unless such sums are actually received by Purchaser, or (d) bound by any payment of rents, additional rents or other sums which Cree may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser or (ii) such prepayment shall have been expressly approved of by Purchaser.

4. Notice to Tenant. After written notice is given to Cree by Lender that EDGE is in default under the Security Instrument and that the rentals under the Sublease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by EDGE to Lender in connection therewith, Cree shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to EDGE under the Sublease and EDGE hereby expressly authorizes Cree to make such payments to Lender and hereby releases and discharges Cree from any liability to EDGE on account of any such payments.

5. Notice to Lender and Right to Cure. Cree shall notify Lender of any default by EDGE under the Sublease and agrees that, notwithstanding any provisions of the Sublease to the contrary, no notice of cancellation thereof or of an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and in the case of any such default until thirty (30) days shall have elapsed following the giving of such notice or in the case of such default, cannot be reasonably cured within said thirty (30) day period, such time as is reasonably necessary to cure such default, provided, that within said (30) day period, Lender shall have commenced and diligently continues to remedy such default or cause the same

to be remedied, provided further that Lender's time to cure shall not exceed sixty (60) days after receipt of notice of default. Notwithstanding the foregoing, Lender shall have no obligation to cure any such default.

6. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To Lender:

Attention: _____
Telephone Number: _____

With a copy to:

Attention:
Telephone Number:

To EDGE:

Economic Development Growth Enterprises Corporation
584 Phoenix Drive
Rome, New York 13441
Attention: Steven DiMeo, President
Telephone Number: 315-338-0393

With a copy to:

Saunders Kahler, L.L.P.
185 Genesee Street, Suite 1400
Utica, New York 13501
Attention: Joseph E. Saunders, Esq.
Telephone Number: 315-733-0419

To CREE:

Name: Rick McFarland
Title: Senior Vice President, Global Operations
Address: 4600 Silicon Drive, Durham, NC 27703
Telephone Number: (919) 407-4600
E-Mail Address: rmcfarland@cree.com

With a copy to:

Name: Brad Kohn
Title: General Counsel
Address: 4600 Silicon Drive, Durham, NC 27703
Telephone Number: (919) 407-4600
E-Mail Address: bkohn@cree.com

And a copy to:

Name: Kevin McAuliffe
Title: Barclay Damon LLP
Address: 125 E. Jefferson Street, Syracuse, NY 13202
Telephone Number: (315) 425-2875
E-mail Address: kmcauliffe@barclaydamon.com

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 8, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Demised Premises is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

7. Amendments. No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the Party against whom the same is sought to be asserted.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender, EDGE, Cree and their respective successors and assigns.

9. Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of New York, excluding its principles of conflict of laws.

10. Severability. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

11. Execution. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

12. Pronouns. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, intending to be legally bound, and intending that this instrument constitute an instrument executed and delivered under seal, each of the parties hereto have caused this Agreement to be duly executed as of the date first written above.

LENDER: [LENDER]

By: _____
Name: _____
Title: _____

EDGE: **ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION**

By: _____
Steven J. Dimeo
President

CREE: **CREE, INC.**

By: _____
Name: _____
Title: _____

EXHIBIT A

[FSMC/EDGE GROUND SUBLEASE TO BE ATTACHED]

EXHIBIT B

[EDGE/CREE GROUND SUBLEASE TO BE ATTACHED]

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.

"Affected Tax Jurisdiction" means any one of the Affected Tax Jurisdictions.

"Affected Tax Jurisdictions" means, collectively, the County of Oneida, Whitesboro Central School District, the Town of Marcy, Maynard Fire District and Dunham Public Library.

"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 Leaseback Agreement, the PILOT Agreement, the PILOT Mortgage, the Recapture Agreement and the Environmental Compliance and Indemnification Agreement.

"Allocation Agreement" means the Agreement Approving PILOT Terms and Allocating PILOT Payments dated as of October 1, 2013 by and among the Affected Tax Jurisdictions, the Agency and EDGE, as the same may be amended from time to time.

"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, Gregg Lowe; 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 Gregg Lowe.

"Authorizing Resolution" means the resolution adopted by the Agency on the 18th day of October 2019 authorizing the execution and delivery of the Agency Documents as such resolution may be amended and supplemented from time to time.

"Bank" means NBT Bank, National Association, and its successors and assigns.

"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.

"Closing Date" means the date of delivery of the Leaseback Agreement.

"Company" means Cree, Inc. and its successors and assigns.

"Company Documents" means the Third Ground Sublease, the Lease Agreement, the Leaseback Agreement, the PILOT Agreement, the PILOT Mortgage, the Environmental Compliance and Indemnification Agreement and the Recapture Agreement.

"Completion Date" means the earlier of (a) the taxable status date that the Facility is reflected on the annual assessment roll or property record card as having a Certificate of Occupancy, or (b) December 31, 2021.

"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.

"Construction Period" means the period (a) beginning on the earlier of (i) the date of commencement of construction, construction, renovation and equipping of the Facility, which date shall not be prior to September 27, 2019, or (ii) the Closing Date and (b) ending on the Completion Date.

"EDGE" means Economic Development Growth Enterprises Corporation and its successors and assigns.

"EDGE Land" means that certain 1.49± acre portion of the Land owned in fee by EDGE and leased to the Company, together with the SUNY Land, under the Third Ground Sublease.

"EDGE Lenders" means those lenders to be identified at a later date which, together with the Bank, will finance the EDGE Project Related Debt.

"EDGE Project Related Debt" means any debt incurred by EDGE for the purposes of financing and/or refinancing the hard and soft costs of making Project-Related Improvements and paying for other Project-Related Development Costs as more particularly defined in the PILOT Agreement.

"Environmental Compliance and Indemnification Agreement" means the Environmental Compliance and Indemnification Agreement dated as of May 22, 2020 between the Company and the Agency, as the same may be amended from time to time.

"Equipment" means all machinery, equipment and other personal property used and to be used in connection with the renovation and equipping of 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.

"Facility Services" means all services necessary for the acquisition, construction and equipping of the Facility.

"First Ground Lease" means the Amended and Restated Ground Lease dated as of May 1, 2010 between SUNY, as lessor, to FSMC, as lessee, as has been or may be amended from time to time.

"FSMC" means Fort Schuyler Management Corporation and its successors and assigns.

"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 as of May 22, 2020 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 as of May 22, 2020 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.

"Lenders" means the EDGE Lenders and the Bank.

"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 a title report, if the same has been presented to the Agency, (ii) the Leaseback Agreement, (iii) utility, access and other easements and rights-of-way, restrictions 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) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens which are approved in writing by the Agency or its Counsel, (v) Liens for taxes not yet delinquent, (vi) the First Ground lease, (vii) the Second Ground Lease, (viii) the Third Ground Lease and (ix) the Lenders' Financing Documents.

"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 as of May 22, 2020 between the Company and the Agency, as amended from time to time.

"PILOT Mortgage" means the PILOT Mortgage dated May 22, 2020 from the Company and the Agency to the Agency for the benefit of the Affected Tax Jurisdictions, as the same may be amended from time to time.

"Plans and Specifications" means all the drawings, renderings, plans and other information describing the Facility submitted to the Agency by the Company in connection with the Application for Financial Assistance dated September 24, 2019, which may be amended from time to time up until the Completion Date.

"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.

"Recapture Agreement" means the Jobs Creation and Recapture Agreement dated as of May 22, 2020 between the Company and the Agency, as the same may be amended from time to time.

"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.

"Second Ground Sublease" means that Ground Sublease dated May 22, 2020 between FSMC, as lessor, and EDGE, as lessee, with respect to the SUNY Land, 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" means facilities of substantially the same nature as the proposed Facility.

"SUNY" means the People of the State of New York, acting by and through the State University of New York.

"SUNY Land" means that 53.76± acre parcel of land owned in fee by SUNY and leased to FSMC under the First Ground Lease.

"Third Ground Sublease" means the Ground Sublease dated May 22, 2020 between EDGE, as lessor, and the Company, as lessee, with respect to the Land, as the same may be amended from time to time.

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

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

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