

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

and

MOHAWK, ADIRONDACK & NORTHERN RAILROAD CORP.

and

GENESEE & MOHAWK VALLEY RAILROAD CO., INC.

FIRST AMENDED AND RESTATED LEASE AGREEMENT

Dated as of April 15, 2012

Oneida County Industrial Development Agency
2012 Lease Amendment and Restatement
(Mohawk, Adirondack & Northern Railroad Corp./
Genesee & Mohawk Valley Railroad Co., Inc. Facility)

THIS FIRST AMENDED AND RESTATED LEASE AGREEMENT (the "First Amended and Restated Lease Agreement"), dated as of the 15th day of April 2012, by and among **MOHAWK, ADIRONDACK & NORTHERN RAILROAD CORP.**, a corporation duly organized and validly existing under the laws of the State of New York with an address of One Mill Street, Suite 101, Batavia, New York 14020 ("MA&N"), **GENESEE & MOHAWK VALLEY RAILROAD CO., INC.**, a corporation duly organized and validly existing under the laws of the State of New York with an address of One Mill Street, Suite 101, Batavia, New York 14020 ("G&MV"), (MA&N AND G&MV, collectively, 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, renovate, refurbish, equip, lease, maintain, sell and dispose of land and any building or other improvement, and all real and personal properties, including but not limited to, machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

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

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

WHEREAS, the Act, among other things, specifically authorizes the Agency to acquire, construct, own, maintain and lease or sell to a railroad or private business corporation any interest in railroads operating within Oneida County, including easements or rights-of-way, necessary or convenient to the operation of such railroad;

WHEREAS, the Agency acquired fee title to a certain industrial development facility consisting of a railroad yard in the City of Utica, trackage in the City of Rome and a line of rail running from City of Utica to the Oneida County – Lewis County line north of Boonville (collectively, the "Improvements"), all situated on a 450± acre parcel of land running through the City of Rome, the City of Utica, the Village of Boonville, the Village of Remsen, the Village of Holland Patent, the Town of Boonville, the Town of Steuben, the Town of Trenton and the Town

of Marcy (collectively, the "Land"); and all equipment used in connection with the operation of the Improvements (the "Equipment"), all to be used for the purpose of providing continued rail service to the residents of Oneida County (the Land, the Improvements and the Equipment referred to collectively as the "Facility"); and

WHEREAS, the Agency leases a portion of the Facility to MA&N pursuant to a lease agreement dated as of December 29, 1992 as amended on March 17, 2009 (the "MA&N Lease Agreement"); and

WHEREAS, the Agency leases a portion of the Facility to G&MV pursuant to a lease agreement dated as of December 29, 1995 as amended on March 17, 2009 (the "G&MV Lease Agreement"); and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to provide continued railroad service for the benefit of all Shippers (as hereinafter defined) along the Facility and to bear all common carrier responsibilities in conjunction with the Facility; and

WHEREAS, in order to induce the Company to continue to operate and maintain the Facility, the Agency is willing to extend, amend and restate the M&AN Lease Agreement and the G&MV Lease Agreement 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 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 First Amended and Restated Lease 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. Based upon the representations of the Company as to the utilization of the Facility, the Facility will constitute a "project," as such quoted term is defined in the Act. Each of the Agency Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Agency.

(b) The Agency owns a fee interest in the Facility and will lease the Facility to the Company pursuant to this First Amended and Restated Lease Agreement, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the County of Oneida and improving their standard of living.

(c) By resolution adopted on March 16, 2012, the Agency determined that, based upon the review by the Agency of the materials submitted and the representation made by the Company relating to the Facility, the Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQR Act.

(d) Neither the execution and delivery of any of the Agency Documents and the other documents contemplated thereby nor the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Agency Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof or of the Agency's Certificate of Establishment or Bylaws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or 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 First Amended and Restated Lease Agreement by the undertaking of the Company to operate, maintain and repair the Facility and related jobs in Oneida County, New York.

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) MA&N is a railroad corporation duly organized and validly existing under the laws of the State of New York and authorized to conduct business in the State of New York, and has full legal right, power and authority to execute, deliver and perform each of the Company Documents and the other documents contemplated thereby. G&MV is a railroad corporation duly organized and validly existing under the laws of the State of New York and authorized to conduct business in the State of New York, and has full legal right, power and authority to execute, deliver and perform each of the Company Documents and the other documents contemplated thereby. 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 (i) has been an critical factor in the Company's decision to operate and maintain the Facility in the County; (ii) 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 (iii) will provide a financial benefit to the Shippers.

(d) The Facility and the design 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 fee interest in all those properties and assets contemplated by this First Amended and Restated Lease Agreement and all documents related hereto.

(f) There is no action, litigation, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending, or, to the knowledge of the Company, threatened against or affecting the Company, 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 First Amended and Restated Lease 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 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) The Company will diligently operate the Facility for the purposes of promoting the prosperity and general welfare of all citizens of the State and will bear all common carrier obligations as if it were the owner of 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 (i).

ARTICLE II

DEMISING CLAUSES AND RENTAL PROVISIONS

Section 2.1 Agreement to Convey to Agency.

The Company has conveyed to the Agency a fee 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 First Amended and Restated Lease 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 Operation of the Facility.

The Company, as agent for the Agency, will continue to operate the Facility. The Company shall be entitled to use the Facility in any manner not otherwise prohibited by this First Amended and Restated Lease Agreement provided such use causes the Facility to qualify or continue to qualify as a "project."

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 First Amended and Restated Lease 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 delivered to the Company sole and exclusive possession of a portion of the Facility under the MA&N Lease Agreement effective December 29, 1992, and the Agency delivered to the Company sole and exclusive possession of a portion of the Facility under the G&MV Lease Agreement effective December 29, 1995. The Agency hereby extends sole and exclusive possession of the Facility (subject to Sections 5.3 and 7.1 hereof) to the Company.

(b) Except as provided in Section 7.1 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on December 31, 2023 or on such earlier date as may be permitted by Section 8.1 hereof.

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

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

Section 2.6 Rents and Other Amounts Payable.

(a) The Company shall pay basic rent for the Facility as follows: Five Hundred Dollars (\$500.00) per year commencing on the Closing Date and on the First Business Day of each and every April thereafter during the term of this First Amended and Restated Lease 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 First Amended and Restated Lease 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 First Amended and Restated Lease Agreement or (iii) terminate this First Amended and Restated Lease 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 First Amended and Restated Lease 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, this First Amended and Restated Lease Agreement and the First Amended and Restated PILOT Agreement. Neither the members, officers, agents (except the Company) or employees of the Agency, nor any person executing the Agency Documents, shall be liable personally or be subject to any personal liability or accountability by reason of the 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.

Section 2.9 Grant of Easements, Licenses and Rights.

(a) The Company agrees not to unreasonably withhold or unreasonably condition access or crossing or utility rights (the "Rights") to any municipality located in the County of Oneida, and to charge no more for existing and future Rights than actual and reasonable out-of-pocket costs incurred by the Company attendant with the portion of tracks to which the Rights pertain.

(b) The Company agrees not to unreasonably withhold or unreasonably condition easement or license agreements for utilities or access to adjacent private property owners provided however that the Company may charge such private property owners the actual costs incurred by the Company for creating and maintaining, and increased operating costs resulting from, such easements and licenses and further provided that the Company may charge private developers a market price for easements and licenses where other access is available to such private developers but access through and over the Facility is financially and/or practically advantageous to such private developers, and further provided that nothing contained herein shall be deemed or construed to prevent the Company from charging at all times and under all circumstances market prices for easements and licenses for utility (gas, oil, water, electricity, cable, telephone, Internet, etc.) transmission facilities to the extent they do not serve adjoining private property.

(c) The Company agrees to be responsible for regular maintenance and cleanup of the Facility, provided however, that nothing shall preclude the Company from requiring third parties to maintain and keep clean the specific areas covered by their easements or licenses.

(d) The obligations of the Company under this Section 2.9 shall continue so long as the Company enjoys tax exemptions for the Facility by reason of legal ownership of the Facility by the Agency or otherwise.

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, 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, the Company at its own expense from time to time may make any structural additions, modification or improvements to the Facility or any part hereof, provided such actions do not adversely affect the structural integrity of the Facility. Notwithstanding anything herein to the contrary, all track materials, including but not limited to rail and ties, whether now or hereafter located on, or part of, the Facility, may be repaired, replaced, removed and/or disposed of by the Company in its sole discretion without accounting therefore to the Agency. All such additions, modifications or improvements made by the Company shall become a part of the Facility and subject to the leasehold interest 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 a leasehold interest in 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 become 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 anytime 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 First Amended and Restated 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 First Amended and Restated Lease 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 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, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance that the Company or any permitted sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or any permitted 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) Insurance protecting the Agency and 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) 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 \$3,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage), comprehensive automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than \$3,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage) protecting the Agency and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

(d) During the Construction Period (and for at least one year 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
Owners Protective
Contractors Protective
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$3,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$3,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(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) day's prior written notice of the restriction, cancellation or modification thereof to the Agency. The policy evidencing the insurance required by Section 3.4(c) hereof shall name the Agency as an additional insured. All policies evidencing the insurance required by Sections 3.4(d)(ii) and (iii) shall name the Agency as additional insured. The policies under Section 3.4(a) shall contain appropriate waivers of subrogation.

(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. The Company shall deliver to the Agency before the renewal date of each policy a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance 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. Prior to the expiration of each such policy, the Company shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this First Amended and Restated Lease Agreement. The Company shall provide such further information with respect to the insurance coverage required by this First Amended and Restated Lease Agreement as the Agency may from time to time reasonably require.

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

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

If the Company fails (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, or payments-in-lieu-of-taxes pursuant to the First Amended and Restated 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 First Amended and Restated 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 First Amended and Restated Lease 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.

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 First Amended and Restated Lease Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated); and

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

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

(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 their option to terminate this First Amended and Restated Lease Agreement pursuant to Section 8.1 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 8.2 hereof. If an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 7.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 7.2 and Section 7.4 hereof.

Section 4.2 Condemnation.

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

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

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

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

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

(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 First Amended and Restated Lease Agreement pursuant to Section 8.1 hereof such Net Proceeds shall be applied to the Payment of the amounts required to be paid by Section 8.2 hereof. If any Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 7.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 7.2 and Section 7.4 hereof.

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

ARTICLE V

SPECIAL COVENANTS

Section 5.1 No Warranty of Condition or Suitability by Agency.

(a) 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.

(b) The Agency makes no representations regarding the fitness of the Facility for use in connection with the provisions of Rail Services, or regarding the existence of any defects of dangerous conditions existing on or with respect to the Facility. The Company represents that it is familiar with the Facility. The Company accepts the Facility in its "as is" condition. The Company agrees to remedy any defects or dangerous conditions which the Company may discover on the Facility through inspection carried out with reasonable care or by notice and to maintain the Facility free of defects or dangerous conditions, in accordance with federal and State railroad safety standards.

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 the providing of Rail Services 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, demolishing, 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 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 First Amended and Restated Lease Agreement, the obligations of the Company pursuant to this Section 5.2 shall remain in full force and effect after the termination of this First Amended and Restated Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and 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 at all reasonable times 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 First Amended and Restated Lease Agreement.

Section 5.5 Qualification in State.

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

Section 5.6 Agreement to File Annual Statements and Provide Information.

The Company shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Section 874(8) of the New York State General Municipal Law. The Company further agrees whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Company, their finances, their operations and their 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, construction, renovation and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers and companies or associations insuring the premises having jurisdiction of the Facility or any part thereof, or to the acquisition, construction, renovation and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof. The Company agrees that it shall continue to bear all common carrier responsibilities which it bore prior to its transfer of the Facility to the Agency.

(b) The Company shall construct, renovate, 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, renovate, equip, use, operate and manage the Facility in accordance with any applicable Environmental Laws and Environmental Permits, and shall not cause, allow or permit the Facility or any part thereof to be operated or used for the storage, treatment, generation, transportation, processing, handling, production, management or disposal of any Hazardous Substances other than in 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, renovation, equipping, use or operation of the Facility which would (i) involve the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance other than in accordance with any applicable Environmental Law, or the demolition, 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 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 demolition, construction, renovation, 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, on or in the vicinity of the Facility, (ii) the demolition, construction, renovation, 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 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 reasonably incurred costs of such defense, including, without limitation, attorney fees, court costs, and litigation expenses, shall be paid by the Company.

(g) The Company represents and covenants that there are no electrical transformers, capacitors, or other equipment, items or articles on or at the Facility which contain polychlorinated biphenyls.

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 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 First Amended and Restated Lease Agreement shall be enforceable only out of the Agency's interest under this First Amended and Restated Lease 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 First Amended and Restated Lease 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 First Amended and Restated Lease 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 First Amended and Restated Lease 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 (except for the fixtures) has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company with the prior written consent of the Agency (which consent may not be unreasonably withheld but may be subject to such conditions as the Agency may deem appropriate), may remove such items from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, provided that such removal will not materially impair the operation of the Facility for the purpose for which it is intended or change the nature of the Facility so that it does not constitute a "project" under the Act.

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

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

Section 6.3 Assignment and Subleasing.

(a) This First Amended and Restated Lease 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. A transfer in excess of 50% of the equity voting interests of the Company shall be deemed an assignment and require the prior written consent of the Agency. Any assignment or sublease shall be on the following conditions, as of the time of such assignment or sublease:

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

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

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

(iv) neither the validity nor the enforceability of this First Amended and Restated Lease 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 Bank.

The Agency may be requested to pledge and assign its rights to and interest in this First Amended and Restated Lease Agreement and in all amounts payable by the Company pursuant to Section 2.3 hereof and all other provisions of this First Amended and Restated Lease Agreement (other than Unassigned Rights), to a lending institution. The Agency shall not unreasonably withhold its consent to such mortgage, pledge and assignment by the Agency.

Notwithstanding the foregoing, all indemnities herein contained shall subsequent to such pledge and assignment continue to run to the Agency for its benefit.

Section 6.6 Merger of Agency.

(a) Nothing contained in this First Amended and Restated Lease 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 First Amended and Restated Lease 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 five (5) days of receipt of notice as herein provided;

(ii) the failure by the Company to observe and perform any covenant contained in Sections 2.9(c), 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;

(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 invalidity, illegality or unenforceability of the First Amended and Restated PILOT Agreement or the failure of the Company to make payments thereunder 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 First Amended and Restated Lease 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 First Amended and Restated Lease 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 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 First Amended and Restated Lease 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 First Amended and Restated Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;

(ii) convey to the Company fee interest in the Facility and terminate the First Amended and Restated PILOT Agreement. The Agency shall have the right to execute a quitclaim deed 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 conveyance. 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 conveyance 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;

(vi) 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 First Amended and Restated Lease Agreement.

(b) No action taken pursuant to this Section 7.2 shall relieve the Company from its obligation to make all payments required hereunder.

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

Section 7.3 Remedies Cumulative.

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative

and in addition to every other remedy given under this First Amended and Restated Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the 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 First Amended and Restated Lease 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 First Amended and Restated Lease 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 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 [Intentionally Omitted].

ARTICLE VIII

EARLY TERMINATION OF FIRST AMENDED AND RESTATED LEASE AGREEMENT;
OPTION IN FAVOR OF COMPANY

Section 8.1 Early Termination of First Amended and Restated Lease Agreement.

(a) The Company shall have the option to terminate this First Amended and Restated Lease 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.

(b) The Agency shall have the option at any time to terminate this First Amended and Restated Lease Agreement and to demand immediate payment in full of the rental reserved and unpaid as described in Section 2.6 hereof upon written notice to the Company of the occurrence of an Event of Default hereunder.

Section 8.2 Conditions to Early Termination of First Amended and Restated Lease Agreement.

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

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

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

Section 8.3 [Reserved].

Section 8.4 Conveyance on Termination.

Upon termination or expiration of the Lease Term in accordance with Sections 2.5 or 8.1 hereof, the Agency shall deliver to the Company a quitclaim deed and all necessary documents (i) to convey to the Company all of the Agency's right, title and 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 First Amended and Restated Lease 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). The Agency shall make no warranty as to its title to the Property. Upon the conveyance of the Agency's fee interest pursuant to this Article VIII, all Agency Documents shall terminate.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices.

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

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

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

To the Company: Mohawk, Adirondack & Northern Railroad Corp.
One Mill Street, Suite 101
Batavia, New York 14020
Attn.: David J. MonteVerde, President

Genesee & Mohawk Valley Railroad Co., Inc..
One Mill Street, Suite 101
Batavia, New York 14020
Attn.: David J. MonteVerde, President

With a Copy To: John S. Herbrand, Esq.
One Chase Square
Suite 1900
Rochester, New York 14604

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 First Amended and Restated Lease 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 First Amended and Restated Lease 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 First Amended and Restated Lease 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 First Amended and Restated Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Only possession of the counterpart marked "Secured Party's Original" shall be effective to perfect the rights of any holder of the First Amended and Restated Lease Agreement as counterparts shall be marked "Duplicate" and no security interest therein can be created except by possession of the "Secured Party's Original" counterpart.

Section 9.6 Applicable Law.

This First Amended and Restated Lease 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 First Amended and Restated Lease 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 First Amended and Restated Lease Agreement.

Section 9.8 Survival of Obligations.

This First Amended and Restated Lease 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 First Amended and Restated Lease 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 First Amended and Restated Lease 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 First Amended and Restated Lease 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 First Amended and Restated Lease 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 First Amended and Restated Lease 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 First Amended and Restated Lease Agreement and not otherwise defined shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

Section 9.13 This Document Controlling.

It is the intent of the Agency and the Company that the MA&N Lease Agreement and the G&MV Lease Agreement be superseded in their entirety by this First Amended and Restated Lease Agreement, except for the indemnities and guarantee of indemnities contained in the MA&N Lease Agreement and the G&MV Lease Agreement, which shall survive.

[SIGNATURE PAGE FOLLOWS]

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

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Natalie L. Brown
Vice Chairman

MOHAWK, ADIRONDACK &
NORTHERN RAILROAD CORP.

By: _____
David J. MonteVerde
President

GENESEE & MOHAWK VALLEY
RAILROAD CO., INC.

By: _____
David J. MonteVerde
President

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

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

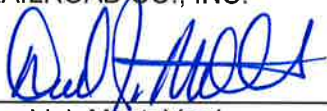
By: _____
Natalie L. Brown
Vice Chairman

MOHAWK, ADIRONDACK &
NORTHERN RAILROAD CORP.

By: 

David J. MonteVerde
President


GENESEE & MOHAWK VALLEY
RAILROAD CO., INC.

By: 

David J. MonteVerde
President

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

On the 26 day of July 2012 before me, the undersigned a notary public in and for said state, personally appeared **Natalie L. Brown**, 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
LAURA S. RUBERTO
Notary Public, State of New York
Appointed in Oneida County
Reg. No. 01RU5031396
Commission Expires August 1, 2014

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

On the ___ day of July 2012 before me, the undersigned a notary public in and for said state, personally appeared **David J. MonteVerde**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

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

On the ____ day of July 2012 before me, the undersigned a notary public in and for said state, personally appeared **Natalie L. Brown**, 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

STATE OF NEW YORK)
 : ss.:
COUNTY OF *MONROE*)

On the *26th* day of July 2012 before me, the undersigned a notary public in and for said state, personally appeared **David J. MonteVerde**, 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.

John S. Herbrand

Notary Public

JOHN S. HERBRAND
Notary Public, State of New York
Registration # 02HE6099658
Qualified in Monroe County
Commission Expires *9/29/2015*

EXHIBIT A

ALL THAT TRACT OR PARCEL OF LAND situate in Oneida County, State of New York, more particularly set forth and described in a certain deed from the MOHAWK, ADIRONDACK & NORTHERN RAILROAD CORPORATION to Oneida County Industrial Development Agency dated December 19, 1992, and recorded in the Oneida County Clerk's Office on December 30, 1992.

Oneida County, New York

Lyons Falls Secondary, Line Code 4741

ALL THAT CERTAIN property of the Grantor, being the line of railroad known as the Lyons Falls Branch (a.k.a Lyons Falls Secondary) and identified as Line Code 4741 in the Recorder's Office of Oneida County, New York in Book 2070 at page 119, situate in the County of Oneida and State of New York; being further described as follows:

BEGINNING as approximately Railroad Mile Post 0.2, being approximately 130 feet southeasterly of the southeast side of Washington Street, said Beginning being adjacent to Grantor's line of railroad known as the Penn Central Albany-Rensselaer to Bay View Main Line (a.k.a. Consolidated Rail Corporation's Chicago Line) and identified as Line 4700 at Railroad Mile Post 237.8, more or less, in the City of Utica, as indicated on sheets 2 of 3 and 3 of 3 of aforesaid "Exhibit "B"; thence extending in a general northerly direction through the County of Oneida and passing through the Towns of Marcy and Trenton, the Village of Holland Patent, the Towns of Trenton, the Village of Remsen, the Towns of Remsen, Steuben and Boonville and the Village of Boonville to the County Line, the County of Oneida on the south and the County of Lewis on the north, being at approximately Railroad Mile Post 37, as indicated on sheet 1 of 3 of aforesaid Exhibit "B".

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as trustees of the Property of the Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-123 dated March 30, 1976 and recorded on January 4, 1979, in the Recorder's Office of Oneida County, New York, in Deed Book 2070, at page 111&c., and granted and conveyed unto Consolidated Rail Corporation.

BEING a part or portion of the same premises conveyed by Consolidated Rail Corporation to MOHAWK, ADIRONDACK & NORTHERN RAILROAD CORPORATION by deed dated September 8, 1992 and recorded in the Oneida County Clerk's Office on November 10, 1992, in Book 2641 of Deeds at page 323.

EXCEPTING AND RECEIVING, thereout and therefrom and unto the Consolidated Rail Corporation, permanent, perpetual, exclusive, assignable and unrestricted easements and rights

for any and all existing sewer, gas and water lines, poles, pipes, wires, cables, power, fiber optic cables for signal and communication lines and all their appurtenances, hereinafter referred to as "Facilities", located in, on, under, over, above, or beneath the surface, across or through the Premises in the area adjoining Consolidated Rail Corporation's remaining property in the vicinity of Washington Street in Utica, New York which are needed and useful in the support of Consolidated Rail Corporation's railroad operations and also for any existing private fiber optic cable(s) and its appurtenances; and together with the right to use, maintain, repair, replace, renew, rehabilitate and remove said Facilities and their appurtenances; and further together with the right of unimpeded ingress and egress in, on, over, across and through Premises for the aforesaid purposes.

ALL THAT TRACT OR PARCEL OF LAND situate in the County of Oneida, State of New York, more particularly set forth and described in a certain deed from the **GENESEE & MOHAWK VALLEY RAILROAD CO., INC.** to Oneida County Industrial Development Agency dated December ____, 1995, and recorded in the Oneida County Clerk's Office on December ____, 1995.

Oneida County, New York
Rome Industrial Track, Line Code 4744

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Camden Secondary Track (a.k.a. Rome Industrial Track), and identified as Line Code 4744 in the Recorder's Office of Oneida County, New York in Book 2070 at page 121 of the Book of Deeds, situate in the City of Rome, County of Oneida and State of New York, being further described as follows:

BEGINNING at Railroad Station 1989+50, being approximately Railroad Mile Post 37.5, also being at the southeasternmost line of property conveyed by Consolidated Rail Corporation to G. W. Bryant Core Sands, Inc. by deed dated August 13, 1985, as indicated on sheet 1 of 11 of Exhibit "B"; thence extending in a general southeasterly direction to approximately Railroad Mile Post 43.7; thence continuing in a general southeasterly direction, the southerly line of property herein described being 8 feet south of the near rail of Track No. 206, as identified in ZTS Albany Division, Volume 2, Zone 84, dated April 15, 1989, and known as the Rome Industrial Track (except on Bridge No. 248.54, across the Mohawk River, where said southerly line is on the north face of the center tress; see Note No. 1 on sheet 9 of 11 of Exhibit "B"), to approximately Railroad Mile Post 46.1 (a.k.a. Mile Post 44.8, more or less), also being opposite Railroad Mile Post 248.3, more or less, of Consolidated Rail Corporation's Chicago Line (Line Code 4700), the place of ENDING, as indicated on sheet 9 of 11 of Exhibit "B".

TOGETHER with all property of the former Rome and Clinton Railroad Company as it extends off the Rome Industrial Track in the vicinity of James Street, as indicated on sheet 5 of 11 of Exhibit "B".

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor by Conveyance Document No. PC-CRC-RP-123, dated March 30, 1976 and recorded on September 14, 1978, in the Recorder's Office of Oneida County, New York, in Deed Book Volume 2070 at page 111&c., granted and conveyed unto Consolidated Rail Corporation.

AND, FURTHER BEING a part or portion of the premises which Consolidated Rail Corporation conveyed to Grantor by Deed dated December 8, 1993 and recorded in the Clerk's Office of Oneida County, New York in Liber 2669 at page 411 of the Book of Deeds.

Oneida County, New York

Utica Yard (northern portion), adjacent to the Chicago Line

ALL THAT CERTAIN property of the Grantor, being a portion of the line of railroad known as the Penn Central Albany-Rensselaer to Bay View Main Line (a.k.a. the Chicago Line), and identified as Line Code 4700 in the Recorder's Office of Oneida County, New York in Book 2070 at page 116 of the Book of Deeds, situate in the City of Utica, County of Oneida and State of New York, being further described as follows:

BEGINNING at approximately Railroad Mile Post 237.85, as indicated on sheet 10 of 11 of Exhibit "B"; thence extending in a general southeasterly direction, the southerly line of property herein described, partially being 10 feet north of the near rail Track No. 201, as identified in ZTS Albany Division, Volume 2, Zone 84, page 1, dated April 15, 1989 and known as the Chicago Line Track No. 1, from a point 140 feet, more or less, southeast of the southeasterly line of Washington Street to approximately 250 feet southeasterly from the point of switch for Track No. 269 and 262, as identified in said ZTS Albany Division and known as West Lead, on said Track No. 201; partially being 15 feet south of the near rail of Track No. 262, as identified in said ZTS Albany Division and known as the Utica Yard Lead; partially being 15 feet south of the near rail of the Utica Yard Ladder Track, partially being 15 feet south of the near rail of Track No. 573, as identified in said ZTS Albany Division and known as the Stone Track and partially being north of the near rail of Track No. 261, as identified in said ZTS Albany Division and known as the North Controlled Siding to approximately Railroad Mile Post 236.25, the place of ENDING, as indicated on sheet 11 of 11 of Exhibit "B".

BEING a part or portion of the same premises which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-123, dated March 30, 1976 and recorded on September 14, 1978, in the Recorder's Office of Oneida County, New York, in Deed Book Volume 2070 at page 111&c., granted and conveyed unto Consolidated Rail Corporation.

AND, FURTHER BEING a part or portion of the premises which Consolidated Rail Corporation conveyed to Grantor by Deed dated December 8, 1993 and recorded in the Clerk's Office of Oneida County, New York in Liber 2669 at page 412 of the Book of Deeds.

EXCEPTING AND RESERVING thereout and therefrom and unto the said Consolidated Rail Corporation, permanent, exclusive and assignable easements and rights for (1) any portion of Consolidated Rail Corporation's communication building or its appurtenances or facilities that may be located on the Premises; (2) any utilities in, on, over, above, under, across and through the Premises that are needed now or in the future to service said building; and (3) ingress, egress and regress in, on, over, across, above and through the Premises for access to and from and for the purposes of using said building and its appurtenances and facilities. (See sheet 10 of 11 of Exhibit "B", the notes on said Exhibit "B" are meant to be general in nature and not specific); and

EXCEPTING AND RESERVING thereout and therefrom and unto the said Consolidated Rail Corporation, permanent, perpetual, exclusive and assignable easements and rights (1) to use free or change the tracks located on the Premises for the purposes of operating its locomotives, engines, trains, freight cars and any other railroad equipment on, over, across and through the Premises so that Consolidated Rail Corporation may have rail access to the track marked as "CT" on sheet 10 of 11 of Exhibit "B" and identified as Track No. 268 in the aforesaid Albany Division and which track is also known as the former South Controlled Siding; and (2) for egress and regress purposes on, over, across and through the Premises for vehicular, pedestrian and any other purposes that Consolidated Rail Corporation may need for access to and from said Track so that Grantor may use its property that is contiguous and adjacent to said Track for any purposes whatsoever; (The notes on said Exhibit "B" are meant to be general in nature and not specific); and

EXCEPTING AND RESERVING thereout and therefrom and unto the said Consolidated Rail Corporation, permanent, perpetual, assignable and exclusive easements in, on, over, under, above, across and through the Premises for utility purposes and also for ingress, egress and regress access purposes to and from Consolidated Rail Corporation's contiguous and adjacent property.

THIS INDENTURE, made the 10th day of September Two Thousand Eight.

BETWEEN

GENESEE & MOHAWK VALLEY RAILROAD CO., INC., a New York corporation
having an office at One Mill St., Suite 101, Batavia, New York 14020,

party of the first part,

and

HARBOR POINT MINERAL PRODUCTS, INC., a New York corporation
having an office at 71 Wurz Avenue, Utica, New York 13503,

party of the second part.

WITNESSETH, that the party of the first part in consideration of One Dollar and other good and valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, its successors and assigns, forever, **ALL THAT TRACT, PIECE OR PARCEL OF LAND**, situate within the City of Utica, County of Oneida and State of New York, described as follows:

BEGINNING at an iron pin located at the intersection of the southwesterly street boundary of Wurz Avenue with the division line between the herein described property on the southwest and the property of Michael L. Benedetto and Frank J. Sparato (reputed owners) on the northeast;

Thence South 34° 58' 00" East, along the last mentioned division line, a distance of 585.64 feet to a point;

Thence South 32° 31' 45" East, continuing along the last mentioned division line, a distance of 51.16 feet to an iron pin;

Thence South 28° 47' 45" East, continuing along the last mentioned division line, a distance of 110.24 feet to an iron pin;

Thence South 31° 23' 30" East, continuing along the last mentioned division line, a distance of 48.38 feet to an iron pin;

Thence South 36° 13' 45" East, continuing along the last mentioned division line, a distance of 48.08 feet to an iron pin;

Thence South 40° 09' 30" East, continuing along the last mentioned division line, a distance of 40.61 feet to an iron pin located on the northwesterly boundary of Leland Avenue;

Thence South 31° 00' 30" West, along said northwesterly boundary of Leland Avenue, a distance of 42.93 feet to an iron pin;

Thence through the property of N.Y.C. & H.R. Railroad Company (reputed owner) the following four (4) courses and distances:

- 1) North 49° 35' 15" West, a distance of 101.96 feet to an iron pin;
- 2) North 48° 16' 15" West, a distance of 463.04 feet to an iron pin;
- 3) North 56° 31' 15" West, a distance of 203.49 feet to an iron pin;
- 4) North 68° 10' 40" West, a distance of 120.02 feet to an iron pin, said pin located at the intersection of the last mentioned course with the division line between the herein described property on the southeast and the property of Empire Recycling Operations, Trio, (reputed owner) on the northwest;

Thence North 21° 48' 45" East, along the last mentioned division line, a distance of 305.56 feet to an iron pin located on the aforesaid southwesterly street boundary of Wurz Avenue;

Thence South 68° 04' 00" East, along the last mentioned street boundary, a distance of 126.08 feet to the point of beginning.

SUBJECT TO easements, covenants and restrictions of record, if any, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises.

BEING THE SAME PREMISES conveyed to the grantor herein by deed dated December 4, 2007 and recorded in the Oneida County Clerk's Office December 21, 2007 as Instrument Number 2007-025656.

This conveyance is done in the usual course of business of the grantor herein and does not constitute all or substantially all of the assets of the grantor.

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, its successors and assigns, forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.


AND the party of the first part in compliance with Sec. 13 of the Lien Law, will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

GENESEE & MOHAWK VALLEY RAILROAD CO., INC.

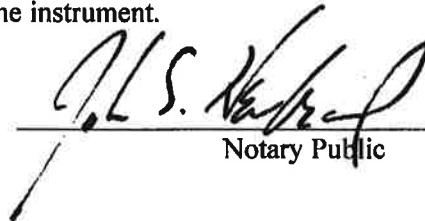
By:


David J. MonteVerde
President

9/9/08

STATE OF NEW YORK }
COUNTY OF Monroe } ss:

On the 10th day of September in the year 2008 before me, the undersigned, a notary public in and for said state, personally appeared David J. MonteVerde, 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 entity upon behalf of which the individual acted, executed the instrument.


Notary Public

JOHN S. HERBRAND
Notary Public, State of New York
Registration # 02HE6099658
Qualified in Monroe County
Commission Expires _____

9/29/2011

EXHIBIT B

EQUIPMENT

All fixtures, building materials and items of personal property constructed, renovated and installed in connection with the Mohawk, Adirondack & Northern Railroad Corp./Genesee & Mohawk Valley Railroad Co., Inc. Facility located in the City of Rome, the City of Utica, the Village of Boonville, the Village of Remsen, the Village of Holland Patent, the Town of Boonville, the Town of Steuben, the Town of Trenton and the Town of Marcy, Oneida County, New York.

SCHEDULE A

SCHEDULE OF DEFINITIONS

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

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

"Agency Documents" means the First Amended and Restated Lease Agreement, the First Amended and Restated PILOT Agreement and the Environmental Compliance and Indemnification Agreement.

"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 MA&N, its President; in the case of G&MV, its President; and in the case of all, 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 MA&N or G&MV, 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; (ii) MA&N by its President and (iii) G&MV by its President.

"Authorizing Resolution" means the resolution adopted by the Agency on the 18th day of May 2012 with respect to the Facility authorizing the execution and delivery of the Agency Documents as such resolutions may be amended and supplemented from time to time.

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

"Closing Date" means the date of delivery of the First Amended and Restated Lease Agreement.

"Company" means, collectively, MA&N and G&MV.

"Company Documents" means the First Amended and Restated Lease Agreement, the Environmental Compliance and Indemnification Agreement and the First Amended and Restated PILOT Agreement.

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

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

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

"Environmental Compliance and Indemnification Agreement" means the Environmental Compliance and Indemnification Agreement dated April 15, 2012 by and between the Agency and the Company, 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 Facility as described in Exhibit B to the First Amended and Restated Lease Agreement.

"Event of Default" means any of the events defined as Events of Default by Section 7.1 of the First Amended and Restated Lease Agreement.

"Facility" means the Land, the Improvements and the Equipment leased to the Company under the First Amended and Restated Lease Agreement.

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

"First Amended and Restated Lease Agreement" means the First Amended and Restated Lease Agreement dated as of April 15, 2012 by and between the Agency, as lessor, and the Company, as lessee, with respect to the Facility, as the same may be amended from time to time.

"First Amended and Restated PILOT Agreement" means the First Amended and Restated Payment-in-Lieu-of-Tax Agreement dated as of April 15, 2012 between the Company and the Agency, as amended from time to time.

"G&MV" means Genesee & Mohawk Valley Railroad Co., Inc., a New York railroad corporation with an address of One Mill Street, Suite 101, Batavia, New York 14020, and its successors and assigns.

"G&MV Facility" means the Land, the Improvements and the Equipment leased to G&MV under the G&MV Lease Agreement.

"G&MV Lease Agreement" means the Lease Agreement dated as of December 29, 1995 by and between the Agency, as lessor, and G&MV, as lessee, with respect to the G&MV Facility, as the same may be amended from time to time.

"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, collectively, a railroad yard in the City of Utica, trackage in the City of Rome and a line of rail running from City of Utica to the Oneida County – Lewis County line north of Boonville (i) affixed or attached to the or to be constructed on 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 real property leased by the Agency to the Company pursuant to the First Amended and Restated Lease Agreement and more particularly described in Exhibit A attached thereto, together with all easements of record.

"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 First Amended and Restated Lease Agreement.

"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.

"MA&N" means Mohawk, Adirondack & Northern Railroad Corp., a New York railroad corporation with an address of One Mill Street, Suite 101, Batavia, New York 14020, and its successors and assigns.

"MA&N Facility" means the Land, the Improvements and the Equipment leased to MA&N under the MA&N Lease Agreement.

"MA&N Lease Agreement" means the Lease Agreement dated as of December 29, 1992 by and between the Agency, as lessor, and the MA&N, as lessee, with respect to the MA&N Facility, as the same may be amended from time to time.

"Permitted Encumbrances" means (i) exceptions to title set forth in the Title Report, (ii) the First Amended and Restated Lease 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, and (v) Liens for taxes not yet delinquent.

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

"Plans and Specifications" means the plans and specifications for the Facility, prepared for the Company and approved by the Agency, as revised from time to time in accordance with the First Amended and Restated Lease Agreement.

"Project" means the continued operation of the Facility.

"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.

"Rail Service" means the transportation by railroad of freight and passenger (including recreational and tourism) and shall include the loading and unloading of railroad freight cars for or on behalf of Shippers, and the storage of locomotives and rail cars for third parties.

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

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

"Shippers" means all Persons which find it convenient to transport freight and/or passengers to or from terminals located adjacent to the Facility.

"State" means the State of New York.

"Substitute Facilities" means facilities of substantially the same nature as the proposed Facility.

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

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

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