

Transcript Document No. 3

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY
(TOWN OF HEMPSTEAD, NEW YORK)

And

TERRACE 100, L.P.

LEASE AGREEMENT

Dated as of December 1, 2006

\$28,000,000
Town of Hempstead Industrial Development Agency
Multifamily Housing Revenue Bonds, Series 2006
(Terrace 100, L.P. Facility)

The interest of the Town of Hempstead Industrial Development Agency (the “**Issuer**”) in this Lease Agreement has been assigned (except for certain “**Reserved Rights**” as defined in this Lease Agreement) pursuant to the Trust Indenture dated as of the date hereof from the Issuer to The Bank of New York, as trustee (the “**Trustee**”), and the Pledge and Assignment dated as of the date hereof from the Issuer to the Trustee, and is subject to the security interest of the Trustee thereunder.

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LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of December 1, 2006 (together with all supplements, modifications and amendments thereto, the “**Lease Agreement**”), is between the TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 350 Front Street, 2nd Floor, Hempstead, New York 11550 (together with its successors and assigns, the “**Issuer**”), and TERRACE 100, L.P., a limited partnership duly organized and existing under the laws of the State of New York, having an office at 2001 Marcus Avenue, Suite 245E, Lake Success, New York 11042 (together with its successors and assigns, the “**Company**”).

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “**Enabling Act**”), authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish land, 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, industrial or civic purposes and which may include or mean an industrial pollution control facility to the end that such agencies may be able to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act, the Issuer was established by Chapter 529 of the 1971 Laws of New York, as amended (together with the Enabling Act, the “**Act**”), for the benefit of the Town of Hempstead and the inhabitants thereof; and

WHEREAS, to accomplish the purposes of the Act, the Issuer has entered into negotiations with the Company to induce the Company to commence with the financing of a portion of the costs of a certain project to be known as the Jackson Terrace Apartments (the “**Project**”) consisting of: (A) the acquisition of title to or other interest in an approximately 2 acre parcel of land located at 100 Terrace Avenue between Jackson Street and Bedel Street in the Village of Hempstead, Town of Hempstead, County of Nassau, New York and described in Exhibit A attached hereto (the “**Land**”) and the existing improvements located thereon consisting principally of an approximately 400,000 square foot building containing in the aggregate 417 residential units (the “**Residential Units**”), at least forty percent (40%) of which Residential Units will be leased to households earning no more than sixty percent (60%) of the area’s median gross income, and related improvements (collectively, the “**Existing Improvements**”); (B) the renovation, reconstruction and equipping of the Existing Improvements to accommodate 417 residential rental units and related common areas (collectively, the “**Improvements**”); (C) the acquisition and installation in and around the Improvements of the Equipment (as hereinafter defined) (collectively, the “**Facility**”); (D) the

paying of certain costs and expenses incidental to the issuance of Bonds (as hereinafter defined)(the costs associated with items (A) thorough (D) above being hereinafter referred to as the “**Project Costs**”); and (E) the lease (with an obligation to purchase) or sale of the facilities financed with the Bonds to the Company or such other person as may be designated by the Company and agreed upon by the Issuer; and

WHEREAS, the Issuer is in receipt of correspondence on behalf of the Company stating the Company will set aside at least forty percent (40%) of the units at the Facility for exclusive use by households that fall below sixty percent (60%) of the median family income in the Town of Hempstead and stating that the Company will verify on an annual basis to the Issuer its commitment to hold at least forty percent (40%) of the units at the Facility for people below sixty percent (60%) of the median family income in the Town of Hempstead (the “**40% Set Aside Letter**”); and

WHEREAS, on October 18, 2006 the Issuer adopted a Preliminary Inducement Resolution agreeing to proceed with the proposed financing and allowing the Company adequate time to provide such additional information in such form and content satisfactory to the Issuer, including, without limitation, a feasibility study showing the need for the Facility, the economic impact that the Facility will have on the economy of the Village of Hempstead and the Town of Hempstead, the number of construction jobs and permanent Private Sector jobs to be created directly or indirectly by the Facility, and other related matters together with such letters or reports from interested parties and governmental agencies or officials (the “**Letters of Support**”) (the Feasibility Study (as hereinafter defined), 40% Set Aside Letter and the Letters of Support are collectively, the “**Requisite Materials**”); and

WHEREAS, the Company has now provided the Issuer with the Requisite Materials including that certain Market Study prepared by GAR ASSOCIATES, INC., certified on November 8, 2006 (the “**Feasibility Study**”), to enable the Board of the Issuer to make findings and determinations that the Facility qualifies as a “project” under the Act and that the Facility satisfies all other requirements of the Act; and

WHEREAS, on December 6, 2006, the Issuer completed its environmental review of the Facility in compliance with the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law of the State of New York (the “**State**”); and

WHEREAS, pursuant to Section 147(f) of the Code, interest on the Bonds will not qualify for exclusion from gross income for Federal income purposes unless the issuance of the Bonds is approved by the Supervisor after a public hearing to consider both the issuance of the Bonds and the nature and location of the Facility has been conducted following reasonable public notice; and

WHEREAS, on November 21, 2006, the Issuer held such a public hearing upon proper notice in compliance with the Code; and

WHEREAS, the Issuer has adopted a resolution on December 6, 2006 (the “**Resolution**”) authorizing the acquisition, reconstruction, renovation and equipping of the Facility and the issuance of the Bonds to finance a portion of the costs of the acquisition,

reconstruction, renovation and equipping of the Facility and the lease of the Facility to the Company, and authorizing the execution and delivery of the other Issuer Documents; and

WHEREAS, the Facility will be leased by the Issuer to the Company pursuant to this Lease Agreement; and

WHEREAS, Issuer financing assistance is necessary to provide employment in, and is beneficial for the economy of, the Town of Hempstead and is reasonably necessary to induce the Company to proceed with the Project (as defined in the Indenture); and

WHEREAS, the Issuer, in order to provide funds for a portion of the costs of the Project and for incidental and related costs thereto, will issue and sell its Multifamily Housing Revenue Bonds, Series 2006 (Terrace 100, L.P. Facility) in the aggregate principal amount of up to \$28,000,000 (the “**Bonds**”) pursuant to the Act, the Resolution, and the Trust Indenture dated as of December 1, 2006 (the “**Indenture**”), between the Issuer and The Bank of New York, as trustee (the “**Trustee**”); and

WHEREAS, the Company, the Issuer and Bank of America, N.A. (the “**Bank**”) will enter into a Bond Purchase Agreement, dated December 29, 2006 (the “**Bond Purchase Agreement**”) in connection with the issuance and sale of the Bonds; and

WHEREAS, concurrently with the execution hereof, (i) the Company, D & F Construction Group Inc. (“**D & F**”), Peter G. Florey (“**Peter Florey**”) and Leonard T. D’Amico (“**Leonard D’Amico**”; and, together with the Company, D & F and Peter Florey, the “**Guarantors**”) will guarantee (with respect to D & F, Peter Florey and Leonard D’Amico, to the limited extent set forth therein) the payment of the principal of, sinking fund installments for, redemption premium, if applicable and interest on the Bonds pursuant to a Guaranty Agreement, dated as of December 1, 2006 (the “**Guaranty**”), from the Company to the Issuer and the Trustee, and (ii) the Issuer will assign to the Trustee all of its rights (except its Reserved Rights) under this Lease Agreement, pursuant to a certain Pledge and Assignment, dated as of December 1, 2006 (the “**Assignment**”); and

WHEREAS, to secure its obligations under this Lease Agreement, (i) the Company, and the Issuer have executed (i) a Conventional Loan Mortgage, Security Agreement and Fixture Filing, a Building Loan Mortgage, Security Agreement and Fixture Filing, and an Acquisition Loan Mortgage, Security Agreement and Fixture Filing, each from the Company and the Issuer to the Trustee (collectively, as amended, modified or supplemented from time to time, the “**Mortgages**”) and (ii) the Company has executed an Assignment of Contracts, Plans and Specifications (as the same may be amended, modified or supplemented from time to time, the “**Assignment of Project Documents**”), and the Company and the Managing Member have executed a Security Agreement (Assignment of Membership Interest and Capital Obligations) (as amended, modified or supplemented from time to time, the “**Membership Assignment**”) each dated as of December 1, 2006, for the benefit of the Trustee as secured party; and

NOW THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Issuer herein contained, any obligation it may incur for the

payment of money shall not subject the Issuer to any pecuniary or other liability nor create a debt of the State of New York or of the Town of Hempstead, and neither the State of New York nor the Town of Hempstead shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals, revenues and receipts derived from or in connection with the Facility, including moneys received under this Lease Agreement):

ARTICLE I DEFINITIONS

Section 1.1 Definitions. The following capitalized terms shall have the meanings specified in this Article unless the context requires otherwise. All other capitalized terms used herein which are defined in the Indenture and not defined herein shall have the meanings ascribed thereto in the Indenture. The singular shall include the plural and the masculine shall include the feminine and neuter shall include the masculine or feminine.

“Acceptable Leases” means residential or commercial leases on a form approved by the Servicer.

“Accountant” means Koch & Company, LLP, or such other independent certified public accountant or firm of independent certified public accountants, selected by the Company and approved by the Servicer, such approval not to be unreasonably withheld or delayed.

“Acknowledgement” means the Acknowledgment by the Company of the Assignment.

“Additional Rent” means all fees, charges, reimbursements and other amounts payable by the Company pursuant to this Lease Agreement other than Lease Payments.

“Administrative Rate” means the lesser of (i) four percent (4%) in excess of the Prime Rate or (ii) four percent (4%) in excess of the rate of interest that would otherwise prevail on the Bonds from time to time, but in no event greater than the maximum rate permitted by applicable law.

“Amended and Restated Agreement of Limited Partnership” means that certain Terrace 100, L.P. Amended and Restated Agreement of Limited Partnership, dated December 28, 2006 among D&F Development XII, LLC, Orion Summit 002, LLC, D&F Consultants, LLC, Peter G. Florey, and Leonard D’Amico, as amended and supplemented from time to time.

“Application” means the Application for Financial Assistance submitted on October 16, 2006 to the Issuer by the Company or an affiliate thereof relating to the Project.

“Appraisal” means an appraisal of the market value of the Project performed by a qualified independent appraiser approved by the Servicer.

“Approved Budget” means the Proposed Budget approved by the Servicer.

“Architect” means Gerald J. Caliendo, R.A., A.I.A..

“Architect’s Contract” means the AIA Form E181 Contract, dated November 6, 2006, between D & F Development Group, LLC and the Architect, providing for the design of the Improvements and the supervision of the reconstruction, renovation and equipping of the Existing Improvements, including ongoing monthly inspection of the Improvements, certification of Requisitions and certification of Completion, among other things.

“Assignment” means the Pledge and Assignment with Acknowledgment thereof by the Company, dated as of December 1, 2006, from the Issuer to the Trustee.

“Assignment of Project Documents” means the Assignment of Contracts, Plans and Specifications, dated as of December 1, 2006 from the Company to the Bank.

“Bank” means Bank of America, N.A., and its successors and assigns.

“Bond Counsel” means Nixon Peabody LLP or any attorney at law or other law firm of nationally recognized standing in matters pertaining to the excludability from gross income, for Federal income tax purposes, of the interest payable on bonds issued by states and political subdivisions, selected by the Issuer and duly admitted to practice law before the highest court of any state of the United States of America.

“Bond Documents” means the Bond Purchase Agreement, Indenture, the Bonds, the Lease Agreement, the Tax Regulatory Agreement, the Assignment, the Guaranty Agreement, the Mortgage, the Assignment of Project Documents, the Membership Assignment, the Construction Disbursement Agreement, the Completion Agreement, the Payment Guaranty, the Indemnity Agreement and the PILOT Agreement, and all other documents, agreements and instruments executed and delivered in connection with the issuance, sale and delivery of the Bonds, as each such document, agreement or instrument may be amended, modified, supplemented or restated from time to time.

“Bond Issuance Charge” means the charge payable to the State in connection with the issuance of the Bonds.

“Bond Purchase Agreement” means the Bond Purchase Agreement, dated December 29, 2006, among the Company, the Issuer and the Bank.

“Bonds” means the Issuer’s Multifamily Housing Revenue Bonds, Series 2006 (Terrace 100, L.P. Facility) in the aggregate principal amount of up to \$28,000,000.

“Capital Expenditures” means capital expenditures determined in accordance with generally accepted accounting principles relating to the repair, renovation or replacement of the Project.

“Change Order” means a change made to the Plans and Specifications, as evidenced by a written change order request in accordance with the terms of the Construction Contract.

“Company Documents” means, collectively, the Bond Purchase Agreement, the Lease Agreement, the Guaranty, the PILOT Agreement, the Tax Regulatory Agreement, the Certificate as to Arbitrage, the Construction Disbursement Agreement, the Mortgages, the Assignment of

Project Documents, the Membership Assignment, the Environmental Compliance and Indemnification Agreement, the Acknowledgment and the Company's Tax Certificate, together with all other documents or instruments executed by the Company which evidence or secure the Company's indebtedness under such documents and all other documents and instruments delivered simultaneously herewith or required under the Company Documents to be delivered during the term of the Bonds.

"Company Tax Documents" shall have the meaning ascribed to such term in Section 5.18(a) hereof.

"Completion Agreement" means the Completion Agreement dated as of even date herewith and executed by the Guarantors in favor of the Trustee, as the same may be modified, supplemented or amended from time to time.

"Completion Date" means December 1, 2008, as the same may be extended in accordance with Section 5.1 hereof and the Construction Disbursement Agreement.

"Construction Contract" means the contract, dated November 8, 2006, between the Company and the Contractor, providing for the reconstruction, renovation and equipping of the Existing Improvements and certification of Requisitions, among other things.

"Construction Disbursement Agreement" means the Construction Disbursement and Building Loan Agreement dated as of even date herewith between the Company and the Bank, as the same may be supplemented, amended or modified.

"Consulting Engineer" shall have the meaning ascribed to that term in the Construction Disbursement Agreement.

"Contractor" means D & F Construction Company, Inc.

"D & F" means D & F Construction Group Inc., a New York business corporation, and its successors and assigns.

"Debt Coverage Ratio" means the ratio of annual Net Operating Income to annual debt service.

"Deed" means the Bargain and Sale Deed, dated the Closing Date, from the Company to the Issuer, conveying the Land to the Issuer.

"Default" or **"Event of Default"** means, when referring to (i) the Indenture, an event or condition specified or defined as such by Article VI of the Indenture and (ii) this Lease Agreement, an event or condition specified or defined as such by Section 7.1 hereof.

"Development Budget" means the budget for total estimated Project Costs and sources of payment attached to the Construction Disbursement Agreement, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and the Construction Disbursement Agreement.

“Direct Costs” means the costs of the Land, the Existing Improvements, the Improvements, the Equipment, and all labor, materials, fixtures, machinery and equipment required to renovate, reconstruct and equip the Existing Improvements in accordance with the Plans and Specifications.

“Environmental Compliance and Indemnification Agreement” means the Environmental Compliance and Indemnification Agreement, dated as of even date herewith, from the Company to the Issuer and the Trustee, as the same may be modified, supplemented or amended from time to time.

“Equipment” all materials, furnishings, fixtures, furniture, machinery, equipment and all items of tangible or intangible personal property now or hereafter owned or acquired by the Company in which the Issuer has been or will be granted an interest to secure the obligations of the Company under the Company Documents.

“Existing Improvements” has the meaning set forth for that term in the Recitals, above.

“Facility” means, collectively, the Equipment, the Land, the Existing Improvements and the Improvements.

“Financial Assistance” has the meaning given to such term in Section 854(14) of the Act, including the issuance of the Bonds and the grant of exemption from real property taxation, mortgage recording tax and sales and use tax.

“Financing Statements” means Uniform Commercial Code Form 1 Financing Statement(s) naming the Company, the Issuer, the Managing Member and/or the Investor Member as debtors, and the Trustee as secured party.

“Generally Accepted Accounting Principles” means the principles that are (i) consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors, as in effect from time to time, and (ii) consistently applied with past financial statements of the Company adopting the same principles; provided that a certified public accountant would, insofar as the use of such accounting principles is pertinent, be in a position to deliver an unqualified opinion (other than a qualification regarding changes in Generally Accepted Accounting Principles) as to financial statements in which such principles have been properly applied.

“Governmental Authority” means the United States, the State in which the Land is located and any political subdivision, agency, department, commission, board, bureau, authority or instrumentality of either of them, including any local authorities, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of government, which has jurisdiction over the Land or the reconstruction, renovation, equipping and operation of the Facility thereon.

“Guarantor or Guarantors” means individually and collectively, Peter G. Florey, an individual, and Leonard T. D’Amico, an individual, and D & F Construction Group Inc., a New York business corporation.

“Guarantor Documents” means the Payment Guaranty, the Guaranty Agreement and the Completion Agreement.

“Guaranty or Guaranty Agreement” means the Guaranty Agreement dated as of December 1, 2006 made by the Company and the Guarantors for the benefit of the Trustee and the Issuer, as it may be amended, modified, supplemented or restated from time to time.

“Hazardous Substances” means, without limitation, any flammable, explosive, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum constituents, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, pollutants, or toxic pollutants, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Sections 1251 et seq.), Articles 17 and 27 of the New York State Environmental Conservation Law, or any other applicable Environmental Law and the regulations promulgated thereunder.

“HUD” means the United States Department of Housing and Urban Development and its successors and assigns.

“Impositions” means Real Estate Taxes, payments in lieu of Real Estate Taxes and any special assessments, such as user charges, fire protection, water, utility or sewer charges, or other governmental charges customarily charged to all users on a nondiscriminatory basis.

“Improvements” has the meaning set forth for that term in the Recitals, above, as they may be reconstructed, renovated and equipped in accordance with the Plans and Specifications.

“Indebtedness” means all obligations, contingent and otherwise, that in accordance with Generally Accepted Accounting Principles should be classified upon the obligor’s balance sheet as liabilities, or to which reference should be made by footnotes thereto, including in any event and whether or not so classified: (a) all debt and similar monetary obligations, whether direct or indirect; (b) all liabilities secured by any deed to secure debt, mortgage, deed of trust, pledge, security interest, lien, charge or other encumbrance existing on property owned or acquired subject thereto, whether or not the liability secured thereby shall have been assumed; (c) all liabilities under capitalized leases; and (d) all guaranties, endorsements and other contingent obligations whether direct or indirect in respect of indebtedness of others, including the obligations to reimburse the issuer of any letter of credit for amounts drawn on such letter of credit.

“Indenture” means the Trust Indenture, dated as of December 1, 2006, between the Issuer and the Trustee.

“Indirect Costs” means all title insurance premiums, survey charges, engineering fees, architectural fees, real estate taxes, appraisal costs, premiums for insurance, marketing, advertising and leasing costs, brokerage commissions, legal fees, accounting fees, overhead and

administrative costs, and all other expenses as shown on the Development Budget which are expenditures relating to the Project and are not Direct Costs.

“Investor Member” means Orion Summit 002, LLC, a New York limited liability company, together with its permitted successors and assigns as a member of the Company.

“Issuer Documents” means, collectively, the Bond Purchase Agreement, the Indenture, the Lease Agreement, the Guaranty, the PILOT Agreement, the Mortgages, the Assignment, the Bonds, the Certificate as to Arbitrage and the Tax Regulatory Agreement.

“Issuer’s Annual Compliance Fee” means the fee of \$2,500 paid at closing and the annual compliance fee payable every January 1, commencing January 1, 2008, and continuing thereafter until the Bonds have been paid in full and this Lease Agreement shall have been satisfied and terminated.

“Issuer’s Fee” means an issuance fee in the amount of \$142,500 payable on the Closing Date.

“Land” has the meaning set forth for that term in the Recitals, above.

“Lease Agreement” means this Lease Agreement, dated as of December 1, 2006, between the Issuer, as lessor and the Company, as lessee.

“Lease Payments” means the rental payments payable by the Company pursuant to Section 3.2(a) of this Lease Agreement.

“Lease Term” means the term of this Lease Agreement as set forth in Section 2.7 hereof.

“Legal Requirements” means any legal requirements, including any local, state or federal statute, law, ordinance, code, rule or regulation, now or hereinafter in effect (including environmental laws) or order, judgment, decree, injunction, permit, license, authorization, certificate, franchise, approval, notice, demand, direction or determination, of any Governmental Authority and all legal requirements imposed upon the Land, or upon the owner(s) of the Land from time to time, pursuant to any applicable covenants, conditions, easements, servitudes and restrictions and any applicable ground lease.

“Leonard D’Amico” means Leonard T. D’Amico, an individual and his heirs and assigns.

“Lien” means any interest in the Facility or any part thereof or any right therein, including without limitation any rents, issues, profits, proceeds and revenues therefrom, securing an obligation owed to, or a claim by, any Person, whether such interest is based on the common law, statute or contract, and including but not limited to the lien and security interest arising from a deed to secure debt, mortgage, deed of trust, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” shall also include any and all reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the Facility or any part thereof or any interest therein.

“Management Agreement” means the Property Management Agreement dated as of November 21, 2006, between the Company and the Property Manager, and any substitute agreement relating to the management of the Project.

“Managing Member” means D & F Development XII, LLC, a New York limited liability company, as managing member of the Company, together with any permitted successors and assigns.

“Managing Member Documents” means the Membership Assignment.

“Membership Assignment” means the Security Agreement (Assignment of Membership Interest and Capital Obligations), dated as of December 1, 2006, from the Managing Member and the Company to the Trustee.

“Mortgages” means, collectively, the Conventional Loan Mortgage, Security Agreement and Fixture Filing, dated as of December 1, 2006, from the Company and the Issuer to the Trustee, the Building Loan Mortgage, Security Agreement and Fixture Filing, dated as of December 1, 2006, from the Company and the Issuer to the Trustee, and the Acquisition Loan Mortgage, Security Agreement and Fixture Filing, dated as of December 1, 2006, from the Company and the Issuer to the Trustee.

“Net Operating Income” means, for any period, (A) the lesser of (i) actual Project Revenues for such period or (ii) Project Revenues as projected in the Appraisal dated October 17, 2006 for such period, adjusted to reflect a five percent (5.0%) vacancy rate less (B) the greater of (i) Operating Expenses for such period or (ii) the allocable portion of Projected Operating Expenses.

“Obligor(s)” means the Company and the Managing Member.

“Operating Agreement” means the Limited Partnership Agreement of the Company dated as of October 23, 2006, as amended as of December 28, 2006, as the same may be amended, modified or supplemented from time to time, subject to the terms hereof.

“Operating Expenses” are all reasonable and necessary expenses of operating the Facility in the ordinary course of business which are actually incurred by the Company (appropriately pro-rated for any expenses that, although actually incurred in a particular period, also relate to other periods) and which are directly associated with and fairly allocable to the Facility for the applicable period, including, without limitation, ad valorem real estate taxes and assessments, insurance premiums and regularly scheduled tax and insurance impounds paid with respect to the Project (without taking any such payment or expense into account more than once), deposits to replacement reserves, maintenance costs, management fees determined by the Servicer (not including out-of-pocket cost reimbursements required under the applicable management agreement in such limitation), accounting, legal, and other professional fees, fees relating to environmental audits, wages, salaries and personnel expenses, but excluding rental payments under this Lease Agreement, capital expenditures, any of the foregoing expenses which are paid from deposits to cash reserves previously included as Operating Expenses, and any payment or expense for which Company was or is to be reimbursed from proceeds of the Bonds or insurance or by any third party. Operating Expenses shall not include federal, state or

local income taxes, corporate overhead or fees or legal and other professional fees unrelated to the operation of the Facility.

“Operating Revenues” means all cash receipts of Company from operation of the Facility or otherwise arising in respect of the Facility which are properly allocable to the Facility for the applicable period, including receipts from residential and commercial leases and parking agreements, concession fees and charges and other miscellaneous operating revenues, proceeds from rental or business interruption insurance but excluding security deposits and earnest money deposits until they are forfeited by the depositor, advance rentals until they are earned, and proceeds from a sale or other disposition.

“Opinion of Bond Counsel” means a written opinion of Bond Counsel addressed to the Issuer and the Trustee and in form and substance acceptable to the Issuer and the Trustee.

“Organizational Documents” means for any corporation, partnership, trust, limited liability company, limited partnership, unincorporated association, business or other legal entity, the documents pursuant to which such entity has been established or organized, as such documents may be amended from time to time in accordance with the terms of this Lease Agreement.

“Payment Guaranty” means the Payment Guaranty, dated as of December 1, 2006 and executed by the Guarantors in favor of the Trustee, as the same may be modified, supplemented or amended from time to time.

“Permitted Encumbrances” shall have the meaning ascribed to such term in the Mortgages.

“Peter Florey” means Peter G. Florey, an individual and his heirs and assigns.

“PILOT Agreement” means the Payment in Lieu of Tax Agreement, dated as of December 1, 2006, between the Company and the Issuer, as amended, modified, supplemented or restated from time to time.

“Plans and Specifications” means the plans and specifications for the Project prepared by the Architect and more particularly described in the Construction Disbursement Agreement, as the same may be amended, modified or supplemented in accordance with the terms hereof and the Construction Disbursement Agreement.

“Project Approvals” means all approvals, consents, waivers, orders, agreements, authorization, permits and licenses required under applicable Legal Requirements or under the terms of any restriction, covenant or easement affecting the Project, or otherwise necessary or desirable for the ownership, acquisition, reconstruction, renovation and equipping, use and operation of the Project and the Improvements, whether obtained from a Governmental Authority or any other Person.

“Project Costs” means the sum of all Direct Costs and Indirect Costs that will be incurred by the Company in connection with the acquisition of the Land and the Existing Improvements, the reconstruction, renovation and equipping of the Existing Improvements, the

marketing and leasing of leasable space in the Improvements, and the operation and carrying of the Facility through Stabilization.

“Project Revenues” means, for any period, the revenues actually collected during such period (a) generated from all tenants and others occupying or having a right to occupy or use the Facility or any portion thereof (other than revenue from Section 8 vouchers to the extent such revenue causes the rent on any unit to exceed the lower of (A) maximum allowable tax credit rent designated for that unit or (B) the average rent being achieved for similar non-Section 8 subsidized units within the Facility for such period), adjusted to reflect rental concessions over the term of any applicable lease, and (b) from the use and occupancy of any amenities and services of the Facility, including vending machine income, net cable TV revenues, laundry service and parking income, but exclusive of (i) capital contributions, (ii) net proceeds from the sale or refinancing of the Facility, (iii) net proceeds of insurance (other than proceeds of loss of rent insurance to the extent paid for apartment units occupied at the time of the loss), and net condemnation awards, (iv) security deposits and prepaid rents to the extent not permitted to be released to the Company pursuant to the terms of leases, and (v) interest earnings.

“Projected Operating Expenses” means \$3,100,000 or such other figure as is agreed in writing by the Company and the Servicer.

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

“Property Manager” means Wizard Group, Inc. d/b/a LTD Management, or any successor manager of the Facility approved by the Servicer and the Issuer (which approval of the Issuer shall not be unreasonably withheld and shall be deemed granted if not rejected within ten (10) days of receipt of a written request therefore).

“Proposed Budget” means the proposed capital and operating budget for the Facility, submitted to the Servicer for approval.

“Proposed Budget” shall have the meaning ascribed to such term in Section 5.22(a) hereof.

“Real Estate Taxes” means all general levy real estate taxes levied against the Project by the applicable governmental authorities.

“Required Equity Funds” means the funds advanced by the Managing Member to the Company prior to the exercise of the purchase option set forth in Section 5.10 of the Amended and Restated Agreement of Limited Partnership, and, thereafter, by the capital contributions by Investor Member to the Company, for application to Project Costs in accordance with the Approved Budget, to be contributed and so applied in installments at times and in amounts approved by the Servicer.

“Reserved Rights” means those certain rights of the Issuer under this Lease Agreement to indemnification and to payment or reimbursement of fees and expenses of the Issuer, its right to receive notices, reports, opinions of Counsel, Opinions of Bond Counsel, financial statements, certificates, insurance policies, binders or certificates, or other information, and to enforce notice

and reporting requirements, its right to make determinations and grant or withhold consents and approvals hereunder and under the other Bond Documents, its right to inspect and audit the books, records and premises of the Company and the Project, its right to collect reasonable attorneys' fees and related expenses, its right to enforce on its own behalf the obligation of the Company to complete the Project, its right to enforce on its own behalf its rights hereunder with respect to the proceeds of its leasehold title insurance, its right to enforce or otherwise exercise on its own behalf all agreements of the Company with respect to ensuring that the Facility shall always constitute a qualified "project" as defined in and contemplated by the Act, its right in its own behalf to declare an Event of Default under Section 7.1 hereof with respect to any of the Reserved Rights, and its right to specifically enforce the Company's covenant to comply with applicable Federal tax law and State law (including the Act and the rules of the Issuer). Reserved Rights include, without limitation, the right of the Issuer to receive sums due to it, to enforce and to receive amounts payable under this Lease Agreement and subject to Section 7.8 of this Lease Agreement, to enforce its rights and exercise its remedies under this Lease Agreement against the Company, including, without limitation, the Issuer's rights under the following sections: 2.9, 3.2(c), 3.6, 5.3(a) and (f), 5.4(a), 5.7, 5.14, 5.27, 5.19, 7.2(a)(i), (v) and (vi), 7.4, 9.6, 9.9 and 10.2(b).

"Sales Taxes" means any tax(es) imposed by Article 28 of the New York Tax Law, as the same may be amended from time to time.

"Secured Property" shall have the meaning ascribed to such term in the Mortgages.

"Single Purpose Entity" means an entity that (i) is formed solely for the purpose of owning and operating a single asset; (ii) does not engage in any business unrelated to such asset; (iii) keeps its own books and records and its own accounts, separate and apart from the books, records and accounts of any other Person; and (iv) holds itself out as being a legal entity, separate and apart from any other Person.

"Stabilization" means the point at which

- (i) the Completion Date has occurred;
- (ii) lien-free completion of the Facility has occurred;
- (iii) at least 90% of the residential units within the Facility have been occupied by tenants meeting the requirements of the Company Documents in the three (3) consecutive months immediately preceding the date of determination;
- (iv) stabilized rent and expenses; and
- (v) achievement of a Debt Service Coverage Ratio of 1.20.

"Survey" means an instrument survey of the Land and the Improvements prepared in accordance with the Servicer's survey requirements, such survey to be reasonably satisfactory to the Servicer in form and substance.

“Tax Credits” means the federal low income housing credits available with respect to the Project.

“Title Insurance Company” means First American Title Insurance Company of New York.

“Title Policy” means an ALTA standard form title insurance policy or policies issued by the Title Insurance Company for the benefit of the Issuer, the Trustee and their respective successors and assigns, as their interests may appear (with such reinsurance or co-insurance as the Servicer may require, any such reinsurance to be with direct access endorsements) insuring the priority of the Mortgages and that the Company holds marketable fee simple title to the Project and the Issuer holds a valid leasehold interest in the Project, in each case subject only to Permitted Encumbrances and such exceptions as the Servicer may approve, and containing such endorsements and affirmative insurance as the Servicer in its discretion may require.

“Unit Reserve Amount” means during the first twelve months following completion of reconstruction, renovation and equipping of the Facility, an amount equal to \$250 times the number of apartment units at the Facility, which amount shall be increased (i) as of the first day of the first full month of each succeeding twelve month period by the amount by which the cost of living (as reflected in the Consumer Price Index for the metropolitan area in which the Facility is located, or any successor or substitute index) as of the last calendar month of the immediately preceding twelve month period exceeded such cost of living as of the last calendar month of the prior twelve month period and (ii) not more frequently than once every five years upon the written direction of the Servicer by an amount reasonably determined by the Servicer, based on a physical needs assessment in respect of the Facility, as necessary to meet the upcoming capital needs of the Facility.

ARTICLE II REPRESENTATIONS AND COVENANTS

Section 2.1 Representations by the Issuer. The Issuer makes the following representations as of the date of the execution and delivery of this Lease Agreement as the basis for the undertakings on its part herein contained:

(a) The Issuer is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York.

(b) The Issuer has the power and lawful authority to adopt the Resolution, to execute and deliver the Issuer Documents, to issue the Bonds to obtain funds to provide financing for the Project, to assign the revenues derived and to be derived by the Issuer under the Lease Agreement (other than Reserved Rights) to the Trustee and to perform and observe the provisions of the Issuer Documents and the Bonds on its part to be performed and observed.

(c) The Issuer has duly authorized the execution and delivery of each of the Issuer Documents, the issuance, sale and delivery of the Bonds and the performance of the obligations of the Issuer thereunder.

(d) The Issuer Documents and the Bonds have been duly executed and delivered by the Issuer and constitute the legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights, and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(e) Neither of the Issuer nor any director, member, officer or employee of the Issuer has any interest, financial, employment or other, in the Company, the Project or the transactions contemplated hereby.

(f) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Issuer, threatened against the Issuer by or before any court, governmental agency or public board or body, which (i) affects or questions the existence or the territorial jurisdiction of the Issuer or the title to office of any member of the Issuer; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any of the Issuer Documents, or the issuance, execution or delivery of the Bonds; (iii) affects or questions the validity or enforceability of any of the Issuer Documents or the Bonds; (iv) questions the exclusion from gross income for federal income taxation of interest on the Bonds; or (v) questions the power or authority of the Issuer to perform its obligations under any of the Issuer Documents or the Bonds or to carry out the transactions contemplated by any of the Issuer Documents or the Bonds.

(g) The Issuer makes no representation or warranty, express or implied, that the proceeds of the Bonds will be sufficient to finance the acquisition, reconstruction, renovation and equipping of the Project or that the Facility will be adequate or sufficient for the Company's intended purposes.

(h) The Issuer has used no broker in connection with the execution hereof and the transactions contemplated hereby.

(i) The undertaking of the Project and grant of Financial Assistance including issuance of the Bonds to obtain funds to provide financing for the Project is intended to serve the public interest and will further the purposes of the Act including, among such purposes, preserve permanent, private sector employment in the State, prevent economic deterioration, advance the health and economic welfare of the people of the State, improve their standard of living by facilitating the enhancement of the quality and conditions of the affordable housing provided at the Facility and provide safe and secure affordable rental housing; to accomplish the foregoing, the Issuer intends to issue the Bonds on the terms set forth in the Indenture, to use the proceeds derived from the sale of the Bonds as specified in the Indenture and this Lease Agreement and to grant the other Financial Assistance.

(j) The Bonds have been issued under the Indenture and are secured by the Indenture, pursuant to which the Issuer's interest in this Lease Agreement (other than the Reserved Rights), and the revenues and receipts to be derived by the Issuer pursuant to this Lease Agreement, are pledged and assigned by the Issuer to the Trustee as security for payment of the principal of, premium, if any, and interest on the Bonds.

(k) The Issuer has not made and will not make any pledge or assignment of or create any encumbrance on the Trust Estate, other than the pledge and assignment to the Trustee, as their interests may appear, under the Indenture, the Assignment and the Mortgages.

Section 2.2 Representations by the Company. The Company makes the following representations and warranties, and covenants and agrees as follows, as of and from the date of the execution and delivery of this Lease Agreement as the basis for the undertakings on its part herein contained:

(a) The Company is, and at all times will be, a limited partnership duly organized, validly existing and in good standing under the laws of the State. The Managing Member is, and at all times will be, a limited liability company, duly organized, validly existing and in good standing under the laws of the State. Each of the Company and the Managing Member has, and will at all times have, all requisite power to own its property and conduct its business as now conducted and as presently contemplated, to execute and deliver the Company Documents and the Managing Member Documents and to perform its duties and obligations hereunder and thereunder.

(b) The execution, delivery and performance of this Lease Agreement and the other Company Documents and the transactions contemplated hereby and thereby (i) are within the authority of the Company, (ii) have been duly authorized by all necessary proceedings on the part of the Company, (iii) do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which the Company is subject or any judgment, order, writ, injunction, license or permit applicable to the Company, or any agreement or instrument to which the Company is a party or by which it is bound, result in the creation or imposition of a Lien of any nature on any of the property of the Company, except for Permitted Encumbrances, (iv) do not conflict with any provision of the Organizational Documents of the Company, and (v) do not require the approval or consent of, or filing with, any governmental agency or authority other than those already obtained and the filing of certain of the Company Documents in the appropriate public records.

(c) The execution and delivery of this Lease Agreement and the other Company Documents will result in valid and legally binding obligations of the Company enforceable against it in accordance with the respective terms and provisions hereof and thereof, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights, and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(d) The Company and the Managing Member are, and will at all times be, Single Purpose Entities.

(e) The address of the Company's chief executive office and principal place of business is 2001 Marcus Avenue, Suite 245E, Lake Success, New York 11042. The federal employer identification number for the Company is 20-5764748.

(f) On the Closing Date, the Issuer will acquire and hold fee simple title to the Land and the Improvements, in each case subject only to the Permitted Encumbrances. The Company possesses, and will at all times possess, all franchises, patents, copyrights, trademarks, trade names, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of its business substantially as now conducted or as it is intended to be conducted with respect to the Project, without known conflict with any rights of others.

(g) The Company is not subject to any provision, restriction or prohibition under any Organizational Document or other legal restriction, or any judgment, decree, order, rule or regulation that has or is expected in the future to have a materially adverse effect on the business assets or financial condition of the Company. The Company is not, and will not be, a party to any contract or agreement that has or is expected, in the judgment of the Company's partners, to have any materially adverse effect on the business or financial condition of the Company.

(h) The Company is not and will not at any time be, in violation of any provision of its Organizational Documents or any agreement or instrument to which it may be subject or by which it or any of its properties may be bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that could result in the imposition of substantial penalties or adversely affect the financial condition, properties or business of the Company.

(i) The Company and each Obligor (i) has made or filed, and will make or file in a timely fashion, all federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (ii) has paid, and will pay when due, all taxes and other governmental assessments and charges shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and by appropriate proceedings, (iii) if a partnership, limited partnership or limited liability company, has, and will maintain, partnership tax classification under the Code, and (iv) has set aside, and will at all times set aside, on its books provisions reasonably adequate for the payment of all taxes for periods subsequent to the period to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the partners, officers, members or trustees of the Company know of no basis for any such claim. The Company has filed, and will continue to file, all of such tax returns, reports, and declarations either (x) separately from any Affiliate or (y) if part of a consolidated filing, as a separate member of any such consolidated group.

(j) The Project is located wholly within the State and within the jurisdiction of the Issuer.

(k) None of the Issuer, any director, member, officer or employee of the Issuer has any interest, financial, employment or other, in the Company, the Project or the transactions contemplated hereby.

(l) There is no Event of Default on the part of the Company or any Obligor under this Lease Agreement or any other Company Document, any Managing Member Document, or any Organizational Document, and no event has occurred and is continuing which

after notice or passage of time or both would give rise to a default under any thereof. The Company has received no notices of and has no knowledge of any violations of any Legal Requirements or Project Approvals.

(m) The certifications, representations, warranties, statements, information and descriptions contained in the Application and the Company Documents and in the Company's Tax Certificate, as of the date of the first authentication and delivery of the Bonds, are and will be true, correct and complete, do not and will not contain any untrue statement or misleading statement of a material fact, and do not and will not omit to state a material fact required to be stated therein or necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in light of the circumstances under which they were made, not misleading. The estimates and the assumptions contained in the Company Documents and in the Company's Tax Certificate, as of the date of the first authentication and delivery of the Bonds, are reasonable and based on the best information available to the Company. Each of the certifications, representations, warranties, statements, information and descriptions contained in the Company's Tax Certificate is hereby incorporated into this Lease Agreement by reference, as if fully set forth herein.

(n) The Company has furnished to the Issuer in the Company's Tax Certificate all information necessary for the Issuer to file an IRS Form 8038 with respect to the Bonds, and all of such information is and will be on the date of filing, true, complete and correct.

(o) The Company is not contemplating either the filing of a petition by it or by the Managing Member under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property, and the Company has no knowledge of any Person contemplating the filing of any such petition against it or any Obligor.

(p) The Company is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of the Company constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. section 2510.3-101.

(q) No part of the proceeds of the Bonds will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other Regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Company Document.

(r) The Company is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

(s) The Company has not entered into any Company Document with the actual intent to hinder, delay, or defraud any creditor, and the Company has received reasonably equivalent value in exchange for its obligations under the Company Documents. Giving effect to the transactions contemplated by the Company Documents, the fair saleable value of the Company's assets exceeds and will, immediately following the execution and delivery of the Company Documents, exceed the Company's total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Company's assets is and will, immediately following the execution and delivery of the Company Documents, be greater than the Company's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Company's assets do not and, immediately following the execution and delivery of the Company Documents, will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Company does not intend to, and does not believe it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Company).

(t) All information regarding the Company, the Project and any Obligor delivered to the Issuer, the Trustee and the Bank by the Company, the Obligor or their respective members, officers, agents, employees or affiliates is true and correct in all material respects and all such financial information fairly presents the financial condition and results of operations of the Company and the other Obligors for the periods to which such financial information relates, and discloses all liabilities and contingent liabilities of the Company or the other Obligors.

(u) There are no actions, suits, proceedings or investigations of any kind pending or, to the knowledge of the Company or the Managing Member, threatened against the Company or the Managing Member before any court, tribunal or administrative agency or board or any mediator or arbitrator that, if adversely determined, might, either in any case or in the aggregate, adversely affect the business, assets or financial condition of the Company or the Managing Member, or result in any liability not adequately covered by insurance, or for which adequate reserves are not maintained on the balance sheet of the Company or the Managing Member, or which question the validity of this Lease Agreement or any of the other Company Documents or any of the Managing Member Documents, any action taken or to be taken pursuant hereto or thereto, or any lien or security interest created or intended to be created pursuant hereto or thereto, or which will adversely affect the ability of the Company or the Managing Member to reconstruct, renovate, equip, use and occupy the Project or to pay and perform its obligations hereunder in the manner contemplated by this Lease Agreement, any of the other Company Documents or any of the Managing Member Documents.

(v) All utility services necessary and sufficient for the reconstruction, renovation, equipping and operation of the Project shall be, upon Completion of the Project, and thereafter will at all times be, available through dedicated public rights of way or through perpetual private easements with respect to which the Mortgages create valid and enforceable first liens. The Company has obtained, or promptly will obtain, all utility installations and connections required for the operation and servicing of the Project for its intended purposes.

(w) The rights of way for all roads necessary for the full utilization of the Project for its intended purposes have either been acquired by the appropriate Governmental Authority or have been dedicated to public use and accepted by such Governmental Authority. All such roads shall have been completed, and the right to use all such roads, or suitable substitute rights of way approved by the initial Servicer, shall be maintained at all times for the Facility. All curb cuts, driveways and traffic signals shown on the Plans and Specifications are existing or have been fully approved by the appropriate Governmental Authority and after the completion thereof, shall be maintained at all times for the Facility.

(x) The acquisition, reconstruction, renovation, equipping, use and occupancy of the Project will at times comply with all Legal Requirements. The Company will give all notices to, and take all other actions with respect to, such Governmental Authorities as may be required under applicable Legal Requirements to reconstruct, renovate and equip the Existing Improvements and to use, occupy and operate the Facility.

(y) Except as set forth on Exhibit C hereto, the Company has obtained all Project Approvals required for the acquisition, reconstruction, renovation and equipping of the Project in accordance with the Plans and Specifications. All Project Approvals obtained by the Company have been validly issued and are in full force and effect. The Company has no reason to believe that any of the Project Approvals required for acquisition, reconstruction, renovation and equipping of the Project in accordance with the Plans and Specifications and not heretofore obtained by the Company will not be obtained by the Company in the ordinary course in order to permit completion of reconstruction, renovation and equipping of the Project in accordance with the Plans and Specifications on or before the Completion Date. The Company will timely obtain all Project Approvals not heretofore obtained by the Company (including those listed and described on Exhibit C hereto, those required for use and occupancy of the Facility for its intended purpose upon Completion and any other Project Approvals which may hereafter become required, necessary or desirable) and will furnish the Servicer with evidence that the Company has obtained such Project Approvals promptly upon their receipt. The Company will duly perform and comply with all of the terms and conditions of all Project Approvals obtained at any time. No Project Approvals will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Facility, including any transfer pursuant to foreclosure, deed in lieu of foreclosure or exercise of power of sale under the Mortgages.

(z) The Company has furnished the Bank and the Issuer with true and complete sets of the Plans and Specifications. The Plans and Specifications comply with all Legal Requirements, all Project Approvals, and all restrictions, covenants and easements affecting the Facility, and have been approved by such Governmental Authority as is required for reconstruction, renovation and equipping of the Existing Improvements.

(aa) The Development Budget accurately reflects all Project Costs.

(bb) To the knowledge of the Company, the Survey delivered to the Bank and the Issuer does not fail to reflect any material matter of survey affecting the Facility or the title thereto.

(cc) No part of the Project is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazard or to the extent any part of the Project is an area identified as an area having special flood hazard, adequate flood insurance has been obtained by the Company.

(dd) The Company is not in default or violation of any order, writ, injunction, decree or demand of any Governmental Authority, the violation of which might materially adversely affect the condition (financial or otherwise) or business of the Company. There has not been and shall never be committed by the Company or any other Person in occupancy of or involved with the operation or use of the Facility any act or omission affording any Governmental Authority the right of forfeiture as against the Facility or any part thereof any moneys paid in performance of the Company's obligations under any Company Document.

(ee) The Construction Contract and the Architect's Contract are each in full force and effect and each of the parties thereto are in full compliance with their respective obligations thereunder. The work to be performed by the Contractor under the Construction Contract is the work called for by the Plans and Specifications, and all work required to complete the Improvements in accordance with the Plans and Specifications is provided for under the Construction Contract.

(ff) Each Requisition submitted by the Company shall contain an affirmation that the foregoing representations and warranties remain true and correct in all material respects as of the date thereof.

(gg) To the Company's knowledge, the Project achieves the public purposes of the Act.

(hh) The lease of the Facility by the Issuer and the providing of Financial Assistance including the issuance and delivery of the Bonds by the Issuer:

(i) have been an important consideration in the Company's decision to acquire, reconstruct, renovate and operate the Facility in the Town of Hempstead; and

(ii) are reasonably necessary to preserve the competitive position of the Facility among affordable residential rental projects in the Town of Hempstead.

(ii) So long as the Bonds shall be outstanding or the Issuer holds a leasehold interest in the Facility, the Facility is and will continue to be a "project" (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Issuer Documents or which the Issuer, together with Issuer's counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Facility not to constitute a "project" (as such quoted term is defined in the Act).

(jj) The provision of Financial Assistance for the Project will not have a significant impact on the environment within the meaning of the State Environmental Quality Review Act ("SEQRA"). The Company hereby covenants to comply with all mitigating measures, requirements, and conditions, if any, enumerated in the negative declaration issued by

the Issuer under Article 8 of SEQRA with respect to the Project and in any other approvals issued by any other Governmental Authority.

(kk) The undertaking of the Project, the issuance and delivery of the Bonds and the granting of the other Financial Assistance will, among other things:

(i) promote employment in the Town of Hempstead by supporting construction jobs during its renovation phase and upon completion, three full time jobs at the Project;

(ii) facilitate renovation and reconstruction of the existing Jackson Terrace Apartments affordable housing project;

(iii) ameliorate the existing condition of the Jackson Terrace Apartments affordable housing project thereby enhancing the health, prosperity and standard of living of residents thereof and of the surrounding neighborhood; and

(iv) enable the Company to reconstruct the Facility, provide the improved rental housing units to residents of the Facility and surrounding neighborhood and ensure the continued physical and financial viability of the Facility.

(ll) the Project will not result in the removal of any commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located in the State.

(mm) the Company acknowledges receipt of notice of Section 858-b of the Act, which requires that the Company list new employment opportunities created as a result of the Project with the following entities (hereinafter, the “**JTPA Entities**”): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300) in which the Facility is located.

Section 2.3 Covenants by the Company. The Company hereby covenants and agrees that, on and after the Closing Date, it will:

(a) Give written notice promptly, and in any event at least thirty (30) days prior to the closing thereof, of any intended refinancing of the Project to the Issuer, the Trustee and the Servicer;

(b) Comply in all material respects with all Legal Requirements and promptly furnish the Issuer, the Trustee and the Servicer with reports of any official searches made by any Governmental Authority and any claims of violations thereof;

(c) Upon reasonable notice and at reasonable times, permit the Servicer, the Issuer and the Trustee (or their representatives) to enter upon the Land and inspect the Project;

(d) Indemnify the Issuer, the Trustee, the Bank and the Servicer against claims of brokers arising by reason of the execution hereof or the consummation of the transactions contemplated hereby except, with respect to each party individually and not the other parties, brokers engaged by such party;

(e) Deliver to the Servicer and the Issuer copies of all leases (other than leases to residential tenants in the ordinary course of business as to which the Servicer's and the Issuer's prior written consent is not required pursuant to Section 5.25 hereof) with respect to the Project or any portion thereof, whether executed before or after the date of this Lease Agreement;

(f) Not enter into, cancel or amend any agreement for the furnishing of management or similar services to the Project, without the prior written consent of the Servicer and the Issuer, such consent not to be unreasonably withheld or delayed;

(g) Comply with all restrictions, covenants and easements affecting the Land or the Project;

(h) Take, or require to be taken, such acts as may be required under applicable law or regulation in order that the interest on the Bonds continues to be excludable from gross income for purposes of federal income taxation, and refrain from taking any action which would adversely affect the exclusion from gross income of interest on the Bonds from federal income taxation;

(i) Perform and satisfy all the duties and obligations of the Company set forth and specified in the Indenture as duties and obligations of the Company, including those duties and obligations which the Indenture requires this Lease Agreement or the other Company Documents to impose upon the Company;

(j) Confirm and assure that the Facility, equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents and other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination and inspection at reasonable times and upon reasonable notice by the Issuer, the Trustee or the Servicer or the duly authorized agent of any of them and shall keep copies of all written contracts or other instruments which affect the Facility, all or any of which shall be subject to inspection and examination by the Issuer, the Trustee, the Servicer or the duly authorized agent of any of them;

(k) Commencing on the thirtieth (30th) anniversary of the Closing Date, and on such anniversary in each fifth year thereafter, if filing, registration or recording or refiling, re-registration or rerecording of the Mortgages or any Financing Statement, amendments thereto, continuation statements or instruments of a similar character relating to the pledges and assignments made by the Company to the Issuer or the Trustee to or for the benefit of the Owners of Bonds is required by law in order to fully preserve and protect the rights of the Issuer, the Trustee and the Owners of Bonds, as the case may be, is necessary, cause such filing, registration, recording, refiling, re-registration or rerecording to take place at Company's expense and promptly after any filing, recording, refiling or rerecording of the Mortgages and

any such Financing Statement or amendment thereto or continuation statement or instrument, deliver to the Trustee and the Servicer evidence, satisfactory to the Trustee and the Servicer, that such filing, registration, recording, re-filing, re-registration, or rerecording has been duly accomplished and setting forth the particulars thereof;

(l) Promptly notify the Issuer, the Trustee and the Servicer in writing of any (i) material default by the Company in the performance or observance of any covenant, agreement, representation, warranty or obligation of the Company set forth in this Lease Agreement or any other Company Documents or (ii) any event or condition which with the lapse of time or the giving of notice, or both would constitute an Event of Default under this Lease Agreement or any other Company Documents.

(m) As agent for the Issuer, the Company shall comply with all provisions of the Labor Law, the Executive Law and the Civil Rights Law of the State applicable to the acquisition, renovation, reconstruction, equipping and operation of the Facility and shall include in all construction contracts all provisions that be required to be inserted therein by such provisions. The Company shall comply with the relevant policies of the Issuer with respect to such laws, which are set forth as Exhibit E attached hereto. Except as provided in the preceding two sentences, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 2.4 Conveyance of Interest; Non-Merger; Beneficial Interest.

(a) The Company has conveyed to the Issuer, pursuant to the Deed, a fee interest in the Facility, provided that subject to the provisions of the Deed, the Company shall have the exclusive possession of the Facility thereunder. The Company hereby represents and warrants that such interest in the Facility is free and clear of all Liens except for Permitted Encumbrances. In consideration of the covenant of the Company to make rental payments and of the other covenants of the Company contained in this Lease Agreement, the Issuer hereby leases to the Company the Facility for and during the term of this Lease Agreement and subject to the terms and conditions of this Lease Agreement and to Permitted Encumbrances. The Deed, and its acquisition and holding of said leasehold interest were effected and performed solely on the basis of the Issuer's acceptance of the interest in and to the Facility pursuant to the Deed and at the request of the Company to provide for the grant of Financial Assistance including issuance of the Bonds pursuant to the requirements of the Act, provided that the Issuer and the Company intend that during the term of this Lease Agreement there shall be no merger of this Lease Agreement or of the leasehold estate created hereby with the fee estate in the Facility or any part thereof by reason of the fact that the same Person may acquire or own or hold, directly or indirectly, (1) this Lease Agreement or the leasehold estate created by this Lease Agreement or any interest herein or therein or (2) the fee estate in the Facility or any part thereof; provided, further, that no such merger shall occur unless and until all Persons, including the Trustee, having an interest in this Lease Agreement and all Persons, including the Trustee, having an interest in the fee estate in the Facility shall join in a written instrument effecting such merger and same shall be duly recorded. The Issuer hereby transfers and conveys all of its beneficial and equitable interests, if any, in the Facility to the Company, except for its Reserved Rights. As a result, the parties hereby acknowledge and agree that subject to the terms and conditions of this Lease Agreement, the Company has all of the equitable and beneficial ownership and other

interest in the Facility (except for the Reserved Rights), and will have all the equitable and beneficial ownership and other interest in the Project (except for the Reserved Rights), such that the Company, and not the Issuer, shall have an:

- (i) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Facility due to obsolescence or exhaustion, and shall bear the risk of loss if the Facility is destroyed or damaged;
 - (ii) unconditional obligation to keep the Facility in good condition and repair;
 - (iii) unconditional and exclusive right to the possession of the Facility, so long as no Event of Default shall exist and be continuing under this Lease Agreement;
 - (iv) unconditional obligation to maintain insurance coverage on, and such reserves with respect to, the Facility as may be required by the Company and the Issuer with respect to the Project;
 - (v) unconditional obligation to pay all taxes levied on, or payments in lieu thereof under the PILOT Agreement, and assessments made with respect to, the Facility;
 - (vi) unconditional and exclusive right to receive rental and any other income and other benefits of the Facility and from the operation of the Project, subject to the Reserved Rights and so long as no Event of Default shall exist and be continuing under this Lease Agreement;
 - (vii) unconditional obligation to pay for all of the capital investment in the Facility;
 - (viii) unconditional obligation to bear all expenses and burdens of the Facility and to pay for all maintenance and operating costs in connection with the Facility;
 - (ix) unconditional and exclusive right to include all income earned from the operation of the Project and claim all deductions and credits generated with respect to the Project on its annual federal, state and local tax returns;
 - (x) unconditional obligation to provide all annual reporting.
- (b) Subsequent to the Closing Date, the Company shall be entitled to use the Facility in any manner not otherwise prohibited by this Lease Agreement and other Company Documents, provided that such use causes the Facility to qualify or continue to qualify as a “project” under the Act.

Section 2.5 Appointment as Agent to Complete Project.

(a) Title to all materials, equipment, machinery and other items of property incorporated or installed in the Facility and acquired with the proceeds of the Bonds shall vest in the Issuer immediately upon the Company's obtaining an interest in or to the materials, equipment, machinery and other items of property. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title in the Issuer and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

The Issuer hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency and agrees on behalf of the Issuer to: (i) to acquire, renovate, reconstruct, rehabilitate and equip the Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for acquiring, renovating, reconstructing, rehabilitating and equipping the Facility with the same powers and with the same validity as the Issuer could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the acquisition, reconstruction, renovation and equipping of the Facility from funds made available therefor, and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing and payable to the Issuer under the terms of any contract, order, receipt, or writing in connection with acquisition, renovation, reconstruction and equipping of the Facility, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes any motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets.

(b) The Company, as agent of the Issuer, will, subject to the provisions of this Lease Agreement, cause the Land and Existing Improvements thereon to be reconstructed and renovated (substantially in accordance with Plans and Specifications therefor prepared by or on behalf of the Company, to be maintained by the Company and made available by the Company for inspection by the Issuer, with such changes and substitutions as may be reasonably desired by the Company), and cause to be acquired and installed therein the Equipment. The cost of such acquisition, renovation, reconstruction, equipping and installation shall be paid by the Company. All contractors, materialmen, vendors, suppliers and other companies, firms or persons furnishing labor, services or materials for or in connection with the Project shall be designated by the Company.

(c) The Company shall obtain all necessary approvals from any and all Governmental Authorities requisite to the acquisition, renovation, reconstruction, equipping and operation of the Facility, and all improvements forming a part of the Facility shall be constructed and equipped in compliance with all Legal Requirements. Upon completion of the Facility, the Company shall obtain all required occupancy permits and authorizations from appropriate authorities, if any be required, authorizing the occupancy and use of the Facility for the purposes contemplated hereby.

(d) The Company covenants that it will take such action and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers, if any be so engaged, to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, with all expenses

incurred by the Company in connection with the performance of its obligations under this Section to be considered part of the Qualified Costs of the Project.

(e) The Company, as agent for the Issuer, shall comply with all provisions of the Labor Law, the Executive Law and the Civil Rights Law of the State applicable to the acquisition, renovation, reconstruction, equipping and operation of the Facility and shall include in all construction contracts all provisions that be required to be inserted therein by such provisions. The Company shall comply with the relevant policies of the Issuer with respect to such laws, which are set forth as Exhibit E attached hereto. Except as provided in the preceding two sentences, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 2.6 Agreement to Issue Bonds; Application of Proceeds.

(a) The Issuer agrees, subject to the terms and conditions of this Lease Agreement, to issue and cause to be delivered to the purchaser thereof, the Bonds in the form attached to, and bearing interest and maturing as set forth in, the Indenture and assign all of its right, title and interest hereunder (other than Reserved Rights) to the Trustee.

(b) The Company, as agent for the Issuer, in compliance with Section 13 of the Lien Law to the extent to which that Section may be found to apply by its terms, covenants that it (i) will hold the right to receive the proceeds of the Bonds as a trust fund to be applied first for the purpose of paying the “cost of improvement” (as said term is defined in Section 2(5) of the Lien Law), and (ii) will apply the same first to the payment of the “cost of improvement” before using any part of the total of the same for any other purpose.

Section 2.7 Term of this Lease Agreement. The Issuer hereby leases the Facility to the Company for a term which shall commence on the date hereof and unless sooner terminated pursuant to Article VII of this Lease Agreement, shall end following the payment in full of the Bonds and of all other fees and charges of all parties having been made in accordance with this Lease Agreement except, however, those obligations which by the terms of this Lease Agreement survive termination, including without limitation the indemnities in Sections 3.2, 5.19 and 9.1 hereof and the covenants and provisions relating to the Reserved Rights of the Issuer and the covenants relating to the preservation of the exclusion from gross income of interest on the Bonds for purposes of federal income taxation, shall survive the termination thereof. Upon termination of this Lease Agreement pursuant to this Section, the Company shall prepare a Notice of Termination of Lease Agreement, in substantially the form attached hereto as Exhibit G, for execution by the Issuer and record such instrument at the Company’s expense.

Section 2.8 Rights and Obligations of the Company Upon Prepayment of the Bonds. In the event the Bonds shall have been paid in full prior to the termination date specified in Section 2.7 hereof or provision for such payment shall have been made in accordance with the Indenture, all references in this Lease Agreement to the Bonds, and the Bond Documents applicable thereto, shall be ineffective. If all fees, expenses, indemnifications and related amounts payable to the Issuer shall have been made and the Servicer has consented in writing to the termination of this Lease Agreement, the Company may by written notice to the Issuer elect that this Lease Agreement shall be terminated and of no further force and effect, except as may

otherwise be specifically provided herein. In the event of any such termination, the Issuer or the Trustee, as the case may be, at the sole cost of the Company, shall execute or authorize and deliver to the Company for recording or filing, as appropriate, such instruments as shall be furnished by the Company and as shall be reasonably necessary to effect the termination or discharge of the financing statements, the Assignment and any other security interest in favor of such Person relating to the Facility or this Lease Agreement.

Section 2.9 Administration Fees and Expenses. The Company shall pay or cause to be paid the reasonable fees and charges of the Issuer, as and when the same become due, including the reasonable fees of its counsel. The Issuer's total administrative fee is \$140,000. The Company shall pay to the Issuer on the Closing Date the remainder of the Issuer's administrative and compliance fee in the amount of \$139,000 (at the time the Company submitted its application, it paid \$1,000 to the Issuer). In addition, the Company shall pay to the Issuer an initial compliance fee of \$2,500 on the Closing Date, and thereafter the Company shall pay to the Issuer an annual compliance fee of \$1,000 on or before January 1 of each year commencing January 1, 2008 and continuing until the Bonds have been paid in full and this Lease Agreement shall have been satisfied and terminated. If the Company should fail to make any of the payments required in this Section when due, the item or installment which the Company has failed to pay shall continue as an obligation of the Company until the same shall have been fully paid, and the Company agrees to pay the same with interest thereon (to the extent permitted by law) for the period from the date such payment was due until the same is paid in full at the Administrative Rate.

Section 2.10 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, and in any event the Company, at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Issuer, 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 Issuer, 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 Issuer, 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 Issuer in any such action or proceeding.

Section 2.11 Operation of Project. The Company shall continuously operate and shall not "cease to operate" the Project throughout the term of this Lease Agreement and the Tax Regulatory Agreement for the purposes described herein and therein and otherwise in accordance with the terms of this Lease Agreement, the Tax Regulatory Agreement and the Act, except as appropriate due to damage, destruction or a condemnation of all or any part of the Facility in accordance with Article V of this Lease Agreement. For the purpose of this Lease Agreement, the Company shall be deemed to have "ceased to operate" the Project as contemplated by this Lease Agreement if it (a) materially alters the use of the Project, in the Issuer's judgment, except as permitted hereunder or under the Tax Regulatory Agreement, (b) closes the Project other than for routine maintenance, observation of national holidays or regularly scheduled seasonal

closings, or (c) reduces its operations at the Project to such an extent that, in the Issuer's judgment, the economic benefit to be derived from the Project has been substantially impaired.

Section 2.12 No Warranty Of Condition Or Suitability. THE ISSUER HAS NOT MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, ENVIRONMENTAL STATUS, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE PROJECT, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE PROJECT, OR THE SUITABILITY OF THE PROJECT FOR THE PURPOSES OR NEEDS OF THE COMPANY. THE COMPANY ACKNOWLEDGES THAT THE ISSUER IS NOT THE MANUFACTURER OF THE PROJECT OR THE MANUFACTURER'S AGENT OR A DEALER THEREIN. THE COMPANY IS SATISFIED THAT THE PROJECT IS SUITABLE FOR ITS PURPOSES. THE ISSUER SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL OR INCIDENTAL DAMAGES) OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE LAND, IMPROVEMENTS, EQUIPMENT OR THE PROJECT OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE, OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 2.13 Covenants of the Issuer.

(a) Pledge and Assignment. The Issuer has not pledged or assigned and will not pledge or assign its interest in this Lease Agreement or the revenues and receipts derived pursuant to this Lease Agreement (except for the Reserved Rights) other than as provided in the Indenture, the Lease Agreement and the Mortgages.

(b) Tax-Exemption. The Issuer will not knowingly take or, to the extent it exercises any control, permit to be taken any action that would adversely affect the excludability from gross income for federal income tax purposes of the interest payable on the Bonds, and if it should take or permit to be taken any such action it will take all lawful actions that it can to rescind such actions promptly upon having knowledge of them.

(c) Compliance with Federal Tax Laws. The Issuer will, at the expense of the Company, take such action or actions from time to time, including amendment of this Lease Agreement, as may be necessary, as stated in an Opinion of Bond Counsel acceptable to the Issuer, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service from time to time pertaining to (a) obligations on which the interest is tax exempt under Section 103 of the Code and (b) the provisions, of Section 142(d) of the Code. The Issuer will not take, or to the extent it exercises any control, permit to be taken on its behalf, any action that would cause the interest payable on the Bonds to cease to be excludable for Federal income purposes under Section 103 of the Code from the gross incomes of the owners of

the Bonds, and it will take, at the sole cost and expense of the Company, such action as may be necessary in the Opinion of Bond Counsel to continue such exclusion from gross income.

(d) Notification of Violation of Tax Certificate. Upon the discovery by the Issuer or the Trustee of any noncompliance by the Company with the Company Tax Certificate or Tax Regulatory Agreement, the Issuer (if discovered by the Issuer) will notify the Trustee, and the Trustee (if notified by the Issuer or if discovered by the Trustee) will notify the Issuer, the Servicer and the Investor Member of such noncompliance and, subject to the provisions of Article VII of the Indenture, the Issuer (if discovered by the Issuer) will direct the Trustee to, or the Trustee itself will, promptly institute action, or cause the Company to institute action, to correct such noncompliance. The Issuer will diligently pursue or direct the Trustee to diligently pursue such action, all strictly in accordance with the terms and conditions of this Lease Agreement and the Tax Regulatory Agreement, as the case may be, provided that no such action shall be taken which would adversely affect the interests of the Owners or the Servicer.

ARTICLE III ISSUANCE OF BONDS: RENTAL PAYMENTS

Section 3.1 Issuance of Bonds and Delivery of Company Documents.

(a) In order to finance a portion of the costs of the acquisition, reconstruction, renovation and equipping of the Facility, the Issuer has, consistent with its duties and purpose under the Act, issued and caused the Trustee to authenticate and deliver the Bonds pursuant to the Indenture to the initial Owner. Each series of Bonds bears interest and is payable as provided therein and in the Indenture. Each series of Bonds shall mature and all Outstanding principal of, premium (if any) and interest on such series of Bonds shall be due and payable in full on the Maturity Date applicable to such series of Bonds, all as provided more fully in the Bonds and the Indenture.

(b) The Issuer has authorized the issuance of the Bonds in the aggregate principal amount of \$28,000,000 and agrees to make net Bond proceeds available to payment of Qualified Costs of the Project. Upon the issuance and delivery of the Bonds, the Issuer will deliver the net Bond proceeds to the Trustee for deposit in the Funds and Accounts in accordance with the Indenture.

(c) Pursuant to the Indenture, the Trustee shall make disbursements from the Project Fund created pursuant to the Indenture to pay or to reimburse the Company for costs of the acquisition, reconstruction, renovation and equipping of the Facility, subject to the conditions of the Indenture and this Lease Agreement. Upon receipt of a properly signed Requisition approved by the Servicer (which approval of the Servicer is expressly subject to the satisfaction of the conditions precedent set forth in the Construction Disbursement Agreement), the Trustee is authorized to act upon such Requisition without further inquiry, and, except for gross negligence after notice of facts to the contrary or willful misconduct of the Trustee, the Company shall hold the Trustee harmless against any and all losses, claims or liabilities incurred in connection with the Trustee's making disbursements from the Project Fund in accordance with such Requisition. Neither the Trustee nor the Issuer shall be responsible for the application by the Company of moneys properly disbursed from the Project Fund.

(d) Concurrently with the sale and delivery of the Bonds, and to evidence further the obligation to make rental payments in accordance with the provisions of this Lease Agreement, the Company has executed and delivered the Company Documents.

Section 3.2 Lease Payments and Other Amounts.

(a) The Company shall pay to the Trustee for deposit into the Revenue Fund, on the first Business Day of each month for the period commencing January 2, 2007 (i) an amount equal to the interest and principal next coming due on the Bonds (after taking into account funds available for such purpose, if any, in the Capitalized Interest Account of the Project Fund) to pay the principal of and interest on the Bonds due and payable on each Bond Payment Date and amounts required to be deposited into the Replacement Reserve Fund (pursuant to Section 5.22(c) hereof) and the Tax and Insurance Fund pursuant to Section 5.22(h) hereof) as of such date. Amounts so paid to the Trustee by the Company shall be in immediately available funds or shall be such that on the Bond Payment Date they are available funds.

(b) The Company understands that the interest rate applicable with respect to the Bonds is based upon the assumption that interest income paid on the Bonds will be excludable from the gross income of the Owners under Section 103 of the Code and applicable State law. In the event that a Determination of Taxability shall occur, then the interest rate on the Bonds, and on all obligations under this Lease Agreement (other than those to which the Alternate Rate applies) shall, effective on the date of such Determination of Taxability, be increased to a rate equal to the Taxable Rate. The Company shall, in addition, pay to the Trustee, for deposit into the Revenue Fund, promptly upon demand from the Trustee or the Servicer, an amount equal to the Additional Interest payable on the Bonds. The Company shall also indemnify, defend and hold the Issuer and the Owners harmless from any penalties, interest expense or other costs, including reasonable attorneys' fees (including all reasonably allocated time and charges of Owners' and Trustee's "in-house" and "outside" counsel) and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of the Bonds and any interest payable to any Owner with respect to the Bonds. The obligations of the Company under this Section 3.2(b) shall survive termination of this Lease Agreement and the payment of the Bonds. If, following any increase in interest rates pursuant to this Section 3.2(b), a final determination is made, to the satisfaction of the Owners, that interest paid on the Bonds is excludable from the Owners' gross income under Section 103 of the Code and applicable state law, the Owners shall promptly refund to the Company any Additional Interest and other additional amounts paid by the Company pursuant to this Section 3.2(b).

(c) The Company agrees to pay to the Trustee and the Issuer all fees, charges and expenses of the Trustee and the Issuer, respectively (including, without limitation, the Issuer's Annual Compliance Fee and the reasonable fees and expenses of counsel to the Issuer, Bond Counsel and counsel to the Trustee), as and when the same become due. The Company also agrees to pay the Bond Issuance Charge and all expenses of the Issuer incurred at any time in connection with the Project, the financing of the Project or the Bonds, including, but not limited to, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of the Bond Documents, the Issuer Documents or any other documents relating to the Project or the Bonds in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit; all

payments for such fees and expenses shall be made by the Company to the Issuer or to any payee designated by the Issuer not later than thirty (30) days after receipt of invoices rendered to the Company by the Issuer. The Company also agrees to pay the printing and engraving costs of the Bonds, if any, including any certificates required to be prepared for use in connection with any exchanges of Bonds for the cost of which Owners are not liable. The Company also agrees to pay the fees of the Servicer and to pay all reasonable costs and expenses incurred by the Servicer in connection with the administration of the Bonds or the collateral therefor, and any amendments, modifications or “workouts” thereof, including without limitation reasonable attorneys’ fees and costs (including allocated costs of in-house attorneys), fees and costs of engineers, accountants, appraisers and other consultants, title insurance premiums and recording costs upon receipt of written demand therefor.

(d) The Company agrees to pay all Costs of Issuance (in addition to those Costs of Issuance otherwise required to be paid by this Section 3.2).

(e) The Company agrees to pay any Prepayment Equalization Payments at the times and in the amounts the same become due and payable pursuant to the Indenture.

(f) The Company agrees to pay, as and when the same become due, to the Issuer, the Servicer or the Trustee any extraordinary expenses, including, without limitation, any costs of litigation or defects in title to the Facility, which may be incurred by the Issuer, the Servicer or the Trustee in connection with the Bond Documents including the reasonable, actually incurred costs and fees of any attorneys or other experts retained by the Issuer, the Servicer or the Trustee in connection therewith.

Section 3.3 Payments Pledged and Assigned. It is understood and agreed that the Company Documents and certain other documents and property and all payments required to be made by the Company pursuant hereto (except payments to be made to the Issuer in respect of its Reserved Rights and payments to be made to the Servicer and the Trustee pursuant to Section 3.2(b) hereof) have been assigned to the Trustee simultaneously herewith pursuant to the Indenture, the Assignment and the Mortgages as and for security for the Bonds. The Company hereby consents to such assignment and recognizes the Trustee as the assignee of the Issuer, to the extent of the assignment, for purposes of said documents and property. The parties to this Lease Agreement acknowledge that the covenants and agreements contained in this Lease Agreement and in the Indenture are for the benefit of the Owners from time to time and may be enforced on their behalf by the Trustee as provided in the Indenture. The Issuer shall, at the expense of the Company, execute and deliver from time to time, in addition to the instruments of assignment specifically provided for in this Lease Agreement, such other and further instruments and documents as may be reasonably requested by the Trustee from time to time to further evidence, effect or perfect such pledge and assignment for the purposes stated in the Indenture.

Section 3.4 Obligations of Company Hereunder Unconditional. The Company shall make the Lease Payments under this Lease Agreement which shall at all times and in all events, be sufficient to timely pay, when due, the principal of, premium (if any) and interest on, the Bonds, as the same may come due, whether at maturity, upon redemption or by acceleration or otherwise, plus all Additional Rent. The obligations of the Company to make any payments required by the terms of this Lease Agreement and the other Company Documents, including,

without limitation, the payments required in Section 3.2 hereof, and to perform and observe the other agreements on its part contained herein and in the other Company Documents shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of set off, counterclaim, abatement or otherwise, until such time as the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture. The Company (i) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for herein or in the other Company Documents, (ii) will perform and observe all of its other agreements contained herein and the other Company Documents and (iii) will not suspend the performance of its obligations hereunder and under the other Company Documents for any cause including, without limiting the generality of the foregoing, failure to complete reconstruction, renovation and equipping of the Project, any acts or circumstances that may constitute failure of consideration, failure of or a defect of title to the Project or any part thereof, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State or any political subdivision of either, or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease Agreement or the other Company Documents. The Company may, at its own cost and expense and in its own name or in the name of the Issuer (provided the Issuer is a necessary party and consents thereto), prosecute or defend any action or proceeding or take any other action involving third persons which the Company deems reasonably necessary in order to secure or protect its rights hereunder, and in such event the Issuer, subject to the provisions of the Indenture, hereby agrees to cooperate fully with the Company and to take all action (at the Company's cost and expense) necessary to effect the substitution of the Company for the Issuer in any such action or proceeding if the Company shall so request.

Section 3.5 [RESERVED]

Section 3.6 Right to Perform Company's Obligations. In the event the Company fails to perform any of its obligations under this Lease Agreement, the Issuer, the Trustee and/or the Servicer may, but shall not be obligated to, perform such obligation and pay all costs related to such performance; all such costs so advanced by the Issuer, the Trustee or the Servicer shall become an additional obligation of the Company under this Lease Agreement, payable on demand, with interest on such obligation at the Administrative Rate. Advances by the Servicer shall constitute Additional Rent hereunder, shall be secured by the Mortgages and shall not be subordinate to the Company Documents. In the event of an advance made by the Issuer due to the Company's default, the interest on the advance shall be at the Administrative Rate.

ARTICLE IV ADVANCES

Section 4.1 Requisition. At such time as the Company shall desire to obtain an advance from the Construction Account, the Insurance and Condemnation Proceeds Account or the Equity Account of the Project Fund, the Company shall complete, execute and deliver a Requisition to the Servicer. Each Requisition shall be signed on behalf of the Company and shall be in the form attached as Exhibit I to the Construction Disbursement Agreement. The Trustee may rely conclusively on the statements and certifications contained in any Requisition.

The Company shall not submit any Requisition directly to the Trustee. Each advance from the Construction Account, the Insurance and Condemnation Proceeds Account or the Equity Account of the Project Fund by the Trustee shall be subject to prior approval of the Requisition by the Servicer. Upon approval, the Servicer shall forward each Requisition to the Trustee for payment.

ARTICLE V SPECIAL COVENANTS OF THE COMPANY

Section 5.1 Commencement and Completion of Project. The Company will commence reconstruction, renovation and equipping of the Existing Improvements not later than January 30, 2007, will diligently pursue reconstruction, renovation and equipping of the Existing Improvements, will attain Completion prior to the Completion Date, which date shall not be later than December 31, 2008, unless extended in accordance with the terms and conditions hereof, and will pay all sums and perform all such acts as may be necessary or appropriate to complete such reconstruction, renovation and equipping, all as more fully set forth in the Construction Disbursement Agreement.

Section 5.2 Records and Accounts. The Company will (a) keep true and accurate records and books of account in which full, true and correct entries will be made in accordance with Generally Accepted Accounting Principles, which records and books will not be maintained on a consolidated basis with those of any other Person, including any Affiliate of the Company and (b) maintain adequate accounts and reserves for all taxes (including income taxes), depreciation and amortization of its properties, contingencies, and other reserves, all of which accounts shall not be commingled with accounts of any other Person, including any or Affiliate of the Company.

Section 5.3 Financial Statements and Information. The Company will deliver, or cause to be delivered, to the Issuer, the Trustee and the Servicer:

(a) as soon as available, but in any event not later than one hundred twenty (120) days after the end of each fiscal year of the Company, beginning for the year immediately succeeding the year in which Stabilization occurs, the audited balance sheet of the Company at the end of such year, and the related audited statement of income, statement of retained earnings, changes in capital, and statement of cash flows for such year, and a statement of all contingent liabilities of the Company which are not reflected in such financial statements or referred to in the notes thereto, each setting forth in comparative form the figures for the previous fiscal year and all such statements to be in reasonable detail, prepared in accordance with Generally Accepted Accounting Principles, and accompanied by an auditor's report prepared without qualification by the Accountant;

(b) as soon as available, but in any event not later than thirty (30) days after the end of each calendar quarter, copies of the unaudited balance sheet of the Company as at the end of such quarter, and the related unaudited statement of income, statement of retained earnings, changes in capital, and statement of cash flows for the portion of the Company's fiscal year then elapsed, all in reasonable detail and prepared in accordance with Generally Accepted Accounting Principles, together with a certification by the Company that the information

contained in such financial statements fairly present the financial position of the Company on the date thereof (subject to year-end adjustments);

(c) [RESERVED];

(d) within twenty (20) days after the end of each calendar month, a current rent roll and schedule of aging lease receivables as of the end of such month, in form and level of detail reasonably acceptable to the Servicer, detailing, with respect to each lease, the tenant's name, the lease date, the premises demised, the term, the rent, the security deposit and any rent paid more than one month in advance, together with a certification by the chief financial officer that the information therein is true and correct, and a leasing report for preceding calendar month, setting forth the Company's efforts to market and lease the then unleased space in the Improvements during such month and the results of such efforts; and following Stabilization, after the end of each semi-annual period, with the first such delivery being not later than thirty (30) days after the end of the semi-annual period ending on the last day of the sixth full month following Stabilization, and subsequent deliveries being not later than thirty (30) days after the end of each succeeding semi-annual period;

(e) quarterly, on the first day of each calendar quarter beginning with the quarter in which the Completion Date occurs and ending in the quarter in which the Project achieves Stabilization, a certificate in the form set forth in Exhibit F hereto;

(f) on or before December 1 of each year, a copy of the Proposed Budget; provided, however, that the Company shall not be in violation of this covenant due to failure to deliver an Approved Budget due to the Servicer's delay in delivery of same to the Company;

(g) from time to time such other financial data and information related to the Company, the Managing Member and the Project as the Issuer, the Trustee or the Servicer may reasonably request, including, without limitation, all information required by Section 9.9 hereof.; and

(h) not later than each July 30 and January 30 until Stabilization, a management prepared financial statement of the Guarantor, in form and level of detail reasonably acceptable to the Servicer, together with a certificate from the chief financial officer of the Guarantor (in the case of D & F), or Peter Florey (in the case of Peter Florey) or Leonard D'Amico (in the case of Leonard D'Amico) that such statements are true and correct, as at the immediately preceding June 30 (with respect to the July 30 delivery) or December 31 (with respect to the January 30 delivery).

Section 5.4 Insurance.

(a) The Company will obtain and maintain insurance with respect to the Project and the operations of the Company with insurance companies licensed to do business in the State of New York, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company, including, without limitation, the requirements set forth on Exhibit D hereto. All renewal policies, with premiums paid, shall be delivered to the Issuer, the Trustee and the Servicer at least thirty (30) days before expiration of the existing policies. If any

such insurance shall expire or be canceled, or become void or voidable by reason of the breach of any condition of coverage, or if the Issuer, the Trustee or the Servicer determines that any coverage is unsatisfactory by reason of the failure or impairment of the capital of any insurance carrier, or if any insurance is unsatisfactory to the Issuer, the Trustee or the Servicer, in its sole judgment, the Company shall promptly place new insurance satisfactory to the Issuer, the Trustee or the Servicer.

(b) The Company will provide the Issuer, the Trustee and the Servicer with certificates evidencing such insurance upon the request of the Issuer, the Trustee or the Servicer.

(c) If the Company fails to provide, maintain, keep in force or deliver to the Issuer, the Trustee and the Servicer the policies of insurance and certificates required by this Lease Agreement, the Issuer, the Trustee or the Servicer may (but shall have no obligation to) procure such insurance, and the Company will pay all premiums thereon promptly on demand by the Issuer, the Trustee or the Servicer, and until such payment is made by the Company, the amount of all such premiums shall bear interest at the Alternate Rate.

Section 5.5 Liens and Other Charges. The Company will duly pay and discharge, cause to be paid and discharged, or provide a bond satisfactory to the Servicer to pay or discharge, before the same shall become overdue all claims for labor, materials, or supplies that if unpaid might by law become a lien or charge upon any of its property.

Section 5.6 Inspection of Project and Books, Appraisals.

(a) The Company shall permit the Issuer, the Trustee and the Servicer upon reasonable notice at reasonable times, at the Company's reasonable cost and expense, to visit and inspect the Project and all materials to be used in the reconstruction, renovation and equipping thereof and will cooperate with the Issuer, the Trustee and the Servicer during such inspections (including making available working drawings of the Plans and Specifications); provided that this provision shall not be deemed to impose on the Issuer, the Trustee, and the Servicer any obligation to undertake such inspections.

(b) The Company shall permit the Issuer, the Trustee and the Servicer, upon reasonable notice at reasonable times, at the Company's reasonable cost and expense, to examine the books of account of the Company and the Project (and to make copies thereof and extracts therefrom) and to discuss the affairs, finances and accounts of the Company and the Project with, and to be advised as to the same by, its officers, partners, or trustees, all at such reasonable times and intervals as the Issuer, the Trustee and the Servicer may reasonably request; provided that so long as no Default or Event of Default shall have occurred and be continuing, the Company shall only be obligated to pay the expenses associated with one (1) such investigation during any twelve (12) month period.

(c) The Issuer, the Trustee and the Servicer shall have the right to obtain from time to time, at the Company's reasonable cost and expense, updated Appraisals of the Project; provided that so long as no Default or Event of Default shall have occurred and be continuing, the Company shall only be obligated to pay for the costs and expenses associated with one (1) such Appraisal during any twelve (12) month period.

(d) The costs and expenses incurred by the Issuer, the Trustee and the Servicer in obtaining such Appraisals or performing such inspections shall be paid by the Company promptly upon billing or request by the Issuer, the Trustee and the Servicer for reimbursement.

Section 5.7 Compliance with Laws, Contracts, Licenses, Orders; Ordinances and Permits

(a) The Company, throughout the Lease Term, agrees that it will promptly comply in all material respects, and cause any other lessees or occupant of the Facility to comply in all material respects, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, that now or at any time hereafter may be applicable to the Facility or any part thereof or to the 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 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 or of any companies or associations insuring the premises.

(b) The Company shall keep or cause the Facility to be kept free of Hazardous Substances (except to the extent the presence of such Hazardous Substances is in compliance with applicable federal, state and local laws or regulations). Without limiting the foregoing, the Company shall not cause or permit the Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any contractor, subcontractor, tenant or subtenant, a release of Hazardous Substances onto the Facility. The Company shall comply in all material respects with and will use best efforts to ensure compliance in all material respects by all contractors, subcontractors, tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply in all material respects with, and ensure that all contractors, subcontractors, tenants and subtenants obtain and comply in all material respects with, any and all approvals, registrations or permits required thereunder. The Company shall:

- (i) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Substances (except to the extent the presence of such Hazardous Substances is in compliance with applicable federal, state and local laws or regulations), on, from, or affecting the Facility in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies; and
- (ii) defend, indemnify, and hold harmless the Trustee, the Servicer, the Majority Owner and the Issuer, their respective employees, agents, officers, and directors, from and against any claims, demands, penalties,

finances, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (A) the presence, disposal, release, or threatened release of any Hazardous Substances that are on, migrating from or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to the presence of Hazardous Substances on, migrating from or affecting the Facility, (C) any lawsuit brought or threatened, settlement reached, or government order relating to the presence of Hazardous Substances on, migrating from or affecting the Facility and/or (D) any violation of laws, orders, regulations, requirements, or demands of government authorities, directed or related to such Hazardous Substances, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

In the event the Mortgages are foreclosed or the Company tenders a deed in lieu of foreclosure, the Company shall deliver the Facility free of any and all Hazardous Substances so that the condition of the Facility shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Facility. The provisions of this Section shall be in addition to any and all other obligations and liabilities the Company may have to the Issuer, the Servicer, the Majority Owner or the Trustee at common law, and shall survive the transactions contemplated herein.

(c) Notwithstanding the provisions of subsections (a) and (b) 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 Issuer, the Trustee, the Majority Owner or the Servicer shall notify the Company that by failure to comply with such requirement or requirements, the lien of the Mortgages as to any part of the Facility may be materially endangered or 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 Trustee, the Majority Owner, the Servicer and to the Issuer. 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 Issuer, the Majority Owner, the Servicer and the Trustee.

(d) Notwithstanding the provisions of this Section 5.7, if, because of a breach or violation of the provisions of subsections (a) or (b) hereof (without giving effect to subsection (c) hereof), either the Issuer, the Majority Owner, the Servicer, the Trustee, or any of their respective members, directors, officers, agents, or employees, shall be threatened with a fine, liability, expense or imprisonment, then, upon at least ten (10) days prior written notice from the Issuer, the Majority Owner, the Servicer or the Trustee, the Company shall immediately provide legal protection and/or pay amounts necessary in the opinion of the Issuer, the Majority Owner, the

Servicer or the Trustee, as the case may be, and their respective 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.

(e) Notwithstanding any provisions of this Section, the Trustee, the Majority Owner, the Servicer and the Issuer retain the right to defend themselves in any action or actions that are based upon or in any way related to such Hazardous Substances. In any such defense of themselves, the Trustee, the Majority Owner, the Servicer and the Issuer shall each select their own counsel, and any and all costs of such defense, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, shall be paid by the Company.

(f) The Company will comply in all material respects with (i) all Legal Requirements, (ii) the provisions of its Organizational Documents, (iii) all applicable decrees, orders and judgments, and (iv) all licenses and permits required by applicable laws and regulations for the conduct of its business or the ownership, use or operation of its properties, including all Project Approvals. The Company will file such certificates and other reports with the Issuer and the Trustee as are required by the Tax Regulatory Agreement, including but not limited to the filing with the Issuer of true copies of each IRS Form 8703 - "Annual Certification of a Residential Rental Project" (or any successor form thereto) as completed and filed with the Internal Revenue Service for each calendar year during the Qualified Project Period (as defined in the Tax Regulatory Agreement). The Company will complete and file on behalf of the Issuer all forms and reports required by the laws of the State and the Code in connection with the Project, the Bond Issuance Charge and the Bonds.

Section 5.8 Use of Proceeds. In accordance with the Development Budget, the Company will use the proceeds of the Bonds (a) for the purpose of paying for Qualified Costs of the Project and (b) for the purpose of paying costs of acquisition and reconstruction, renovation and equipping of the Project other than Qualified Costs of the Project only to the extent permitted by the Company's Tax Certificate and to the extent such costs can be paid for with Bond proceeds under Section 142(d) of the Code without jeopardizing the exclusion from gross income of interest on the Bonds.

Section 5.9 Company to Pay Excess Project Costs. The Company will pay when due all costs of acquisition, reconstruction, renovation and equipping of the Project in excess of the proceeds of the Bonds, regardless of the amount.

Section 5.10 Subcontractors and Materialmen. The Company will furnish to the Issuer, the Trustee or the Servicer, upon request, and from time to time, affidavits listing all subcontractors and materialmen who might or could claim statutory or common law liens and are furnishing or have furnished labor or material to the Project or any part thereof, together with affidavits and all completed Form ST-60 forms, or other evidence satisfactory to the Issuer, the Trustee or the Servicer, showing that such parties have been paid all amounts then due for labor and materials furnished to the Project. The Company will also furnish to the Issuer, the Trustee, and the Servicer, at any time and from time to time upon reasonable request by the Issuer, the Trustee or the Servicer, lien waivers bearing a then current date and prepared on a form satisfactory to the Issuer, the Trustee or the Servicer from the Contractor and such subcontractors

or materialman as the Issuer, the Trustee or the Servicer may designate; provided, however, that the Issuer, the Trustee or the Servicer shall not so designate any subcontractor or materialman whose subcontract is an amount not less than \$350,000 unless the Issuer, the Trustee or the Servicer has reasonable grounds to suspect that such subcontractor or materialman may have grounds for assertion of claims for non payment.

Section 5.11 Further Assurance of Title. If at any time the Servicer has reason to believe that any disbursement from the Project Fund is not secured or will or may not be secured by the Mortgages as a first lien or security interest on the Secured Property, then the Company shall, within ten (10) days after written notice from the Servicer, do all things and matters necessary to assure to the satisfaction of the Servicer that any disbursement from the Project Fund previously made or to be made is secured or will be secured by the Mortgages as a first lien or security interests on the Secured Property, and the Servicer, at its option, may decline to approve any further Requisitions until the Servicer has received such assurance. Nothing in this Section shall limit the right of the Servicer, at the Company's expense, to order searches of title from time to time and to require bringdowns or endorsements extending the effective date of the Title Policy in connection with the making of advances as herein set forth.

Section 5.12 Publicity. The Company will permit the Issuer and the Servicer to obtain publicity reasonably acceptable to the Company in connection with the acquisition, reconstruction, renovation and equipping of the Improvements through press releases and participation in such events as ground breaking and opening ceremonies and placement of signs on the Land, including, but not limited to, the right of the Issuer to erect on the Facility Site at the Issuer's own cost and expense a sign stating that financing and/or other economic benefits in connection with the Facility for the Facility have been provided by the Issuer.

Section 5.13 Further Assurances.

(a) *Regarding Reconstruction and Renovation*. The Company will furnish or cause to be furnished to the Issuer, the Trustee and the Servicer all instruments, documents, boundary surveys, footing or foundation surveys, certificates, plans and specifications, title and other insurance, reports and agreements and each and every other document and instrument reasonably required to be furnished by the terms of this Lease Agreement or the other Company Documents, all at the Company's expense.

(b) *Regarding Preservation of Collateral*. The Company will execute and deliver to the Issuer, the Trustee and the Servicer such further documents, instruments, assignments and other writings, and will do such other acts reasonably necessary, to preserve and protect the collateral at any time securing or intended to secure the obligations of the Company under the Company Documents, as the Issuer, the Trustee and the Servicer may require.

(c) *Regarding this Lease Agreement*. The Company will cooperate with, and will do such further acts and execute such further instruments and documents as the Issuer, the Trustee and the Servicer shall reasonably request to carry out to their satisfaction the transactions contemplated by this Lease Agreement and the other Company Documents.

Section 5.14 Notices. The Company will promptly notify the Issuer, the Trustee, the Servicer and the Investor Member in writing of (i) the occurrence of any Default or Event of Default or event which, with the giving of notice or the passage of time, or both, would constitute a Default or Event of Default; (ii) the Company's receipt of notice from any Governmental Authority of any alleged violation of environmental laws or regulations or other Legal Requirements; (iii) any labor problems with respect to the Company or the Project or the prevailing wages policy set forth on Exhibit E hereto; (iv) the occurrence of any other event which would have a material adverse effect on the Project or the business or financial condition of the Company; or (v) the receipt by the Company of any notice of default or notice of termination with respect to any contract or agreement relating to the ownership, reconstruction, renovation, equipping, operation, or use of the Project.

Section 5.15 Solvency; Adequate Capital. The Company will:

- (a) Remain solvent and pay all of its indebtedness from its assets as the same become due; and
- (b) Maintain adequate capital for the normal obligations reasonably foreseeable for a business of its size and character and in light of its contemplated business operations.

Section 5.16 Management Contract.

(a) At all times during the term of this Lease Agreement, the Project shall be managed pursuant to a management contract with the Property Manager, which contract shall be terminable, (i) with cause, at any time, by the Company or its successors and (ii) with or without cause, following a foreclosure of the Mortgages or deed-in-lieu of such foreclosure, by the Company or its successors as owners of the Project. Such management contract shall comply with the provisions of the Tax Regulatory Agreement and otherwise be in form and substance satisfactory to the Servicer. The Company acknowledges that the Issuer, the Trustee and the Servicer will rely on the Property Manager's experience in operating properties such as the Project as a means of maintaining the value of the collateral. In connection with the approval of the Property Manager, or any replacement management company:

(i) the Property Manager or holder of the stock or partnership interest therein, shall be a Person whose character, financial strength, stability and experience is acceptable to the Servicer and who shall have experience managing properties of a type and size reasonably similar to the Project; and

(ii) the Property Manager shall deliver all organizational documentation and other materials evidencing its experience acceptable to the Servicer.

(b) The Company shall, from time to time, obtain from the Property Manager such certificates of estoppel with respect to compliance by the Company with the terms of the management contract as may be requested by the Trustee and the Servicer.

(c) The Company acknowledges and agrees that the Trustee, as mortgagee under the Mortgages, is and shall be a third-party beneficiary of the Management Agreement and

any replacement management agreement. Any amendment to the Management Agreement or delivery of a replacement management agreement must be approved in writing by the Servicer.

Section 5.17 Negative Covenants of the Company. The Company covenants and agrees that, during the term of this Lease Agreement:

(a) *Restrictions on Easements and Covenants*. Except for Permitted Encumbrances, the Company will not create or suffer to be created or to exist any easement, right of way, restriction, covenant, condition, license or other right in favor of any Person which affects or might affect title to the Project or the use and occupancy of the Project or any part thereof without obtaining the prior written consent of the Issuer and the Servicer, which shall not be unreasonably withheld or delayed so long as the proposed action is necessary for the operation of the Project for the purposes contemplated hereby and the proposed action does not materially impair the validity or priority of the lien of the Mortgages. The Company shall provide written notice to the Issuer and the Trustee of the grant of any such easement, right of way, restriction, covenant, condition, license or other right.

(b) *No Amendments, Terminations or Waivers*. Neither the Company nor the Managing Member shall amend, supplement, terminate or otherwise modify or waive any provision of its Organizational Documents or any documents relating to the contribution of equity by the members of the Company without obtaining the prior written consent of the Issuer and the Servicer, which consent will not be unreasonably withheld or delayed; provided, that the Servicer's or the Issuer's consent will not be required for any amendment of the Operating Agreement necessary to accomplish a transfer contemplated by Section 5.17(e)(ii) below.

(c) *Restrictions on Indebtedness*. Without obtaining the prior written consent of the Issuer and the Servicer, the Company will not create, incur, assume, guarantee or be or remain liable, contingently or otherwise, with respect to any Indebtedness other than:

(i) Indebtedness arising under the Company Documents;

(ii) subordinate Indebtedness; provided that the documentation in connection with such subordinate Indebtedness (including, without limitation, the standstill agreement) is reasonably approved by the Servicer and the proceeds of such subordinate Indebtedness is applied to pay costs of the Facility pursuant to the Approved Budget;

(iii) current liabilities of the Company relating to the Project, incurred in the ordinary course of business but not incurred through (A) the borrowing of money, or (B) the obtaining of credit except for credit on an open account basis customarily extended and in fact extended in connection with normal purchases of goods and services; and

(iv) Indebtedness relating to the Project, in respect of taxes, assessments, governmental charges or levies and claims for labor, materials and supplies to the extent that payment therefor shall not at the time be required to be made.

(d) *Restrictions on Liens.* Without obtaining the prior written consent of the Issuer and the Servicer, the Company will not (i) create or incur or suffer to be created or incurred or to exist any lien, encumbrance, deed to secure debt, mortgage, deed of trust, pledge, charge, restriction or other security interest of any kind upon any of its property or assets of any character whether now owned or hereafter acquired, or upon the income or profits therefrom; (ii) transfer any of its property or assets or the income or profits therefrom for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to payment of its general creditors; (iii) acquire, or agree or have an option to acquire, any property or assets upon conditional sale or other title retention or purchase money security agreement, device or arrangement; (iv) suffer to exist for a period of more than thirty (30) days after the same shall have been incurred any Indebtedness or claim or demand against it that if unpaid might by operation of law or upon bankruptcy or insolvency, or otherwise, be given any priority whatsoever over its general creditors; or (v) sell, assign, pledge or otherwise transfer any accounts, contract rights, general intangibles, chattel paper or instruments, with or without recourse; provided that the Company may create or incur or suffer to be created or incurred or to exist:

1. statutory liens relating to the project to secure taxes, assessments and other governmental charges or claims for labor, material or supplies in respect of obligations not overdue;
2. liens in favor of the Issuer and/or the Trustee under the Company Documents; and
3. the Permitted Encumbrances.

(e) *Transfers.*

(i) Without obtaining the prior written consent of the Issuer and the Servicer, the Company will not, directly or indirectly, by operation of law or otherwise, sell, assign, mortgage, pledge, hypothecate, transfer or otherwise dispose of the Project or any interest in the Project, and (except for Permitted Encumbrances and a declaration of restrictive covenants for low-income housing credits in a form approved by the Servicer) will not encumber, alienate, hypothecate, grant a security interest in or grant any other interest whatsoever (whether superior or inferior to the lien of the Mortgages) in the Project, in the Leases or in the rents, issues and profits therefrom.

(ii) Without obtaining the prior written consent of the Issuer and the Servicer, no ownership interest in the Company and no ownership interest in the Managing Member may be sold, conveyed, transferred, assigned, pledged or otherwise transferred, in whole or in part, directly or indirectly, by operation of law or otherwise; provided, however, that the following transfers may occur with notice to, but without the consent of, the Issuer and the Servicer: (i) replacement of the Managing Member with the Investor Member or an Affiliate of or entity controlled by First Sterling Financial, Inc. (provided that the replacement Managing Member shall have been approved in advance by the Issuer and the Servicer, which approval shall not be unreasonably withheld or delayed), (ii) the transfer of limited partnership interests in the Company after

the Investor Member has paid all installments of the Required Equity Funds, so long as management remains in the Managing Member, (iii) transfers by the Investor Member of its interest in the Company to any Affiliate (as defined in the Indenture) of or entity controlled by First Sterling Financial, Inc. of the Investor Member, or (iv) the pledge by the Investor Member to the Company of its limited partnership interests to secure its obligations to make capital contributions and any action by the Company to enforce the pledge upon default by its members or a pledge by the Investor Member to a lending institution to secure its obligations under a credit facility provided by such lending institution to the Investor Member.

(f) *Merger, Consolidation, Conversion and Disposition of Assets*

(i) The Company will not become a party to any merger or consolidation, or agree to or effect any asset acquisition or stock acquisition.

(ii) The Company will not convert into any other type of entity.

(iii) The Company will not seek the dissolution or winding up, in whole or in part, of the Company or voluntarily file, or consent to the filing of, a petition for bankruptcy, reorganization, assignment for the benefit of creditors or similar proceedings.

(g) *Sale and Leaseback.* The Company will not enter into any arrangement, directly or indirectly, whereby the Company shall sell or transfer any property owned by it in order then or thereafter to lease such property or lease other property that the Company intends to use for substantially the same purpose as the property being sold or transferred.

(h) *Preservation of Tax Exemption.* The Company will not take any action that would adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation, nor omit or fail to take any action required to maintain the exclusion of interest on the Bonds from gross income for purposes of federal income taxation.

Section 5.18 Arbitrage and Tax Matters.

(a) The Company hereby represents, warrants and agrees that all certifications and representations of fact made by the Company in the Company's Tax Certification, and in the Tax Regulatory Agreement and Arbitrage Certificate (collectively, the "**Company Tax Documents**") are true, accurate and complete in all material respects of the date on which executed and delivered.

(b) The Company covenants not to cause or direct any moneys on deposit in any fund or account to be used in a manner which would cause the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code, and the Company certifies and covenants to and for the benefit of the Issuer and the Owners that so long as there are any Bonds Outstanding, moneys on deposit in any fund or account in connection with the Bonds, whether such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner which will cause the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code. In furtherance of the foregoing, the Company covenants to comply with the terms and conditions of the Company Tax Documents and to pay

when due any amount required to be paid to the United States in accordance with the Company Tax Documents and this Lease Agreement.

(c) At any time when any amount required to be paid under Section 148(f) of the Code (the “**Rebate Regulations**”) is due, the Company shall pay to the United States on behalf of the Issuer the full amount then required to be paid under the Rebate Regulations. Within sixty (60) days after the Bonds have been paid in full, the Company shall pay to the United States on behalf of the Issuer the full amount then required to be paid under the Rebate Regulations. Each such payment shall be made to such location specified by the Internal Revenue Service, accompanied by a Form 8038-T (or other appropriate information reporting form) prepared by the Company. No later than fifteen (15) days prior to each date on which a payment could become due under the Rebate Regulations (“**Rebate Payment Date**”), the Company shall deliver to the Issuer and the Trustee a certificate of a Rebate Analyst either summarizing the determination that no amount is required to be paid or specifying the amount then required to be paid, if the certificate specifies an amount to be paid, (A) such certificate shall be accompanied by a completed Form 8038-T, which is to be signed by an Authorized Representative of the Issuer, and shall include a certification by the Company that the Form 8038-T is accurate and complete, and (B) no later than ten (10) days after the Rebate Payment Date, the Company shall furnish to the Issuer and the Trustee a certificate stating that such amount has been timely paid. This Section 5.18(c) shall be construed so as to cause compliance with the Rebate Regulations. The Company covenants that all action taken under this Section 5.18(c) shall be taken in a manner that complies with the Rebate Regulations and that it shall neither take any action nor omit to take any action that would cause the Bonds to be “arbitrage bonds” by reason of the failure to comply with the Rebate Regulations. To the extent that any payment of rebatable arbitrage or penalty in lieu of rebate is not timely made to the United States, the Company shall pay to the United States on behalf of the Issuer any correction amount, interest, penalty or other amount necessary to prevent the Bonds from becoming “arbitrage bonds” within the meaning of Section 148 of the Code. The Company covenants that, to the extent necessary, it shall obtain the advice and assistance of a Rebate Analyst to aid it in complying with the Rebate Regulations.

Section 5.19 Indemnification.

(a) The Company hereby releases the Issuer, the Trustee and each Owner (including any Person at any time serving as a member, employee, officer, director, trustee, official or agent (except the Company) of any thereof) from and agrees that the Issuer, the Trustee and each Owner (including any Person at any time serving as a member, employee, officer, trustee, official or agent (except the Company) of any thereof) shall not be liable for, and to the maximum extent permitted by law, agrees to indemnify and hold the Issuer, the Trustee and each Owner (including any Person at any time serving as a member, employee, officer, director, trustee, official or agent (except the Company) of any thereof) harmless from: (i) any liability for any loss or damage to property or any injury to, or death of, any Person that may be occasioned by any cause whatsoever pertaining to the Project, (ii) any liabilities, losses or damages, or claims therefor, and expenses (including reasonable attorneys’ fees actually incurred), arising out of or in connection with any Bond Document or Company Document or any of the transactions contemplated hereby or thereby or failure on the part of the Company to comply with any law, regulation or ordinance affecting the Project, and (iii) any and all claims

arising in connection with (a) the issuance or sale of any Bonds or any certifications or representations made by any person other than the party seeking indemnification, including, but not limited to, any (1) statement or information made by the Company with respect to the Company or the Project in any offering document or materials regarding the Bonds, the Project or the Company or in the Tax Regulatory Agreement or Company's Tax Certificate or in any other certificate executed by the Company which, at the time made, is misleading, untrue or incorrect in any material respect, (2) untrue statement or alleged untrue statement of a material fact relating to the Company or the Project contained in any offering material relating to the sale of the Bonds, as from time to time amended or supplemented, or arising out of or based upon the omission or alleged omission to state in such offering material a material fact relating to the Company or the Project required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading, (3) failure to properly register or otherwise qualify the sale of the Bonds or failure to comply with any licensing or other law or regulation which would affect the manner in which or to whom the Bonds could be sold and (b) the carrying out by the Company of any of the transactions provided for in the Bond Documents and the Company's Documents. If any such claim is asserted, any Person indemnified herein will give prompt notice to the Company and will cooperate with the Company in the investigation and defense of any such claim, and the Company will assume the defense thereof by engaging counsel approved by the indemnified party (which approval shall not be unreasonably withheld). In the event the indemnified party, at its sole discretion, reasonably determines that there exists a conflict of interest between counsel's representation of the Company and its own representation in any such action or proceedings, the indemnified party shall have the right to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Company shall pay the reasonable fees and expenses actually incurred by such separate counsel. During the pendency of litigation with respect to any claim which would have a material adverse effect on the financial condition of the Company or the Project, the Company shall at its cost post such bond or other security as the Issuer, the Trustee, any Owner or any individual indemnified hereunder may reasonably require with respect to any such claim. This indemnification covenant shall survive repayment of the Bonds and the termination of this Lease Agreement and the Indenture. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Issuer, the Trustee, or the Servicer, or any of their respective members, directors, trustees, officers, agents (except the Company) or employees, and irrespective of the breach of a statutory obligation and shall extend to and include, without limitation, all reasonable costs, reasonable counsel fees, expenses or liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except (a) in the case of the foregoing indemnification of the Trustee and the Servicer, to the extent such damages are caused by the gross negligence or willful misconduct of such Person, and (b) in the case of the foregoing indemnification of the Issuer, to the extent such damages are caused by the gross negligence or willful misconduct of the Issuer.

(b) The Company agrees to indemnify and hold harmless the Issuer, the Trustee and each Owner from and against any and all claims, actions and suits, and from and against any and all liabilities, losses, damages and expenses of every nature and character arising out of this Lease Agreement or any of the other Company Documents or the transactions contemplated hereby and thereby including, without limitation, (i) any brokerage, leasing, finder's or similar fees, (ii) any disbursement of the proceeds of any of the Bonds, (iii) any condition of the Project whether related to the quality of construction, renovation or otherwise,

(iv) any actual or proposed use by the Company of the proceeds of the Bonds, (v) any actual or alleged violation of any Legal Requirements or Project Approvals, (vi) the execution and delivery or amendment of any document entered into in connection with the transactions provided for in the Bond Documents or the Company Documents, including any certifications or representations made by any person other than the party seeking indemnification, (vii) the approval of the financing for the Project, (viii) any and all claims arising in connection with the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents, the Company Documents or any other documents relating to the Project or the Bonds or in connection with any other matters relating to the Bonds or the Project, including, but not limited to, any federal or state tax audit, or any questions or other matters arising under such documents, (ix) the Trustee's acceptance or administration of the trusts created by the Indenture or the exercise of its powers or duties under the Indenture, this Lease Agreement, the Tax Regulatory Agreement, the Company's Tax Certificate or any other agreements to which it is a party or otherwise in connection with the transactions provided for in the Bond Documents or the Company Documents, (x) the Company's failure to comply with any requirement of any Company Document, (xi) any act or omission of the Company or any of its agents, servants, employees or licensees in connection with this Lease Agreement or the Project, including violation of any law, ordinance, court order or regulation affecting the Project or any part of it or the ownership, occupancy or use of it, (xii) any damage or injury, actual or claimed, of whatsoever kind, cause or character, to property (including loss of use of property) or persons, occurring or allegedly occurring in, on or about the Facility or arising out of any action or inaction of the Company, whether or not related to the Facility, or resulting from or in any way connected with the acquisition, renovation, reconstruction, equipping or management of the Facility, the issuance of the Bonds or otherwise in connection with transactions provided for in the Bond Documents and the Company Documents or otherwise in connection with the Project, the Bonds or the execution or amendment of any document relating to the Project or the Bonds, (xiii) any violation of any environmental law of the State applicable to, or the release of any toxic substance from, the Facility, and (xiv) any and all claims arising in connection with the operation of the Facility, or the conditions, environmental or otherwise, occupancy, use, possession, conduct or supervision of work done in or about, or from the planning, design, acquisition, construction, renovation, repair or equipping of, the Facility or any part of it, including, but not limited to, the Americans with Disabilities Act of 1990, as amended, and all regulations promulgated thereunder (as evidenced by an architect's certificate to such effect). The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Issuer, the Trustee, or the Servicer, or any of their respective members, directors, trustees, officers, agents (except the Company) or employees, and irrespective of the breach of a statutory obligation and shall extend to and include, without limitation, all reasonable costs, reasonable counsel fees, expenses or liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except (a) in the case of the foregoing indemnification of the Trustee and the Servicer, to the extent such damages are caused by the gross negligence or willful misconduct of such Person, and (b) in the case of the foregoing indemnification of the Issuer, to the extent such damages are caused by the gross negligence or willful misconduct of the Issuer. To effectuate the purposes of this Section 5.19, the Company shall provide for and insure, in the liability policies required under Section 5.4 of this Lease Agreement, not only its own liability in respect of the matters therein mentioned but also liability pursuant to this Section 5.19.

In litigation, or the preparation therefor, the Issuer, the Trustee or the Servicer shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Company agrees to pay promptly the reasonable actually incurred fees and expenses of such counsel. The obligations of the Company under this Section shall survive the termination of this Lease Agreement and the Indenture and the repayment of the Bonds. If, and to the extent that the obligations of the Company under this Section are unenforceable for any reason, the Company hereby agrees to make the maximum contribution to the payment in satisfaction of such obligations which is permissible under applicable law.

Section 5.20 Agreements Between Company and its Affiliates. Except for the Construction Contract, the Development Agreement and the Management Agreement, the Company shall not enter into any agreement, written or otherwise, directly or indirectly relating to the Project with an Affiliate of the Company without the prior written consent of the Issuer and the Servicer.

Section 5.21 Company's Continuing Obligation. Notwithstanding any transfer of the Facility to another owner, the Company shall remain obligated to indemnify each indemnified party pursuant to Section 5.19 hereof for all matters arising prior to the date of such transfer, and, as a condition to the release of the transferor on and after the transfer date, the transferee must assume the obligations of the Company under the Bond Documents and the Company Documents on and after such transfer date and indemnify each indemnified party pursuant to Section 5.19 hereof for all matters arising on and after the date of such transfer. Each indemnified party's rights under Section 5.19 hereof and under this Section shall survive the termination of this Lease Agreement and the payment or defeasance of the Bonds.

Section 5.22 Funds. The Company acknowledges the creation of the Replacement Reserve Fund and the Tax and Insurance Fund pursuant to the Indenture. The Replacement Reserve Fund and the Tax and Insurance Fund shall be funded, and moneys therein shall be disbursed, in accordance with the provisions of the Indenture and this Section 5.22.

(a) On or before December 1 of each year, the Company shall submit to the Servicer for approval a proposed operating budget for the Project for the next following year (the "**Proposed Budget**") with a copy to the Issuer. The Servicer shall have the right to approve or disapprove any Proposed Budget or any line-item contained in such Proposed Budget. If any Proposed Budget is not approved by the Servicer within forty-five (45) days following submission by the Company, such Proposed Budget shall be deemed approved. If any line-item or Proposed Budget is disapproved, the Company shall thereafter consult for an additional thirty (30) days with the Servicer in an effort to achieve mutually acceptable Approved Budget. To the extent that the Proposed Budget is disapproved, the Approved Budget for the previous year shall remain in effect, increased by 5% over the previous year (except for costs of utilities, real estate taxes and assessments and insurance and other third-party costs or cost associated with remediation of emergency conditions which shall be permitted variances to the Proposed Budget) until the parties resolve their differences. In addition to, and not in limitation of the foregoing, each Approved Budget may be revised from time to time with prior written consent of the Issuer and the Servicer, not to be unreasonably withheld, to reflect changes to items set forth in the then-current Approved Budget. The Company, by January 31 of each year, shall submit a copy of the Approval Budget to the Issuer.

(b) Each Proposed Budget:

(i) shall be prepared on the basis of sound accounting practices consistently applied;

(ii) shall reflect the projected gross revenues and operating expenses regarding the Project;

(iii) shall reflect all projected Capital Expenditures which are reasonably expected to be made in connection with the Project during the year covered by such Proposed Budget; and

(iv) shall contain such other information as may be reasonably requested by the Servicer.

(c) On each Interest Payment Date beginning with the first month after the Completion Date, the Company shall deposit an amount equal to 1/12 of the Unit Reserve Amount in the Replacement Reserve Fund.

(d) Except as otherwise provided in this Section, before the Servicer shall authorize the disbursement of any amounts from the Replacement Reserve Fund, the Company shall submit the following items to the Servicer for its review and approval:

(i) a requisition from the Company stating that no Event of Default exists and requesting the Servicer to approve a disbursement;

(ii) the identity of all general contractors, architects, engineers and other professionals, if any, engaged in connection with the proposed capital expenditures along with copies of the contracts entered into between the Company and such entities;

(iii) copies of the plans and specifications for the work to be done, if required or produced in connection with the work contemplated;

(iv) if requested by the Servicer, evidence of compliance with all applicable Legal Requirements;

(v) if requested by the Servicer in connection with reconstruction, renovation work in excess of \$50,000, evidence of builders' risk insurance along with workers' compensation and public liability insurance in such amounts and in such form as the Servicer may reasonably require;

(vi) if requested by the Servicer in connection with reconstruction, renovation work in excess of \$50,000, evidence that the Consulting Engineer shall have inspected and approved of the work performed to date;

(vii) copies of bills or invoices documenting the proposed expenditure (with paid receipts or other evidence of payment for such Capital Expenditures to be

provided to the Servicer before the next requested requisition and in any event within ten (10) days of disbursement to the Company of the requested payment); and

(viii) evidence that the general contractor has delivered and filed effective mechanics lien waivers prior to the commencement of work or, if such waivers were not delivered and filed, a release of liens in connection with all work performed, which releases may be conditioned upon payment to the general contractor provided that the general contractor delivers unconditional releases within thirty (30) days of receipt of such payment.

(e) Provided the conditions set forth in Section 5.22(d) have been satisfied (or waived in writing by the Servicer), the Servicer shall authorize the disbursement from the Replacement Reserve Fund of the amount requested by the Company in its requisition, or such lesser amount approved by the Consulting Engineer, to the Company. It shall be a condition to all withdrawals from the Replacement Reserve Fund that (i) all work shall be performed in a good and workmanlike manner and in compliance with all applicable Legal Requirements, (ii) the Servicer shall have reviewed and approved each of the foregoing requirements, (iii) the work to be performed is consistent with the Approved Budget or the recommendations of the Consulting Engineer, and (iv) sufficient amounts are on deposit in the Replacement Reserve Fund to pay the amount requisitioned.

(f) For any single Capital Expenditure (not part of, or related to, a sequence or a series of Capital Expenditures or a particular capital improvement plan or project) costing less than Fifteen Thousand Dollars (\$15,000.00) and whether or not described in the Approved Budget, the Company, upon completion of the work, shall deliver to the Servicer evidence reasonably satisfactory to the Servicer of such completion and shall deliver to the Servicer invoices for such work, and, for all of such subsequent disbursements from the Replacement Reserve Fund, the Company shall deliver evidence of payment in full for all invoices pertaining to the previous disbursement from the Replacement Reserve Fund, whereupon the Servicer shall authorize reimbursement of the cost of the Capital Expenditure from the Replacement Reserve Fund to the Company or, at the Servicer's option, to the contractors to whom such funds are owed.

(g) For any Capital Expenditure (not part of or related to a sequence or series of Capital Expenditures) costing Fifteen Thousand Dollars (\$15,000.00) or more which is to be paid from the Replacement Reserve Fund, before entering into any contracts in connection with such Capital Expenditure (whether or not the Capital Expenditure was described in the Approved Budget), the Company shall submit to the Servicer for its prior review and approval (which shall not be unreasonably withheld or delayed) copies of the proposed contracts to be entered into with respect to such Capital Expenditure and copies of the proposed plans and specifications for the Capital Expenditure. Once the Capital Expenditure is approved in advance by the Servicer, the provisions of Section 5.22(d) shall apply. Upon completion of such work, the Company shall deliver to the Servicer evidence reasonably satisfactory to the Servicer of such completion and shall deliver to the Servicer invoices for such work and, for all of such subsequent disbursements from the Replacement Reserve Fund, the Company shall deliver evidence of payment in full for all invoices pertaining to the previous disbursement from the Replacement Reserve Fund, whereupon the Servicer shall authorize reimbursement of the cost of the Capital Expenditure

from the Replacement Reserve Fund to the Company, or, at the Servicer's option, the contractors to whom such costs are owed.

(h) On each Interest Payment Date, beginning with the first month after the Completion Date, the Company shall deposit funds into the Tax and Insurance Fund in an amount equal to one-twelfth (1/12) of the amount reasonably estimated by the Servicer to be payable during the current year for real estate taxes (including payments in lieu of real estate taxes under the PILOT Agreement) and insurance premiums with respect to the Project. If, one month prior to the due date of any aforementioned obligations, the amounts then on deposit shall be insufficient for the payment of such obligation in full, the Company shall deposit the amount of the deficiency within ten (10) days after demand from the Servicer. Amounts held in the Tax and Insurance Fund shall be applied to the payment of real estate taxes (including payments in lieu of real estate taxes) and insurance premiums, in such order of priority as the Servicer shall determine in its sole discretion, on or before the respective dates on which the same or any of them would become delinquent.

(i) [RESERVED].

(j) On each Interest Payment Date, beginning with the first month after the Conversion Date, the Company shall deposit funds into the Replacement Reserve Fund in an amount equal to \$8,687.50 (or such other amount as shall be agreed in writing by the Company and the Servicer). Amounts held in the Replacement Reserve Fund shall be applied as set forth in this Lease Agreement and the Indenture.

Section 5.23 [RESERVED].

Section 5.24 Covenants Regarding Tax Credits. The Company hereby agrees to comply with all of the following covenants (each, a "**Tax Credit Covenant**"):

(a) To observe and perform all obligations imposed on the Company in connection with the Tax Credits, including the obligation to have the Project "placed in service" (within the meaning given in Section 42 of the Code) in a timely manner; and to operate the residential units of the Project, and to use the Company's best efforts to cause all appropriate parties to operate the same, in accordance with all requirements, statutes, and regulations governing the Tax Credits;

(b) To preserve at all times the allocation and availability of the Tax Credits;

(c) Not to release, forego, alter, amend, or modify its rights to the Tax Credits without the Servicer's prior written consent, which the Servicer may give or withhold in the Servicer's reasonable discretion;

(d) Not to execute any residential lease of all or any portion of the Project which does not comply fully with all requirements, statutes, and regulations governing the Tax Credits, without the Servicer's prior written consent, which the Servicer may give or withhold in the Servicer's sole and absolute discretion;

(e) To cause to be kept all records, and cause to be made all elections and certifications, pertaining to the number and size of apartment units, occupancy thereof by tenants, income level of tenants, set-asides for low-income tenants, and any other matters now or hereafter required to qualify for and maintain the Tax Credits in connection with the low-income occupancy of the Project;

(f) To comply with the appropriate minimum low-income set-aside requirements under the Code or applicable federal regulations (the “**Federal Laws**”) and all laws and regulations of the State (the “**State Laws**”) applicable to the creation, maintenance and continued availability of the Tax Credits;

(g) To certify compliance with the set-aside requirements and report the dollar amount of qualified basis and maximum applicable percentage, date of placement in service and any other information required for the Tax Credits at such time periods as required by Federal Laws or State Laws for such Tax Credits;

(h) To set aside the appropriate number of units for households with incomes meeting the required standards of the median income of the county in which the Project is located to qualify for the Tax Credits (as determined pursuant to Section 42 of the Code and/or State Laws), adjusted for family size, and to operate and maintain all such units as “low-income units” qualifying for the Tax Credits under Section 42(i)(3) of the Code and/or State Laws;

(i) To exercise good faith in all activities relating to the operation and maintenance of the Project in accordance with the requirement of Federal Laws and State Laws; and

(j) To promptly deliver to the Servicer true and correct copies of all notices or other documents or communications received or given by the Company with regard to or relating in any way to the Company’s limited partnership interests and/or the Tax Credits. Immediately upon receipt thereof, the Company shall deliver to the Servicer a copy of (i) the determination of Tax Credits for the Project; (ii) the basis audit (as required by Section 42 of the Code) for the Project (including a certificate of the Company’s accountant if requested by the Servicer); and (iii) the fully-completed Form 8609 (required by the Code) issued for the Project. The Company shall deliver promptly to the Servicer such other certificates, income certificates, reports and information as the Servicer may request.

The Company understands and acknowledges that the Bank is purchasing the Bonds based, in part, upon the value of the proceeds from the syndication of the Tax Credits, and the proceeds from the syndication of the Tax Credits, directly or indirectly, constitute part of Trustee’s security on behalf of the Owners of the Bonds, for the obligations of the Company in connection with the Project. The Company agrees to indemnify, defend, and hold the Issuer, the Servicer and the Owners harmless for, from, and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations, and costs or expenses, including litigation costs and reasonable attorneys’ fees, arising from or in any way connected with the Company’s failure to comply with one or more Tax Credit Covenants, excepting those arising out of, or resulting, solely from the gross negligence or willful misconduct of the Servicer.

Section 5.25 Leasing.

(a) The Servicer and the Issuer (and all other parties whose approval is required) must reasonably approve the Company's standard form of residential lease or rental agreement and the Company's standard form of commercial lease prior to their use by the Company. The Company may not materially modify the approved standard form of residential lease or the approved standard form of commercial lease without the Servicer's and the Issuer's prior written consent in each instance (which consent shall not be unreasonably withheld), together with the approval of all other parties whose consent is required. Each lease of any part of the Project is subject to the Servicer's written approval as to form and substance prior to execution and delivery. Despite the foregoing, the Company may enter into residential leases (and amendments) in the ordinary course of business with bona fide third party tenants without the Servicer's and the Issuer's prior written consent if the Company uses the approved standard form of residential lease and:

(i) Within fifteen (15) days after the Servicer's written request therefor, the Servicer receives a copy of the executed lease (accompanied by all financial information and certificates obtained by the Company pertaining to the tenant);

(ii) The Company, acting in good faith and exercising due diligence, has determined that the tenant qualifies as a low-income family for purposes of meeting the requirements for obtaining Tax Credits;

(iii) The lease meets the standards required by Section 42 of the Code;

(iv) The lease meets the requirements of the Issuer and the Investor Member;

(v) The lease reflects an arm's-length transaction and, so long as the Construction Disbursement Agreement is in effect, conforms to the projections of the Pro Forma Schedule attached thereto;

(vi) The lease does not affect more than one (1) residential unit within the Improvements and is for a minimum term of six (6) months and a maximum term of twelve (12) months, unless otherwise agreed in writing by the Servicer;

(vii) So long as the Construction Disbursement Agreement is in effect, the lease, together with all leases previously executed, does not cause the Project to become "out of balance" as that term is defined in Section 1.2(a) of the Construction Disbursement Agreement. The Company acknowledges that the Project may become "out of balance" if the landlord's aggregate economic obligations under the leases exceed, or the Net Operating Income from the Project fails to meet, the Company's projections for such obligations, thereby increasing the cost or decreasing the value of the Project; and

(viii) The provisions of Section 9.7(b) hereof are satisfied.

Despite the foregoing, the Company may enter into commercial leases (and amendments) in the ordinary course of business with bona fide third party tenants without the Servicer's and

the Issuer's prior written consent if the Company uses the approved standard form of commercial lease and:

(i) Within fifteen (15) days after the Servicer's written request therefor, the Servicer receives a copy of the executed lease (accompanied by all financial information and certificates obtained by the Company pertaining to the tenant);

(ii) The lease meets the requirements of the Issuer and the Investor Member;

(iii) The lease reflects an arm's-length transaction and, so long as the Construction Disbursement Agreement is in effect, conforms to the projections of the Pro Forma Schedule attached thereto;

(iv) The lease does not affect more than one (1) commercial unit within the Improvements and is for a minimum term of six (6) months and a maximum term of twelve (12) months, unless otherwise agreed in writing by the Servicer;

(v) So long as the Construction Disbursement Agreement is in effect, the lease, together with all leases previously executed, does not cause the Project to become "out of balance" as that term is defined in Section 1.2(a) of the Construction Disbursement Agreement. The Company acknowledges that the Project may become "out of balance" if the landlord's aggregate economic obligations under the leases exceed, or the Net Operating Income from the Project fails to meet, the Company's projections for such obligations, thereby increasing the cost or decreasing the value of the Project; and

(vi) The tenant shall have been approved in writing by the Servicer.

(b) The Servicer may consider any executed lease it receives to be unsatisfactory if the lease fails to meet any of the requirements of this Lease Agreement. If this happens, or if the Company at any time fails to submit any executed lease (and accompanying information) at the time required by this Section, or if any Event of Default has occurred and is continuing, the Servicer may make written demand on the Company to submit all future leases for the Servicer's approval prior to execution. The Company must comply with any such demand by the Servicer.

(c) The Servicer's approval of any lease is for the sole purpose of protecting the Servicer's security and preserving the Servicer's rights under the Company Documents. No approval by the Servicer will result in a waiver of any default of the Company. In no event will the Servicer's approval of any lease be a representation of any kind with regard to the lease, its enforceability or the financial capacity of any tenant or guarantor.

(d) The Company must perform all obligations required to be performed by it as landlord under any lease affecting any part of the Land or any space within the Improvements.

Section 5.26 Tax Regulatory Agreement. The covenants of the Company in the Tax Regulatory Agreement shall be deemed to constitute covenants of the Company running with the land and an equitable servitude for the benefit of the Owners of the Bonds and shall be binding

upon any owner of the Facility until (a) such time as such restrictions expire under their own terms, or (b) the Issuer (in its sole and absolute discretion) and the Trustee consent to the release of such restrictions, or (c) the Tax Regulatory Agreement is otherwise terminated by its terms. The Company covenants to file of record the Tax Regulatory Agreement and such other documents and take such other steps as are necessary in order to assure that the restrictions contained in the Tax Regulatory Agreement will, subject to the terms of the Tax Regulatory Agreement, be binding upon all owners of the Facility. The Company covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Facility to another to the end that such transferee has notice of, and is bound by, such restrictions. Subject to the provisions of Article VII of this Lease Agreement, the Issuer and the Trustee shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Company contained in the Tax Regulatory Agreement or this Lease Agreement.

Section 5.27 Right to Enforce Compliance. The Issuer with respect to the Reserved Rights and the Trustee and the Servicer subject to and in accordance with the Assignment and Article VII of this Agreement shall each have the right, but not the obligation, to enforce compliance by the Company and its successors as subsequent owners of the Facility with the requirements of this Lease Agreement and the Tax Regulatory Agreement. Notwithstanding the foregoing, the Trustee agrees that it will, subject to the provisions of the Indenture and Article VII hereof, at the direction of the Issuer, take such action as may be required to achieve compliance by the Company with the terms and provisions of this Lease Agreement and the Tax Regulatory Agreement.

Section 5.28 Damage, Destruction and Condemnation. If prior to full payment of the Bonds (or provision for payment of the Bonds in accordance with the provisions of the Indenture) the Facility or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Facility or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Company shall nevertheless be obligated to continue to pay the amounts specified in this Lease Agreement.

Section 5.29 Obligation to the Company To Acquire and Reconstruct the Mortgaged Property. The Company shall proceed with reasonable dispatch to complete the acquisition, renovation, reconstruction and equipping of the Project. If amounts on deposit under the Project Fund and available to be disbursed to the Company are not sufficient to pay the costs of such acquisition, renovation, reconstruction and equipping, the Company shall pay such costs from its own funds. The Company shall not be entitled to any reimbursement from the Issuer, the Trustee or the Owners in respect of any such costs or to any diminution or abatement in the repayment of the Bonds or Lease Payments. The Issuer shall not be liable to the Company, the Owners or any other person if for any reason the Project is not completed or if the proceeds of the Bonds are insufficient to pay all Qualified Costs of the Project. The Issuer does not make any representation or warranty, either express or implied, that moneys, if any, which will be paid into the Project Fund or otherwise made available to the Company will be sufficient to complete the Project, and the Issuer shall not be liable to the Company, the Owners or any other person if for any reason the Project is not completed.

Section 5.30 Repair and Restoration Following Damage, Destruction or Condemnation.

(a) If the Facility shall be damaged or destroyed (in whole or in part) or title to all or substantially all of the Facility shall be taken at any time while this Lease Agreement is in effect

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

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this 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 amounts derived from the insurance covering the Facility or condemnation proceeds shall be applied in accordance with the Mortgages (or if no Bonds shall be Outstanding and the Mortgages no longer in effect, such proceeds shall be applied as set forth in subparagraph (c) of this Section 5.30).

(b) Any such replacements, repairs, rebuilding, restorations or relocations shall be subject to the following conditions:

(i) the restored Facility shall continue to constitute a “project” as such term is defined in the Act, and the tax exempt status of the interest on the Bonds shall not, in the Opinion of Bond Counsel, be adversely affected;

(ii) the Facility will be subject to no Liens, other than Permitted Encumbrances; and

(iii) any other conditions the Servicer shall reasonably impose.

(c) If (i) the entire amount of the Bonds and interest thereon has been fully paid, or provision therefor has been made in accordance with the Indenture, (ii) if all amounts due to the Trustee and the Issuer have been fully paid and (iii) the Company elects not to restore or repair the Facility, then all such remaining net proceeds of any insurance or condemnation shall be paid to the Company and this Lease Agreement and the leasehold interest of the Issuer in the Facility shall terminate.

(d) In the event the Facility shall not be restored, repaired and reopened for operation within 180 days following damage, destruction or condemnation, the Issuer may by written notice terminate its leasehold interest in the Facility and reconvey the Facility to the Company with the effect and as provided in Section 9.7(c) of this Lease Agreement.

Section 5.31 Maintenance of Facility.

The Company shall:

(a) keep the Facility in good condition and repair and preserve the same against waste, loss, damage, and depreciation, ordinary wear and tear excepted;

(b) make all necessary repairs and replacements to the Facility or any part thereof (whether ordinary or extraordinary, structural, or non structural, foreseen or unforeseen) which is damaged, destroyed, or condemned; and

(c) operate the Facility in a sound and economic manner.

Section 5.32 Assignment or Sublet. The Company shall not assign this Lease Agreement (by operation of law or otherwise) or sublet all or any portion of the Facility (except as permitted, with respect to subleases of units to residential tenants, pursuant to Sections 5.25 and 9.7(b) hereof) without the prior written consent of the Servicer and the Issuer. Any permitted assignment or sublease shall be subject and subordinate to this Lease Agreement.

ARTICLE VI OPTION AND OBLIGATIONS OF COMPANY TO PREPAY

Section 6.1 Optional Prepayment.

(a) Amounts due under Section 3.2(a) hereof are subject to prepayment in order to effect the redemption of the Bonds under Section 4.03 of the Indenture at the option of the Company in whole but not in part at the times (and not before the times) and at the redemption prices plus accrued interest to the redemption date of the Bonds, and the Prepayment Equalization Payment, if applicable, as set forth in Section 4.03 of the Indenture together with interest as set forth in Section 4.03 of the Indenture.

(b) To effect redemption of the Bonds as contemplated in subparagraph (a) above, the Company shall deliver to the Trustee and the Servicer, not less than ninety (90) days prior to the date on which Bonds are subject to redemption under said Section, a written certificate of the Company stating that the Company is prepaying the lease rental obligations pursuant to this Section 6.1. The certificate from the Company shall certify the following: (i) the principal amount of the Bonds to be redeemed pursuant to Section 4.03 of the Indenture, (iii) the date for redemption of the Bonds, (iv) any conditions to such prepayment.

(c) The options granted to the Company in this Section 6.1 shall be exercisable only (i) in the event and to the extent the Bonds are subject to redemption in accordance with the Indenture and (ii) if no Event of Default under any of the Company Documents shall have occurred and be then continuing or if all costs associated with any existing Event of Default (including, without limitation, late fees, penalties, costs of enforcement, protective advances and interest on such amounts) which are then due and owing under the Company Documents are paid in full in connection with such prepayment.

Section 6.2 Mandatory Prepayment. Amounts due under Section 3.2(a) hereof shall be prepaid in whole or in part in order to effect the mandatory redemption of the Bonds at the times and in the amounts specified in Section 4.01 of the Indenture.

Section 6.3 Amounts Required for Prepayment.

(a) The amount payable by the Company hereunder upon either (i) the exercise of the option granted to the Company in Section 6.1 hereof, or (ii) the mandatory prepayment by the Company in Section 6.2 hereof shall be, to the extent applicable and except as otherwise provided, the sum of the following:

(i) the amount of money necessary to pay the redemption price of the Bonds to be redeemed specified in Section 4.03 of the Indenture, in the case of optional redemption and Section 4.02 of the Indenture in the case of mandatory redemption, together with all interest specified therein payable up to and including said redemption date, Prepayment Equalization Payment (if applicable), and all expenses of the redemption; plus

(ii) in the event of a redemption in whole, an amount of money equal to the Trustee's and Issuer's fees and expenses under the Indenture accrued and to accrue until the final payment and redemption of the Bonds; plus

(iii) in the event of any prepayment during the existence and continuance of an Event of Default, the amounts described in Section 6.1(c)(ii) hereof.

(b) Any prepayment made pursuant to Section 6.1 or 6.2 hereof shall be deposited into the Revenue Fund. No prepayment or investment of the proceeds thereof shall be made which shall cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

Section 6.4 Cancellation at Expiration of Term. At the acceleration, termination or expiration of the term of this Lease Agreement and following full payment of the Bonds or provision for payment thereof in accordance with Article IX of the Indenture and of all other fees and charges of all parties having been made in accordance with the provisions of this Lease Agreement and the Indenture, the Issuer shall deliver to the Company any documents and take or cause the Trustee to take such actions as may be necessary to effectuate the cancellation and evidence the termination of this Lease Agreement and the Company Documents (other than the Tax Regulatory Agreement, which shall not terminate except in accordance with the terms thereof).

ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default. The following shall be "**Events of Default**" under this Lease Agreement, and the term "**Event of Default**" shall mean, whenever it is used in this Lease Agreement, any one or more of the following events:

(a) Failure by the Company to pay any amounts required to be paid under Section 3.2(a) of this Lease Agreement that correspond to principal or interest payments on the Bonds at the times and in the amounts required by this Lease Agreement; or

(b) Any failure by the Company to pay as and when due and payable any other sums to be paid by the Company under this Lease Agreement or the PILOT Agreement and

the continuation of such failure for a period of fifteen (15) days after notice to the Company and the Investor Member that the same are due; or

(c) Any failure of any representation or warranty made in this Lease Agreement, the Construction Disbursement Agreement or any Requisition to be true and correct in all material respects; or

(d) Any failure by the Company to observe and perform any covenant or agreement on its part to be observed or performed hereunder or thereunder, other than as referred to in subsections (a) or (b) of this Section 7.1, for a period of thirty (30) days after written notice specifying such breach or failure and requesting that it be remedied, given to the Company and the Investor Member by the Issuer, the Trustee or the Servicer; provided, however, that in the event such breach or failure be such that it can be corrected but cannot be corrected within said 30 day period, the same shall not constitute an Event of Default hereunder if corrective action is instituted by the Company or on behalf of the Company within said 30 day period and is diligently pursued to completion thereafter (unless, in the Opinion of Bond Counsel delivered to the Servicer, failure to correct such breach or failure within the cure period herein provided (or such shorter time as shall be established as a limitation on the period of time during which correction may be pursued) will adversely affect the exclusion from gross income of interest on the Bonds for federal income taxation purposes or violate State law, in which case the extension of cure period herein provided will not be available); or

(e) Any Event of Default (as defined or otherwise set forth in the Indenture or any of the Company Documents, the Managing Member Documents or the Guarantor Documents) shall have occurred and shall remain uncured beyond any applicable cure period provided in the applicable document; or

(f) Any dissolution, termination, partial or complete liquidation, merger or consolidation of any Obligor or the Managing Member of Company, or any sale, transfer or other disposition of the Facility or of all or substantially all of the assets of Company; or

(g) Failure to provide information for annual disclosure when due hereunder;

(h) Any change in the legal or beneficial ownership of the Company or the Managing Member other than as expressly permitted by the terms hereof or by reason of the death of the owner of such interests; or

(i) The Managing Member ceases for any reason to act in that capacity unless replaced by a transferee permitted pursuant to Section 5.17(e); or

(j) [RESERVED];

(k) Any failure by the Company to pay at maturity, or within any applicable period of grace, any Indebtedness, or any failure to observe or perform any material term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing any Indebtedness, for such period of time as would permit (assuming the giving of appropriate notice if required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof; or

(l) Any Obligor shall file a voluntary petition in bankruptcy under Title 11 of the United States Code, or an order for relief shall be issued against any such Obligor in any involuntary petition in bankruptcy under Title 11 of the United States Code, or any such Obligor shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief of debtors, or such Obligor shall seek or consent to or acquiesce in the appointment of any custodian, trustee, receiver, conservator or liquidator of such Obligor, or of all or any substantial part of its respective property, or such Obligor shall make an assignment for the benefit of creditors, or such Obligor shall give notice to any governmental authority or body of insolvency or pending insolvency or suspension of operation; or

(m) An involuntary petition in bankruptcy under Title 11 of the United States Code shall be filed against the Company or any Obligor and such petition shall not be dismissed within ninety (90) days of the filing thereof; or

(n) A court of competent jurisdiction shall enter any order, judgment or decree approving a petition filed against any Obligor seeking any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or appointing any custodian, trustee, receiver, conservator or liquidator of all or any substantial part of its property; or

(o) Any uninsured final judgment in excess of \$25,000 shall be rendered against the Company and shall remain in force, undischarged, unsatisfied and unstayed, for more than thirty (30) days, whether or not consecutive, provided, however that such 30-day period may be extended for up to 60 additional days, so long as the Company shall be diligently and in good faith pursuing the discharge or stay thereof and such final judgment shall remain in force, undischarged, unsatisfied and unstayed; or

(p) Any of the Company Documents, the Managing Member Documents or the Guarantor Documents shall be canceled, terminated, revoked or rescinded otherwise than in accordance with the terms thereof or with the express prior written consent of the Issuer and the Servicer, or any action at law, suit in equity or other legal proceeding to cancel, revoke or rescind any of the Company Documents, the Managing Member Documents or the Guarantor Documents shall be commenced by or on behalf of any Obligor which is a party thereto, or any of their respective stockholders, partners or beneficiaries, or any court or any other governmental or regulatory authority or agency of competent jurisdiction shall make a determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Company Documents, the Managing Member Documents or the Guarantor Documents is illegal, invalid or unenforceable in accordance with the terms thereof; or

(q) The Trustee or any holder of a Bond receives a communication from a Governmental Authority to the effect that the exclusion from gross income of interest on the Bonds will not continue in effect; or

(r) Any refusal by the Title Insurance Company to insure that any advance is secured by the Mortgages as a valid lien and security interest on the Facility and the continuation of such refusal for a period of twenty (20) days after notice thereof by the Servicer to the Company; or

(s) Any of the Indenture, this Lease Agreement, the Tax Regulatory Agreement or the Company's Tax Certificate shall be amended in a material manner (including without limitation any "automatic" amendments of the Tax Regulatory Agreement) without the prior written consent of the Issuer and the Servicer.

Section 7.2 Remedies on Default.

(a) Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and be continuing, any obligation of the Servicer to approve Requisitions shall be terminated, and the Trustee (but only if directed to do so by or with the consent of the Issuer and the Servicer and, subject to the provisions of the Indenture) shall:

(i) by notice in writing to the Company declare the unpaid indebtedness under the Company Documents to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable;

(ii) take whatever action at law or in equity or under any of the Company Documents, the Managing Member Documents or the Guarantor Documents, as may appear necessary or desirable to collect the payments and other amounts then due and thereafter to become due hereunder or thereunder, or to exercise any right or remedy or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Lease Agreement, any other Company Document (including without limitation foreclosure of the Mortgages), any Managing Member Document or any Guarantor Document (including actions to enforce the Payment Guaranty and/or the Completion Guaranty);

(iii) cause the Project to be completed, reconstructed, renovated and equipped in accordance with the Plans and Specifications, with such changes therein as the Servicer may, from time to time, and in its sole discretion, deem appropriate;

(iv) re-enter and take possession of the Facility, on ten (10) days' written notice to the Company, without terminating this Lease Agreement and without being liable for any prosecution or damages therefor, and lease or sublease the Facility to another Person for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from such other Person under such lease or sublease;

(v) terminate this Lease Agreement and surrender the Facility to the Company. The Issuer shall have the right to execute an appropriate termination and deed with respect to the Facility, and in such event the Company waives delivery and acceptance of such termination and deed and the Company hereby appoints the Issuer its

true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such termination and deed;

(vi) terminate, on ten (10) days' written notice to the Company, this Lease Agreement and all rights of the Company under this Lease Agreement and, without being liable for any prosecution or damages therefor, exclude the Company from possession of the Facility and lease (or sublease, as the case may be) the Facility to another Person for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from such other Person under the new lease;

(vii) apply in any court of competent jurisdiction for specific performance by the Company of its covenants, obligations and agreement under this Lease Agreement or for injunctive relief to prevent any violation of the covenants, obligations or agreements on the part of the Company to be observed or performed under this Lease Agreement (the Company acknowledges and agrees that money damages alone would not be an adequate remedy at law for a default by the Company arising from a failure to comply with this Lease Agreement, and therefore the Company agrees that the remedy of specific performance or injunctive relief shall be available to the Trustee in any such case); or

(viii) if an Event of Default occurs under Section 7.1(l), (m) or (n) of this Lease Agreement, all of Company's obligations under the Issuer Documents shall automatically become immediately due and payable upon the filing of the petition commencing such proceeding, all without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or other notices or demands of any kind or character. Upon the occurrence of any other Event of Default under this Lease Agreement, all of the Company's obligations under the Issuer Documents may become due and payable immediately without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor or other notices or demands of any kind or character, all at the Servicer's option, exercisable in its sole discretion. If such acceleration occurs, the Servicer may instruct that the Trustee apply the undisbursed Bond proceeds and any other sums in the Project Fund to the Company's obligations under the Issuer Documents, in any order and proportions in the Servicer's sole discretion.

(b) Any amounts collected pursuant to action taken under this Section (other than amounts collected by the Issuer pursuant to their Reserved Rights) shall, after the payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Issuer, the Trustee or the Servicer and their respective Counsel, be paid into the Revenue Fund (unless otherwise provided in this Lease Agreement) and applied in accordance with the provisions of the Indenture. No action taken pursuant to this Section 7.2 shall relieve the Company from the Company's obligations pursuant to Section 3.2 hereof.

Section 7.3 No Remedy Exclusive. No remedy conferred herein or in any other Company Document upon or reserved to the Issuer, the Trustee or the Servicer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. 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 Issuer, the Trustee or the Servicer to exercise any remedy reserved to it herein or in any other Company Document, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 7.4 Agreement to Pay Fees and Expenses of Counsel. If an Event of Default shall occur under this Lease Agreement or under any of the other Company Documents, and the Issuer, the Trustee and/or the Servicer should employ counsel or incur other expenses for the collection of the indebtedness or the enforcement of performance or observance of any obligation or agreement on the part of the Company herein or therein contained, the Company agrees that it will on demand therefor pay to any such party, or, if so directed by any such party, to its counsel, the reasonable actually incurred fees of such Counsel and all other out-of-pocket expenses incurred by or on behalf of the Issuer, the Trustee and the Servicer.

Section 7.5 No Additional Waiver Implied by One Waiver; Consents to Waivers. In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be effective unless in writing and signed by the party making the waiver.

Section 7.6 Remedies Subject to Applicable Law. All rights, remedies, and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling with respect to the Land and to be limited to the extent necessary so that they will not render this Lease Agreement invalid, unenforceable, or not entitled to be recorded, registered, or filed under the provisions of any applicable law.

Section 7.7 Cure by Investor Member. The Issuer, the Trustee and the Servicer hereby agree that cure of any Event of Default made or tendered by the Investor Member shall be deemed to be a cure by the Company and shall be accepted or rejected on the same basis as if made or tendered by the Company.

Section 7.8 Enforcement of Reserved Rights. The Issuer, without the consent of the Trustee, but only after written notice to the Trustee, the Servicer and the Company, may, upon the occurrence of an Event of Default with respect to any Reserved Rights, reconvey to the Company its interest under the Deed, bring an action for money damages, bring an action for specific performance to enforce the performance and observance of any Reserved Rights of the Issuer, provided that the Issuer may not, without the prior written consent of the Trustee and the Servicer, cause the Trustee to declare the principal of all Bonds then Outstanding and the interest accrued on the Bonds to be immediately due and payable, or cause the Trustee to accelerate,

foreclose or take any other action or seek other remedies under the Bond Documents, the Project Documents or any other documents contemplated by this Lease Agreement or by such other documents to obtain such performance or observance.

ARTICLE VIII MISCELLANEOUS

Section 8.1 General Provisions. The following provisions shall be applicable at all times throughout the term of this Lease Agreement:

(a) The Issuer, the Trustee and the Servicer shall, at all times, be free to establish independently to their respective satisfaction and in their respective absolute discretion the existence or nonexistence of any fact or facts the existence of which is a condition of this Lease Agreement or any other Company Document.

(b) The Bonds and the obligations and undertakings of the Issuer hereunder do not constitute a general obligation of the Issuer or the State or any political subdivision thereof including, without limitation, the Town of Hempstead, and recourse on the Bonds and on the instruments and documents executed and delivered by or on behalf of the Issuer in connection with the transactions contemplated hereby may be had only against certain moneys due and to become due under the Company Documents (and not against any moneys due or to become due to the Issuer pursuant to the Reserved Rights). No recourse shall be had for the payment of the principal of or interest on the Bonds, or for any claim based thereon or on this Lease Agreement or any other Company Document, any Issuer Document or any instrument or document executed and delivered by or on behalf of the Issuer in connection with the transactions contemplated hereby, against the Issuer or any member, officer, employee or other elected or appointed official, past, present or future, of the Issuer or any successor body, as such, either directly or through the Issuer or any such successor body, under any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or by any legal or equitable proceeding or otherwise and all such liability of the Issuer or any such incorporation, member, officer, director, employee, any other elected or appointed official or trustee as such is hereby expressly waived and released as a condition of and consideration for the adoption of the resolution authorizing the execution of the Issuer Documents and issuance of the Bonds and the delivery of other documents in connection herewith. No member, officer, employee or other elected or appointed official past, present or future, of the Issuer or any successor body shall be personally liable on the Issuer Documents, the Bonds or any other documents in connection herewith, nor shall the issuance of the Bonds be considered as misfeasance or malfeasance in office. The Bonds and the undertakings of the Issuer under the Issuer Documents do not constitute a pledge of the general credit or taxing power of the Issuer, the State, or any political subdivision thereof, do not evidence and shall never constitute a debt of the State or any political subdivision thereof (other than the Issuer), and shall never constitute nor give rise to a pecuniary liability of the State or any political subdivision thereof, other than the Issuer. The Issuer has no taxing power.

Section 8.2 Authorized Company Representative. Pursuant to written direction provided on the Closing Date, the Company has appointed one or more Authorized Representatives for the purpose of taking all actions and making all certificates required to be

taken and made by the Authorized Representative under the provisions of the Company Documents. Whenever under the provisions of any Company Document the approval of the Company is required or any party is required to take some action at the request of the Company, such approval or such request shall be made by the Authorized Representative of the Company, unless otherwise specified in this Lease Agreement, and the Issuer, the Trustee and the Servicer shall be authorized to act on any such approval or request and the Company shall have no complaint against any such party as a result of any such action taken in conformity with such approval or request by the Authorized Representative of the Company.

Section 8.3 Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Trustee and the Company and their respective successors and permitted assigns. The Company acknowledges and agrees that the Issuer has assigned or is assigning its rights (other than the Reserved Rights) under this Lease Agreement to the Trustee, and that, pursuant to the Indenture, Trustee will follow directions from the Servicer in implementing certain of the rights and remedies under this Lease Agreement. The Trustee for the benefit of the Owners of the Bonds and the Servicer shall be express third party beneficiaries of this Lease Agreement, and shall have the right to enforce directly against Company or other persons the rights and implement the rights and remedies provided to each of them hereunder, but not including the Reserved Rights; provided, however, that the rights of the Owners to bring actions and implement rights and remedies hereunder shall be subject to the same restrictions as are imposed with respect to actions, rights and remedies of the Owners under the Indenture.

Section 8.4 Execution in Counterparts. This 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; provided, however, that for purposes of perfecting a lien or security interest in this Lease Agreement by the Trustee, whether under Article 9 of the Uniform Commercial Code of the State or otherwise, only the counterpart delivered to, and received by, the Trustee shall be deemed the original.

Section 8.5 Amendments, Changes and Modifications. Subsequent to the issuance of the Bonds and prior to payment or provision for the payment of the Bonds in full (including interest thereon) in accordance with the provisions of the Indenture and except as otherwise provided herein, the Company Documents may not be amended, changed, modified, altered or terminated by the Issuer, the Trustee or the Company except in compliance with Article VIII of the Indenture.

Section 8.6 Severability. In the event any provision of this 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 and such invalid or unenforceable provision shall be deemed no longer to be contained in this Lease Agreement.

Section 8.7 Notices. All notices, demands, requests, consents, approvals, certificates or other communications hereunder shall be sufficiently given and shall be deemed given (a) three days after mailing by certified mail, first-class postage prepaid, (b) the Business Day after sending by expedited overnight delivery service, (c) the date of receipt if delivered by personal delivery, (d) if sent by facsimile transmission, the date of transmission, if receipt of such transmission is telephonically confirmed on such day, addressed as follows:

To the Issuer: Town of Hempstead Industrial Development Agency
350 Front Street, 2nd Floor
Hempstead, New York 11550-4037
Attention: Executive Director and Chief Executive Officer
Fax: 516-489-3179

With a copy to : Ryan, Brennan & Donnelly LLP
131 Tulip Avenue
Floral Park, New York 11001
Attention: John E. Ryan, Esq.

To the Company: TERRACE 100, L.P.
2001 Marcus Avenue, Suite 245E
Lake Success, New York 11042
Attention: Peter G. Florey
Fax: 516-437-0800

With a copy to: Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany, New York 12207
Attention: Steve Heyman, Esq.
Fax: 518-465-6678

To the Investor
Member: Orion Summit 002, LLC
c/o First Sterling Financial, Inc.
1155 Great Northern Boulevard
Manhasset, New York 10030
Attention: Victor Sostar, Sr. Vice President
Fax: 516-627-8760

To the initial
Majority Owner: Bank of America, N.A.
450 B Street, Suite 450
Mail Code #CAO-103-04-04
San Diego, CA 92101-8002
Attention: Loan Administration Manager
Fax: (619) 515-5973

with a copy to:

Bank of America, N.A.
1185 Avenue of the Americas
New York, New York 10036
Attention: Blondell A. Pinnock
Fax: (212) 819-6289

and a copy to:

Banc of America Securities LLC, N.A.
1633 Broadway, 29th Floor
New York, New York 10019
Attention: Todd A. Gomez
Fax: (212) 497-3835

To the Trustee: The Bank of New York
101 Barclay Street, Floor 21W
New York, New York 10286
Attention: New York Municipal Finance Unit
Fax: (212) 815-3455

A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Company to the other shall also be given to the Trustee and the Servicer. The Issuer, the Company, the Servicer and the Trustee may, by ten days' prior written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. No notice need be given to any party if such party is no longer a party to the transactions contemplated by this Lease Agreement.

Section 8.8 Applicable Law. This Lease Agreement shall be governed exclusively by and construed in accordance with the laws of the State.

Section 8.9 Landlord-Tenant Relationship. It is expressly understood and agreed that the relationship between the Issuer and the Company established by the transaction contemplated by this Lease Agreement and by all of the other Company Documents is exclusively that of sublessor, on the part of the Issuer, and sublessee, on the part of the Company notwithstanding any termination of the Issuer's interest in the Facility as provided in the Deed and is in no way to be construed as a partnership or joint venture of any kind. It is further understood that all payments by the Company under the Bond Documents shall be exclusively on account of such sublessor/sublessee relationship.

Section 8.10 Usury; Total Interest. This Lease Agreement is subject to the express condition, and it is agreed, that at no time shall payments hereunder or under the other Company Documents that are or are construed to be payments of interest on the unpaid principal amount of the Bonds reflect interest that is borne at a rate in excess of the maximum permitted by law. The Company shall not be obligated or required to pay, nor shall the Issuer be permitted to charge or collect, interest borne at a rate in excess of such maximum rate. If by the terms of this Lease Agreement or the other Company Documents the Company is required to make such payments reflecting interest borne at a rate in excess of such maximum rate, such payments shall be deemed to be reduced immediately and automatically to reflect such maximum rate. It is further agreed that the total of amounts paid hereunder which are to pay interest on the Bonds, cumulative from the Closing Date, shall not exceed the sum of 5% per month, simple and non-compounded for each month from such date to the date of calculation (calculated on the basis of a 360 day-year of twelve thirty-day months. Any such excess payment previously made in either case shall be immediately and automatically applied to the unpaid balance of the principal

amount of the Bonds and not to the payment of interest thereon. This Lease Agreement is also subject to the condition that amounts paid hereunder representing late payment or penalty charges or the like shall only be payable to the extent permitted by law.

Section 8.11 [RESERVED].

Section 8.12 Non-Recourse. Anything contained in any provision of this Lease Agreement, the Mortgages, the Tax Regulatory Agreement or the Company's Tax Certificate notwithstanding, in the event of any proceeding to foreclose the Mortgages or otherwise to enforce the provisions of this Lease Agreement, the Mortgages or the Tax Regulatory Agreement after Stabilization, neither the Issuer, nor the Trustee nor any Owner of Bonds, nor any beneficiary of the Mortgages shall be entitled to take any action to procure any personal money judgment or any deficiency decree against the Company, it being understood and agreed that recourse hereon and under the Mortgages and the Tax Regulatory Agreement shall, following Stabilization, be limited to the assets of the Company that are the security from time to time provided with respect to the Bonds and this Lease Agreement; provided, however, nothing herein contained shall limit or be construed to limit or impair the enforcement against the Project or any other additional security as may from time to time be given to the beneficiary hereof as security for the performance of this Lease Agreement, the Mortgages, the Tax Regulatory Agreement, the Company's Tax Certificate, the Bonds, or any other instrument now or hereafter securing the Bonds or this Lease Agreement, or the rights and remedies of the Trustee or the beneficiary, its successors and assigns, under this Lease Agreement, the Mortgages, the Tax Regulatory Agreement, the Company's Tax Certificate or the Bonds or any other instruments. Notwithstanding the foregoing, the provisions of this Section shall be null and void and have no force and effect to the extent of any loss suffered by the Issuer, the Trustee, any Bondholder or any beneficiary of the Mortgages as a result of the Company's: (a) committing any act of fraud; (b) misapplication of any condemnation award or casualty insurance proceeds; (c) failure to apply the revenues of the Project in the manner and for the purposes provided in the Bond Documents, whether before or after an Event of Default; (d) violation of any environmental laws; (e) action by the Company challenging the validity of or obligations of the Company under the Guaranty Agreement or any Company Document; or (f) the Company's failure to observe or perform the Reserved Rights after notice and opportunity to cure. Nothing herein shall be deemed to prohibit the naming of the Company in an action to realize upon the remedies provided herein either at law or in equity, subject to the foregoing limitation against a personal money judgment or deficiency decree against the Company, or to prohibit the naming of any person in any action to realize upon the remedies provided in the Managing Member Documents, the Guarantor Documents or any other guaranty given in favor of the Issuer, the Trustee or the Servicer.

Section 8.13 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Lease Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Lease Agreement.

The provision of this Lease Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Lease Agreement.

ARTICLE IX SPECIAL COVENANTS

Section 9.1 Sufficient Indemnity Prior to Action Against Issuer. No order or decree of specific performance with respect to any of the obligations of the Issuer hereunder or under the Assignment or any other Issuer Document shall be sought or enforced against the Issuer unless (i) the party seeking such order or decree shall first have requested the Issuer in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Issuer shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (ii) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Issuer an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if the Issuer refuses to comply with such request and the Issuer's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (A) agree to indemnify and hold harmless the Issuer and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (B) if requested by the Issuer, furnish to the Issuer satisfactory security to protect the Issuer and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Section 9.2 Impositions, Taxes, Assessments and Charges.

(a) Impositions. The Company shall pay all Impositions, foreseen or unforeseen, ordinary and extraordinary, under any present or future law whether billed in the name of the Company or in the name of the Issuer. The Company shall be liable for Impositions, whether or not such Impositions encumber the Issuer's leasehold interest. The obligation of the Company to pay Impositions calculated to and including the date of termination of the Issuer's leasehold interest in the Facility even though such Impositions may not yet be due by such date, shall survive termination of this Lease Agreement or such interest. The Company shall provide the Issuer with proof of payment of Impositions within sixty (60) days after each payment.

In the event the Facility is exempt from Impositions solely due to the Issuer's leasehold interest of the Facility, the Company shall pay all Impositions to the appropriate authorities equivalent to the Impositions which would have been imposed on the Facility if the Issuer had no such interest.

The Issuer shall promptly forward to the Company in writing any notice, bill or other statement received by the Issuer concerning any Imposition. The Company may, at its expense and in its own name, in good faith and with due diligence, contest any Imposition and shall give notice of such contest to the Issuer. In the event of such contest, the Company may permit the Imposition so contested to remain unpaid during the period of such contest unless (i) the failure to pay will subject the Facility to loss, forfeiture or sale prior to completion of the

contest, or (ii) the Issuer would be in any danger of any civil or criminal liability, other than normal accrual of interest, whereupon such Imposition shall be paid forthwith by the Company without prejudice to its contest.

(b) Taxes and Governmental Charges. The Company shall pay, as the same may become due, all taxes and governmental charges of any kind which may lawfully be assessed or levied against or with respect to the Facility or the revenues therefrom.

Section 9.3 Waiver of Real Property Law Section 227. The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any law of like import now or hereafter in effect.

Section 9.4 Identification of Equipment. All Equipment that is or may become the Property of the Issuer pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Trustee. All Equipment and other Property of whatever nature affixed or attached to the Land or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Issuer, rather than the Company, unless the same were utilized for purposes of construction of the Facility or were installed by the Company and title thereto was retained by the Company and such Equipment and other Property were properly identified by such appropriate records as were approved by the Trustee.

Section 9.5 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 pursuant to Section 167 or Section 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any part of the Facility which constitutes "Section 38 Property."

Section 9.6 Performance by Issuer of the Company's Obligations. Should the Company fail to make any payment or to do any act as herein provided, the Issuer may, but need not, upon ten (10) days prior written notice to the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Issuer, and paying all expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so expended by the Issuer under the authority hereof, together with interest thereon at a rate of the Alternate Rate or the highest rate permitted by law, whichever is lower. The Issuer's rights, including the right to repayment, under this Section shall constitute Reserved Rights and shall not affect the rights of third parties against the Company with respect to any payments or actions failed to be made or done by the Company.

Section 9.7 Issuer Termination Right.

(a) Notwithstanding anything to the contrary in this Lease Agreement or the Indenture and in addition to any other rights or remedies available to Issuer, the Issuer may, upon the occurrence of any of the following events and without the consent of the Servicer or the Trustee, terminate the Lease Agreement and upon such termination, the Issuer shall reconvey to

the Company the Issuer's interest in the Facility upon the occurrence of any of the following events:

(i) Failure by the Company to keep continuously in effect the insurance required by Section 5.4 hereof; or

(ii) Failure by the Company to pay, observe and perform any other covenant, condition or agreement under this Lease Agreement, the Environmental Compliance and Indemnification Agreement, in the PILOT Agreement (other than an event described in (iii) below) or under any other agreement between the Company and the Issuer on its part to be performed, which covenant, condition or agreement constitutes a Reserved Right, and continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default, provided that if such failure is not reasonably susceptible to cure within thirty (30) days and the Company commences and diligently pursues such cure within said thirty (30) day period, then the thirty (30) day period shall be extended for up to an additional ninety (90) days (one hundred twenty (120) days total) so long as the Company diligently pursues such cure; or

(iii) Failure by the Company to timely pay each PILOT Payment in accordance with the PILOT Agreement (including any applicable cure period); or

(iv) During any period in which the Issuer has a leasehold interest in the Facility, the assignment or transfer of this Lease Agreement or any interest in the Facility to any Person without the prior written consent of the Issuer.

The Issuer shall give a copy of any notice of default to the Trustee and the Servicer simultaneously with the giving of such notice to the Company and shall accept a timely cure of such default by the Trustee and the Servicer.

(b) Notwithstanding subparagraph (a) to the contrary, the Company may, without the consent of the Issuer, lease or sublease the residential rental units comprising the Facility in the ordinary course of the Company's business, provided that each such lease, sublease or rental agreement shall be subject to this Lease Agreement, comply with the Tax Regulatory Agreement, the Facility shall continue to constitute a qualified "project" in accordance with the Act, and any such lease, sublease or rental agreement shall be on such terms and with such persons as shall be permitted by the Bond Documents and any other Company Documents. The Company shall promptly, upon written request of the Issuer, furnish copies of any such leases, subleases or rental agreements entered into pursuant to this subparagraph (b).

(c) The Company acknowledges that continuance of the interest of the Issuer under the Lease Agreement after the Closing Date is solely for the purpose of providing the exemption of the Facility from real property and sales and use taxation. The termination of the Issuer's interest in the Facility or the reconveyance by the Issuer of its interest in the Facility shall not constitute a merger of the fee estate and leasehold estate of the Company in the Facility, nor relieve the Company from performance and observance of the terms, conditions and

covenants of the Company under this Lease Agreement and the other Company Documents and with respect to the Bonds and the Indenture.

Section 9.8 Merger or Consolidation of Issuer.

(a) Nothing contained in this Lease Agreement shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or transfer of title to the entire Facility to any other public instrumentality or political subdivision which has the legal authority to own and sell the Facility, provided that:

(i) upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease Agreement to be kept and performed by the Issuer shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred; and

(ii) the tax exempt status of the interest on the Bonds shall not be adversely affected thereby.

(b) Prior to the consummation of any such consolidation, merger or transfer of title, the Issuer shall give notice thereof in reasonable detail to the Company, the Servicer and the Trustee.

Section 9.9 Sales Tax Exemption and Reporting.

(a) Pursuant to Section 874 of the Act, the parties understand that the Issuer is exempt from certain Sales Taxes, and that the Project may be exempted from those taxes due to the involvement of the Issuer in the Project. The Issuer makes no representations or warranties that any property is exempt from the payment of Sales Taxes. Any exemption from the payment of Sales Taxes resulting from the involvement of the Issuer with the Project shall be limited to purchases of services and tangible personal property conveyed to the Issuer or utilized by the Issuer or by the Company as agent of the Issuer as a part of the Project prior to the Completion Date, or incorporated within the Facility prior to the Completion Date. This agency appointment expressly excludes the Company from purchasing motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets. No operating expenses of the Facility, and no other purchases or services or property shall be subject to an exemption from the payment of Sales Taxes.

(b) The Company shall annually file, and shall cause any operator of the Project to annually file, a statement with the New York State Department of Taxation and Finance, on a form and in a manner as is prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators, under the authority granted pursuant to this Lease Agreement (the “**Sales Tax Exemption Report**”). Should the Company fail to comply with the foregoing requirement, the Company shall immediately cease to be the agent for the Issuer in connection with the Project (such Issuer relationship being deemed to be immediately revoked) and shall cease to be an operator of the Project without any further action

of the parties, and the Issuer shall be authorized to immediately terminate its leasehold interest in the Project to the Company pursuant to Section 9.7 of this Lease Agreement.

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

(d) Pursuant to Section 874(9) of the Act, the Company agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the “**Thirty Day Sales Tax Report**”), a statement identifying the Company as agent of the Issuer, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. The Company shall submit a copy of such Thirty Day Sales Day Report to the Issuer at the time of filing with the Department of Taxation and Finance.

Section 9.10 Employment and other Information. The Company shall furnish promptly to the Issuer such information, in such form and supported by such certifications, as the Issuer shall request, relating to the Company, any sublessee (including, but not limited to, a schedule listing any existing sublease and sublessee, along with such information regarding such subleases and sublessees as the Issuer may request), the Project, the finances of the Company, and employment by the Company, and any sublessee (past, present and future). The Company further agrees whenever requested by the Issuer to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Issuer to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005, as amended from time to time, or any of the Issuer Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Issuer.

Section 9.11 Employment Opportunities; Notice of Jobs.

(a) The Company shall ensure that all employees and applicants for employment by the Company or its affiliates with regard to the Facility are afforded equal employment opportunities without discrimination. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the federal Job Training Partnership Act (P.L. No. 97 300) in which the Facility is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Company agrees, where practicable, to first consider, and cause each of its affiliates at the Facility to first consider, persons eligible to participate in the federal Job Training Partnership (P.L. No. 97 300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such

act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(b) Nothing in this Section shall be construed to require the Company to violate any existing collective bargaining agreement with respect to hiring new employees.

Section 9.12 Right to Inspect Facility. The Issuer and the Trustee and the duly authorized agents of either of them shall have the right upon reasonable notice and at all reasonable times to inspect the Facility.

Section 9.13 Lien Law Section 73 Covenant. The Company, for itself and as the agent of the Issuer, hereby covenants to the Issuer and to the Trustee, as a third-party beneficiary hereof, that the Company will receive advances of moneys under the Bond Documents and will hold the right to receive such advances as trust funds to be first applied to the payment of trust claims as defined in Section 71 of the Lien Law of the State, and that the Company will apply the same to such payments only, before using any part of such advances for any other purpose.

Section 9.14 Reliance by Trustee. The Trustee shall be entitled to rely on any instructions given by the Company pursuant to the terms hereof and the Company shall indemnify the Trustee for the consequences of all actions taken pursuant to any such instructions.

Section 9.15 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Facility and the interest therein to be conveyed by this Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the financial obligations of the Company. The Facility secures the financial obligation of the Company to the Bank under the Mortgage, and the Facility and the leasehold interests therein secure the Company's obligations to the Issuer under the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and this Lease Agreement, including the Company's obligation to acquire, renovate, construct, equip and maintain the Facility on behalf of the Issuer and the Company's obligation to indemnify and hold harmless the Issuer.

ARTICLE X

EARLY TERMINATION OF LEASE AGREEMENT; OPTION IN FAVOR OF COMPANY

Section 10.1 Early Termination of Lease Agreement. The Company shall have the option to terminate this Lease Agreement at any time that the Bonds are subject to redemption in whole under the Indenture and upon filing with the Issuer and the Trustee 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 payment shall be made (which date shall not be less than forty-five (45) nor more than ninety (90) days from the date such certificate is filed), and upon compliance with the requirements set forth in Section 10.2 hereof.

Section 10.2 Conditions to Early Termination of Lease Agreement. In the event the Company exercises its option to terminate this Lease Agreement in accordance with the provisions of Section 10.1 hereof, the Company shall make the following payments:

(a) To the Trustee for the account of the Issuer: an amount certified by the Trustee that when added to the total amount on deposit with the Trustee for the account of the Issuer and the Company and available for such purpose will be sufficient to pay the principal of, premium, if any, and interest on the Bonds, as well as any other moneys owed to the Trustee or to become payable to the Trustee pursuant to the Bond Documents.

(b) To the Issuer: an amount certified by the Issuer sufficient to pay all unpaid fees and expenses of the Issuer incurred under the Bond Documents, including reasonable fees and disbursements.

(c) To the Servicer: an amount certified by the Servicer sufficient to pay all obligations due and owing under the Bond Documents or any documents to which it and the Company are a party.

(d) To the Majority Owner: an amount certified by the Majority Owner sufficient to pay all the obligations due and owing.

(e) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under the Bond Documents.

Section 10.3 Obligation to Accept Facility.

(a) Upon termination or expiration of the Sublease Term, in accordance with Sections 2.7 and 10.1 hereof, the Issuer shall surrender the Facility to the Company and the Company shall accept the surrender of the Facility from the Issuer for consideration of One Dollar (\$1.00). The Company shall accept the surrender of the Facility by giving written notice when appropriate to the Issuer, the Majority Owner, the Servicer and the Trustee (which may be contained in the certificate referred to in Section 10.1 hereof)

(i) declaring the Company's election to prepay all rent under Section 3.2 hereof and to redeem all Outstanding Bonds, and

(ii) fixing the date of closing for such prepayment of rent and redemption of the Bonds, which shall be the date on which this Lease Agreement is to be terminated.

Section 10.4 Surrender of Facility. At the closing of any surrender of the Facility pursuant to Section 10.3 hereof, the Issuer shall, upon receipt of \$1.00, deliver and request the Trustee to deliver to the Company all necessary documents

(i) to terminate this Lease Agreement and surrender the Facility to the Company subject only to the following: (A) any Liens to which title to such Facility was subject when leased to the Issuer, (B) any Liens created at the request of the Company, or 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 Lease Agreement or arising out of an Event of Default hereunder,

(ii) to release and convey to the Company all of the Issuer'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 Reserved Rights),

(iii) to discharge and release any other security interest held by the Trustee or the Owners of the Bonds, and

The termination of this Lease Agreement shall be effected by the execution, delivery and recording by the Company of the Notice of Termination of Lease Agreement (a form of which is attached hereto as Exhibit G executed by the Company and the Issuer).

Section 10.5 Amounts Remaining on Deposit with the Trustee upon Payment of Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds, and the payment of all amounts owed to the Issuer, and the payment of all fees, charges, expenses and other amounts required to be paid under the Bond Documents, all amounts thereafter remaining on deposit with the Trustee for the account of the Issuer and the Company under the Bond Documents (except for amounts attributable to Reserved Rights or amounts on deposit in the Rebate Fund) shall belong to and be paid to the Company upon its written request to the Trustee as an overpayment of rent, and neither the Trustee nor the Owners of the Bonds shall have any rights hereunder, except those that shall have theretofore vested.

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

TOWN OF HEMPSTEAD INDUSTRIAL
DEVELOPMENT AGENCY

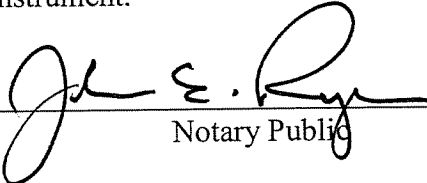
By: 

Name: Frederick E. Parola

Title: Executive Director and
Chief Executive Officer

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

On the 28th day of December in the year 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Frederick E. Parola, 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 Lease Agreement, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Lease Agreement, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.


Notary Public

JOHN E. RYAN
Notary Public, State of New York
No. 4833430
Qualified in Nassau County
Commission Expires Sept. 30 2009

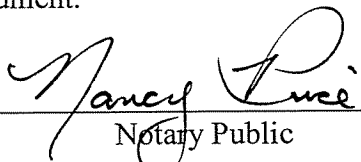
TERRACE 100, L.P.

By: D & F DEVELOPMENT XII, LLC,
its General Partner

By: 
Peter G. Florey, Manager

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

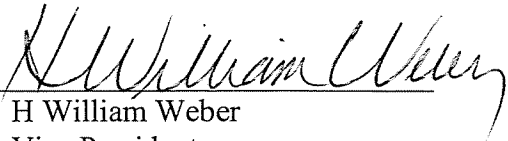
On the 28th day of December in the year 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Peter G. Florey, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Lease Agreement, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Lease Agreement, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public
NANCY PRICE
Notary Public, State of New York
No. 01PR151353
Qualified in Nassau County
Commission Expires August 14, 2010

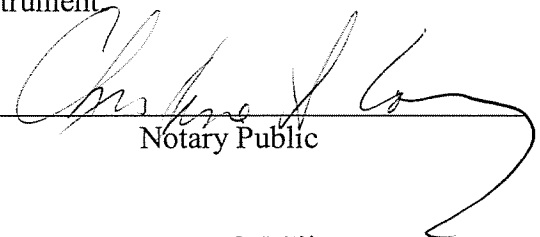
The Trustee hereby consents to and agrees to be bound by all of the provisions of this Lease Agreement insofar as such provisions directly or indirectly apply to, require or prohibit action by the Trustee.

THE BANK OF NEW YORK, as Trustee

By: 
Name: H William Weber
Title: Vice President

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

On the 27th day of December in the year 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared H. William Weber, 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 Lease Agreement, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Lease Agreement, the individual, or the person or entity on behalf of which the individual acted, executed the instrument


Notary Public

CHRISTINE S. CONWAY
Notary Public, State of New York
No. 01CO-4774419
Qualified in Queens County
Commision Expires 3/30/10__

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

All that certain plot, piece or parcel of land, situate, lying and being in the Village of Hempstead, County of Nassau and State of New York being bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Jackson Street and the easterly side of Terrace Avenue;

RUNNING THENCE North 9 degrees 55 minutes 19 seconds West, along the easterly side of Terrace Avenue, 840.28 feet to the southerly side of Bedell Street;

THENCE North 80 degrees 02 minutes 19 seconds East, along the southerly side of Bedell Street, 207.17;

THENCE South 9 degrees 57 minutes 41 seconds East 840.50 feet to the northerly side of Jackson Street;

THENCE South 80 degrees 06 minutes 00 seconds West, along the northerly side of Jackson Street 207.74 feet to the corner aforesaid, the point or place of BEGINNING.

EXHIBIT B**DESCRIPTION OF THE EQUIPMENT**

All articles of personal property and all appurtenances acquired by the Town of Hempstead Industrial Development Agency (the “**Issuer**”) pursuant to the Bill of Sale dated as of December 1, 2006 (the “**Bill of Sale**”), by and between the Issuer and TERRACE 100, L.P. (the “**Company**”) and now or hereafter attached to, contained in or used in connection with the Land (as defined in the Lease Agreement, dated as of December 1, 2006, by and between the Issuer and the Company (the “**Lease Agreement**”) and/or the Facility (as defined in the Lease Agreement) or placed on any part thereof, though not attached thereto, including, but not limited to, pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus aid materials, motors, machinery; and together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefore, and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

EXHIBIT C
PROJECT APPROVALS TO BE OBTAINED

EXHIBIT D

SCHEDULE OF INSURANCE REQUIREMENTS

A. INSURANCE COMPANIES:

All insurance policies must be issued by an insurance carrier which has a Best's general policyholder's rating (as published in the most recent issue of Best's Key Rating Guide, Property Casualty) of not less than A and a financial size category of V or greater (which equates to an adjusted policyholders' surplus of ten million dollars (\$10,000,000) to twenty-five million dollars (\$25,000,000)). Coverage from Lloyd's of London and Industrial Risk Insurance (IRI) is also acceptable. Companies with lesser ratings are acceptable only if there is 100% reinsurance with an acceptably rated company. The reinsurance agreement must have a total value (100 percent) assumption of liability endorsement. In addition, reinsurance agreements must have at least 90 days prior notice of cancellation provisions.

B. PROPERTY INSURANCE COVERAGE:

Builder's Risk Insurance. Builder's risk insurance is required during any period of construction or substantial reconstruction, renovation and during the period of reconstruction after a casualty. This coverage must be in completed value form.

Property Insurance. The Project must be covered by a "causes of loss-special form" policy (formerly known as an "all risk policy"). The policy must include an agreed value clause which must be updated annually. The policy must include replacement cost coverage, i.e. an endorsement or clause that provides for all claims to be made on a replacement cost basis (not on an actual cash value basis) and without any deduction being made for depreciation. The policy must be an amount equal to the greater of:

- (i) of the full replacement cost of the Improvements (without any deduction being made for depreciation); or
- (ii) the amount specified in the agreed value clause (i.e. the amount specified by the insurer to suspend any co-insurance clause).

The policy must include a deductible of not more than \$5,000 per occurrence. Further, the policy must include inflation guard coverage or equivalent coverage that ensures that the policy limit will be increased over time to reflect the effect of inflation.

Ordinance or Law Coverage. This coverage is required for properties that represent "non-conforming" uses under current building, zoning, or land use laws or ordinances and should contain the following three coverages:

- (i) Demolition coverage must be sufficient to cover the cost to demolish and clear the site under undamaged parts of the Project caused by enforcement of any building, zoning or land use law or ordinance in an amount of coverage no less than the fuller demolition expense of the single largest structure at the Project;

(ii) Loss to the undamaged portion of the building coverage should cover the cost of replacing any undamaged portion of the Project that is required to be demolished and should automatically be provided when demolition coverage is provided; and

(iii) Increased cost of construction coverage is required for protection for structures that would fail to comply with building code if they were rebuilt to the same specifications in an amount of coverage sufficient to cover the increased cost over and above replacement cost to bring the single largest structure of the Project up to code.

General Boiler and Machinery Policy. A general boiler and machinery policy is required if the Project has in operation any steam boilers, pipes, turbines, engines and/or other pressure vessels. The policy should be in an amount equal to 100 percent of the full replacement cost of the building(s) housing the equipment. A rider to include electrical machinery and equipment, air conditioning, refrigeration and mechanical objects is recommended. The policy must provide for claims to be made on an accident basis.

Flood Insurance. Flood insurance is required for Improvements located in a Special Flood Hazard Area (“SFHA”) that has federally mandated flood insurance purchase requirements i.e., any area designated by the Federal Emergency Management Agency (“FEMA”) as Zone A, AK, AH, AO, AI 30, A99, V, VE, or V1 30). To determine if a property is located within a SFHA, the surveyor must use the most recent Flood Insurance Rate map issued by FEMA, or if one is not available, the most recent Flood Hazard Boundary Map (also issued by FEMA). Flood insurance is not normally required if the Improvements are not located within a SFHA, even though an unimproved portion of the Land may fall within such an area. Servicer may require flood insurance for Improvements located outside of a Special Flood Hazard Area but within an area designated by FEMA as a Zone B (area of moderate risk), Zone C (area of minimal risk), or Zone X (Flood Hazard Areas formerly designated as Zones B and C are designated on newer Flood Insurance Rate Maps as Zone X) if Servicer determines that conditions warrant it; for example, if the Project are in an area that is subject to flooding due to storm water or within close proximity to a Special Flood Hazard Area boundary. Servicer may require coverage for a Project located in a Zone B or Zone C Flood Hazard Area on a case by case basis if Servicer determines that conditions warrant such coverage. The required amount of insurance per building is the maximum amount of insurance available under the National Flood Insurance Program, with a deductible not to exceed \$3,000.

Business Income Coverage. Business income (rent loss) insurance is required. Coverage for twelve month’s business income is required. The amount of insurance must be adjusted annually. A three month extended period of coverage is recommended to cover the period between the time rental units are ready for occupancy and the time rent up is achieved.

Windstorm Insurance, Sinkhole Insurance, Mine Subsidence Insurance and/or Earthquake Insurance. Such insurance is required for properties in areas prone to these geological phenomena. Servicer will determine the need for this insurance.

All of the above property insurance policies, except for Boiler and Machinery, must provide for claims to be made on an occurrence basis. Boiler and Machinery may be made on an accident basis. Each policy must have a cancellation provision that provides that the carrier will notify

the mortgagee in writing (i) at least 30 days in advance of any policy reduction or cancellation for a reason other than non payment of premium and (ii) at least 10 days in advance of any policy cancellation for non payment of premium. Each policy must also include a mortgage clause acceptable to Servicer. The mortgage clause must name the Trustee and its successors and assigns, as their interests may appear, as mortgagee.

C. LIABILITY INSURANCE COVERAGE:

(i) Owners & Contractors Protective Liability Insurance for the benefit of the Company and the Issuer in a minimum amount of \$5,000,000 per occurrence and aggregate coverage for personal injury and property damage during any period of construction, reconstruction, improvement or renovation of any part of the Project;

(ii) public liability insurance in accordance with customary insurance practices for similar operations with respect to the Project and the business thereby conducted in a minimum amount of \$5,000,000 per occurrence and aggregate coverage, which insurance (A) will also provide coverage of the Company's obligations of indemnity under Section 5.19 of the Lease Agreement, (B) may be effected under overall blanket or excess coverage policies of the Company or any affiliate or subtenant thereof, and (C) shall not contain any provision for deductible amount; and

(iii) such additional coverage of the foregoing insurance and such other insurance in such amounts and against such insurable hazards as the Issuer from time to time may reasonably require.

Notwithstanding the foregoing, if the Issuer determines that the "insurance hazard group classification" for the operations at the Project are Class I, II or III, the limits set forth in "ii" above shall be reduced to \$3,000,000.00 per occurrence and aggregate coverage; or if the Issuer determines that such classification is Class IV, such limits shall be reduced to \$4,000,000.00 per occurrence and aggregate coverage.

Commercial general liability insurance is required. The minimum limit of liability with respect to bodily injury or death or property damage is \$1 million per occurrence with a \$2 million minimum general aggregate limit. An umbrella policy with a minimum aggregate limit of \$5,000,000 must also be obtained. Servicer may require additional amounts of coverage if it is determined that special risks exist. Liability coverage must provide for claims to be made on an occurrence basis. The Trustee and its successors and assigns, as their interests may appear, should be named as additional insureds under all liability insurance policies.

D. WORKER'S COMPENSATION INSURANCE COVERAGE:

Evidence of Worker's Compensation (Statutory Limits) and Employer's Liability Insurance (limit \$500,000/\$500,000/\$500,000) is required if any employee at the Project is required to be covered by worker's compensation laws of the applicable state.

The Company agrees that it will carry or cause to be carried in effect workers' compensation insurance, disability benefits insurance and such other form of insurance which the Issuer or the Company is required by law to provide, covering loss resulting from injury,

sickness, disability or death of the employees of the Company and all contractors and subcontractors employed upon or with respect to the Project at the time of original construction or of any additions, remodeling, alterations, repair, restoration or reconstruction thereafter. The Company shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by law.

E. POLICY ENDORSEMENTS:

All endorsements of the policy or policies must show the effective date and must be appropriately executed so as to confirm their validity. The policy must also have agreed amount endorsements to suspend any applicable coinsurance clauses. In addition, a Joint Loss Endorsement must be included on the Property Damage and Boiler and Machinery Policies.

F. CANCELLATION NOTICES:

All policies must provide for (i) at least 30 days' written cancellation notice to the Issuer and the Trustee, in the event of any policy reduction any material change in coverage or cancellation for any reason other than non payment of premium and (ii) at least a 10 days' written cancellation notice to the Issuer and the Trustee for cancellation due to non-payment of premium.

G. ADDITIONAL INSURED; LOSS PAYABLE PROVISIONS:

All policies must name the Company as the Insured and the Issuer and the Trustee and its successors and assigns as Additional Insureds. The loss payable provisions must name the Trustee and its successors and assigns, as their interests may appear, as loss payees. No other parties may be named as loss payees.

H. MORTGAGE CLAUSE:

The Mortgage Clause (or Mortgagee Clause) in the policy must be the standard mortgage (or mortgagee) clause without contribution and must name the Trustee and its successors and assigns, as their interests may appear, as the Mortgagees.

I. POLICY TERM:

Each policy must be for a term of not less than one year. An existing policy with fewer than 12 months remaining on its term on the Closing Date may be acceptable to Servicer on a case by case basis. The Company must provide evidence that each policy has been paid in full.

J. BLANKET POLICIES:

The Company may comply with and satisfy the requirements of this insurance section through the use of a blanket or package policy (or policies) of insurance covering the Project and other properties and liabilities of affiliates of the Company, provided that the Project is listed and identifiable in the policy and there is a mortgage clause, naming the bond trustee and the letter of credit provider, that is specifically applicable to the Project.

K. EVIDENCE OF INSURANCE:

1. Servicer will accept Accord Certificates as evidence of insurance.
2. Certificates must name the parties' interests (as set forth in G above)
3. Certificates must require notice to the certificate holder of cancellation.
4. Certificates evidencing property insurance must include copies of the Lenders Loss Payable/Mortgagee clause.
5. Certificates must be issued to the Issuer and the Trustee and their respective successors and assigns.

L. ADDITIONAL REQUIREMENTS:

(i) Each of the policies or certificates evidencing the insurance required above to be obtained shall:

(A) provide that there shall be no recourse against the Issuer or the Trustee for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(B) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Issuer or the Trustee to the extent that such other insurance provides the Issuer with contingent and/or excess liability insurance with respect to its respective interest as such in the Project, and shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insured as a group) and liability for premiums (which shall be solely a liability of the Company) shall operate in the same manner as if there were a separate policy covering each insured;

(C) waive any right of subrogation of the insurers thereunder against any person insured under such policy, and waive any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under such policy; and

(D) contain such other terms and provisions as any owner or operator of facilities similar to the Project would, in the prudent management of its properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Project owned or operated by it.

(ii) The Company shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Lease Agreement would or might be suspended or impaired.

(iii) THE ISSUER OR THE TRUSTEE DO NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OF COVERAGE OR

LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTEREST OF THE COMPANY.

(iv) Within one hundred twenty (120) days after the end of each of its fiscal years, the Company shall file with the Issuer and the Trustee a certificate of a representative of the Company to the effect that the insurance it maintains with respect to the Project complies with the provisions of Section 5.4 of the Lease Agreement and this Exhibit E to the Lease Agreement and that certificates thereof have been filed with the Issuer and the policies evidenced thereby are in full force and effect.

EXHIBIT E

Compliance with Labor Law, Executive Law and Civil Rights Law

The purpose of the Town of Hempstead Industrial Development Agency (the “**Issuer**”) is to provide benefits that reduce costs and financial barriers to the creation and to the expansion of business and enhance the number of jobs in the Town of Hempstead.

The Issuer has consistently sought to ensure that skilled and fair paying construction jobs be encouraged in projects funded by the issuance of the Issuer’s tax exempt bonds in large projects.

Now therefor, the parties to the attached Lease Agreement (the “**Lease Agreement**”) further agree to be bound by the following, which are hereby made a part of the Lease Agreement.

I. The Company agrees that:

- (a) no laborer, workman or mechanic, in the employ of any of the Company or any contractor, subcontractor or other person doing or contracting to construct, renovate and rehabilitate the Facility shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law;
- (b) (i) the construction, renovation, rehabilitation, furnishing and equipping of the Facility shall be governed by the requirements of Section 220(d) of Article 8 of the Labor Law of the State of New York, and when requested by the Issuer, provide to the Issuer a plan for an apprenticeship program, or (ii) it will provide to the Issuer a project labor agreement or alternative proposal to pay fair wages to workers at the construction site.

In the event that any of these conditions cannot be met, the Company shall submit to the Issuer an explanation as to the reasons for its failure or inability to comply with such conditions. Furthermore, this policy may be waived, in the sole and final discretion of the Issuer, in the event that the Company demonstrates to the Issuer special circumstances or economic hardship to justify a waiver to be in furtherance of the purposes and goals of the Issuer.

II. To the extent required by law, the Company agrees that:

- (a) in the hiring of employees for the performance of work in acquiring, constructing, renovating, rehabilitating and equipping of the Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction, renovation, rehabilitation and equipping of the Facility, neither the Company nor any contractor, subcontractor nor any person acting on behalf of the Company shall by reason of race, creed, color, disability,

sex, national origin, marital status or Vietnam era veteran status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

(b) neither the Company nor any contractor, subcontractor, nor any person on its behalf shall, in connection with the acquisition, construction, renovation, rehabilitation and equipping of the Facility, discriminate against or intimidate any employee hired for the performance of work involved in acquiring, constructing, renovating, rehabilitating and equipping the Facility on account of race, creed, color, disability, sex, national origin, marital status or Vietnam era veteran status;

(c) the aforesaid provisions of this section covering every contract for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction, renovation, rehabilitation and equipping of the Facility shall be limited to operations performed within the territorial limits of the State of New York; and

(d) the Company shall comply with any other applicable requirements of Section 220-e of the Labor Law.

III. To the extent required by law, the Company will comply with the applicable provisions of Sections 291-299 of the Executive Law, and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights, and will permit access to its books, records and accounts by the State Division of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and the Civil Rights Law.

EXHIBIT F

FORM OF STABILIZATION CERTIFICATE

The Bank of New York

[_____]

Attention: Corporate Trust Department

Re: TERRACE 100, L.P. Project (the “**Project**”)

Ladies and Gentlemen:

The undersigned, being the lessee of the Project, hereby certifies to The Bank of New York, as trustee (the “**Trustee**”) and [_____], as Servicer, that:

The undersigned hereby represents and warrants that:

1. The Improvements were [_____] % occupied by tenants meeting the requirements of the Company Documents in each of the three (3) months most recently ended as of the date of this certificate.
2. Stabilization [has/has not] occurred.
3. Attached hereto is [_____] showing the calculation of Stabilization.

Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Lease Agreement dated as of December 1, 2006 by and among the Town of Hempstead Industrial Development Agency and the undersigned.

TERRACE 100, L.P.

By: D & F DEVELOPMENT XII, LLC,
its General Partner

By: _____
Peter G. Florey, Manager

EXHIBIT G**NOTICE OF TERMINATION OF LEASE AGREEMENT**

The undersigned, TERRACE 100, L.P., a limited partnership organized under the laws of the State of New York (the "**Company**"), with an office at 2001 Marcus Avenue, Suite 245E, Lake Success, New York 11042, as lessee, entered into a certain Lease Agreement for the lease of real property and personal property with the Town of Hempstead Industrial Development Agency, dated as of December 1, 2006 (the "**Lease Agreement**").

The Lease Agreement covers (a) the real property, including any buildings, structures or improvements now or hereafter affixed or attached thereto, as more particularly described in Exhibit A attached hereto and made a part hereof, and (b) certain personal property located thereon, as more particularly described in Exhibit B attached hereto and made a part hereof.

The Company and the Issuer hereby acknowledge that the term of the Lease Agreement terminated effective as of _____, 20__.

IN WITNESS WHEREOF, the Company has caused this Notice to be executed in its name, as of _____, 20__.

TERRACE 100, L.P.

By: D & F DEVELOPMENT XII, LLC,
its General Partner

By: _____
Peter G. Florey, Manager

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

On the ____ day of December in the year 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Peter G. Florey, 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 Lease Agreement, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Lease Agreement, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

Notary Public