Transcript Document No. 4

LEASE AGREEMENT

between

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

as Issuer

and

HEMPSTEAD VILLAGE HOUSING ASSOCIATES, L.P.,

as Company

Relating to

$5,590,000
Town of Hempstead Industrial Development Agency
Variable Rate Multifamily Housing Revenue Bonds, Series 2006
(Hempstead Village Housing Associates, L.P. Facility)

Dated as of November 1, 2006

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LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of November 1, 2006 **(the "Lease Agreement")**, is between the **TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation existing under the laws of the State of New York, having its principal office at 350 Front Street, Hempstead, New York 11550-4037 (the "Issuer"), and **HEMPSTEAD VILLAGE HOUSING ASSOCIATES, L.P.,** a duly organized and validly existing New York limited partnership, having an office at 570 Taxter Road, Sixth Floor, Elmsford, New York 10523 (the "Company");

RECITALS:

WHEREAS, as more fully set forth in the Trust Indenture, dated as of November 1, 2006 (the "Indenture"), between the Issuer and Wells Fargo Bank, National Association, as trustee (the "Trustee"), the Issuer has determined to issue its Variable Rate Multifamily Housing Revenue Bonds, Series 2006 (Hempstead Village Housing Associates, L.P. Facility) in the aggregate principal amount of $5,590,000 (the "Bonds") and to undertake the acquisition, rehabilitation, renovation and equipping of a certain industrial development facility (the "Facility") with the proceeds of the Bond pursuant to and in accordance with the terms and conditions of this Lease Agreement and the Bond Documents (as defined in the Indenture).

WHEREAS, the parties to this Lease Agreement acknowledge the matters set forth in the Recitals to the Indenture.

The parties to this Lease Agreement, in consideration of the premises and the mutual covenants and commitments of the parties set forth in this Lease Agreement, the receipt and sufficiency of which are acknowledged by the parties to this Lease Agreement, agree as follows:

ARTICLE I

INCORPORATION OF ADDITIONAL RECITALS, DEFINITIONS, RULES OF CONSTRUCTION AND FINDINGS

SECTION 1.1 **Incorporation of Recitals.** The Recitals to the Indenture are incorporated into and made a part of this Lease Agreement.

SECTION 1.2 **Definitions.** All capitalized terms used in this Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in Section 1.1 of the Indenture, which meanings are incorporated herein and made a part hereof by reference.

SECTION 1.3 **Rules of Construction.** The rules of construction set forth in Section 1.2 of the Indenture shall apply to this Lease Agreement in their entirety, except that in applying such rules, the term "Lease Agreement" shall be substituted for the term "Indenture".

SECTION 1.4 **Content of Certificates and Opinions.** The provisions of Section 1.3 of the Indenture shall apply to this Lease Agreement in their entirety.

SECTION 1.5 **Interpretation.** The parties to this Lease Agreement acknowledge that each party and its counsel have participated in the drafting, review and revision of this Lease Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Lease Agreement or any amendment, modification, supplement or restatement of any of the foregoing or of any exhibit to this Lease Agreement.

SECTION 1.6 **Effective Date.** The provisions of this Lease Agreement shall be effective on and as of the Closing Date.

SECTION 1.7 **Findings.** The Issuer, based upon the representations and warranties of the Company contained in this Lease Agreement and the information contained in the application and other materials heretofore submitted by or on behalf of the Company to the Issuer, hereby finds and determines that the financing of the acquisition, rehabilitation, renovation and equipping of the Facility by the Issuer, the leasing thereof from the Company and the subsequent leasing thereof back to the Company is reasonably necessary to induce the Company to proceed with the Facility.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.1 **Representations and Warranties of the Issuer.** The Issuer makes the following representations and covenants as the basis for the undertakings on its part herein contained:

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

(b) The Issuer will cause the Facility to be acquired, rehabilitated, renovated and equipped and will lease the Facility to the Company pursuant to this Lease Agreement, all for the Public Purposes of the State.

(c) To finance a portion of the Costs of the Facility, the Issuer will issue the Bonds in the aggregate principal amount of $5,590,000. The Bonds will be issued, mature, bear interest, be redeemable and have other terms and provisions as provided for in the Bonds and the Indenture.

(d) By resolution adopted on May 11, 2005, the Issuer determined that, based upon the review by the Issuer of the materials submitted and the representations made by the Company relating to the Facility, the Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQR Act. By Certificate of Approval duly executed on November 28, 2005, the Applicable Elected Representative, based upon a review of the materials submitted and the representations made by the Company relating to the Facility, concurred in the Issuer's determination under the SEQR Act.

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

(f) Each of the Issuer Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms.

(g) The Bonds have been duly executed and delivered by the Issuer, and upon authentication by the Trustee, will constitute legal, valid and binding special limited obligations of the Issuer, enforceable against the Issuer in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principals of equity.

(h) The Issuer has not created any debt, lien or charge upon the Facility or the Trust Estate and has not made any pledge or assignment of or created any encumbrance on the Facility or the Trust Estate except for Permitted Encumbrances.

SECTION 2.2 Representations and Warranties of the Company.

(a) Specific Representations and Warranties. The Company represents and warrants that:

(1) the Company is a limited partnership duly organized and validly existing under the laws of the State and is duly qualified to conduct its business in the State and in every other state in which the nature of its business requires such qualification;

(2) the Company has the full legal right, power and authority to (a) own its Properties, (b) carry on its business as now being conducted and as the Company contemplates it to be conducted with respect to the Facility and (c) execute and deliver, carry

out its obligations under, and close the transactions provided for in, the Company Documents;

(3) each of the Company Documents has been duly authorized, executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity;

(4) no authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the execution and delivery or approval, as the case may be, by the Company of the Company Documents;

(5) neither the execution and delivery of the Company Documents nor the closing of the transactions provided for in the Bond Documents, the Security Documents or the Construction Phase Credit Documents, nor the Company's fulfillment of or compliance with the terms and conditions of the Company Documents violates or will violate, to the best of the Company's knowledge after due investigation, any law, rule or regulation of any governmental agency or body having jurisdiction over the Company or its general partner or any Key Principal or any of their activities or properties, or any judgment, order, writ, injunction or decree to which the Company or its general partner or any Key Principal is subject, or any of the organizational or other governing documents of the Company or its general partner or any Key Principal, if applicable, or conflicts or will conflict with any agreement, instrument or license to which the Company or its general partner or any Key Principal is now a party or by which it or its general partner or any Key Principal or any of their Properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license, or contravenes or will contravene, to the best of the Company's knowledge after due investigation, any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or, except as provided in the Security Documents, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the Property or assets of the Company or its general partner or any Key Principal, except for any lien, charge or encumbrance allowed under the terms of the Security Documents and any other Permitted Encumbrance;

(6) the Company has made all filings with and has obtained all approvals, permits, authorizations and consents from all federal, state and local regulatory agencies having jurisdiction to the extent, if any, required by applicable laws and regulations to be made or to be obtained in connection with the (a) acquisition, rehabilitation, renovation and equipping of the Facility and (b) execution and delivery by the Company of, and performance by the Company of its obligations under, the Company Documents;

(7) the Company is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any federal or state authority which would have the effect of preventing or hindering the performance of the Company's duties under any of the Company Documents; nor are there any proceedings presently in progress or

to its knowledge contemplated which would, if successful, lead to the issuance of any such order;

(8) no litigation or proceeding is pending or, to the knowledge of the Company or the general partner of the Company, threatened against the Company or its general partner or any Key Principal or with respect to the Facility which has a reasonable probability of having a material adverse effect on the financial condition or business of the Company, or the transactions provided for in the Bond Documents, the Security Documents or the Construction Phase Credit Documents, or which in any way seeks to prohibit, restrain or enjoin the issuance, execution, sale or delivery of the Bonds, the funding of the acquisition, rehabilitation, renovation and equipping of the Facility, the execution or delivery of the Company Documents, or which in any way would adversely affect or call into question the validity or enforceability of the Bonds, the Bond Documents, the Security Documents or the Construction Phase Credit Documents, or the power or authority of the Company to incur, or the ability of the Company to perform, its obligations under the Company Documents, or which questions the power or authority of the Company to carry out the transactions provided for in, or to perform its obligations under, the Company Documents or which would affect the power of the Company to own, equip or operate the Facility, or which questions the exclusion from gross income for federal income tax purposes of the interest payable on the Bonds;

(9) the Company is not in default under any document, instrument or commitment to which the Company is a party or to which it or any of its property or assets is subject which default would or could affect the ability of the Company to carry out its obligations under the Company Documents;

(10) the financial statements which have been furnished by or on behalf of the Company, its general partner and each Key Principal to the Issuer and/or the Loan Servicer were prepared in accordance with generally accepted accounting principles applied on a consistent basis, are complete and accurate in all material respects and present fairly and consistently the financial condition of the Company and such other entities or persons as of their respective dates; since the date of the most recent of such financial statements there has not been any material adverse change in the financial condition of the Company or its general partner or any Key Principal and there has not been any material transaction entered into by the Company or its general partner or any Key Principal other than transactions in the ordinary course of business; neither the Company or its general partner nor any Key Principal has any material contingent obligations which are not otherwise disclosed in its financial statements;

(11) there (a) is no completed, pending or, to the best of the Company's knowledge, threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Facility, the Company, any general partner of the Company or any Key Principal and (b) has been no assertion or exercise of jurisdiction over the Facility, the Company, any general partner of the Company or any Key Principal of the Company by any court empowered to exercise bankruptcy powers;

(12) no event has occurred and no condition exists with respect to the Company or the Facility that would constitute an Event of Default or which, with the lapse of time, if not cured, or with the giving of notice or both, would become an Event of Default;

(13) the Company has not taken any action, or permitted any action that the Company can control to be taken, that would impair the exclusion from gross income, for federal income tax purposes, of the interest payable on the Bonds;

(14) as of the Closing Date, the Company is in compliance with all requirements of the Tax Certificate, and the representations set forth in the Tax Certificate of the Company executed by the Company pertaining to the Company and the Facility are true and accurate;

(15) no information, statement or report furnished in writing to the Issuer, the Credit Provider, the Loan Servicer or the Trustee by the Company in connection with the transactions provided for in the Bond Documents, the Security Documents, the Construction Phase Credit Documents or the Disclosure Agreement or the closing of the transactions provided for in the Bond Documents, the Security Documents or the Construction Phase Credit Documents (including, without limitation, any information furnished by the Company in connection with the preparation of any materials related to the issuance, delivery or offering of the Bonds) contains any material misstatement of fact or omits to state a material fact necessary to make the statements contained in such written materials or in any offering material, in the light of the circumstances under which they were made, not misleading; the representations and warranties of the Company and the statements, information and descriptions contained in the Company's closing certificates, as of the Closing Date, will be true, correct and complete, will not contain any untrue or misleading statement of a material fact, and will not omit to state a material fact required to be stated in such certificates or necessary to make the certifications, representations, warranties, statements, information and descriptions contained in such certificates or in any offering materials, in the light of the circumstances under which they were made, not misleading; the estimates and the assumptions contained in any certificate of the Company delivered as of the Closing Date will be reasonable and based on the best information available to the Company;

(16) the Company acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the acquisition, rehabilitation, renovation and equipping of the Facility, (b) it is familiar with the provisions of all of the documents and instruments relating to the financing, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Facility, and (d) it has not relied on the Issuer, the Trustee, the Credit Provider or the Loan Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Bond Documents, the Security Documents or the Construction Phase Credit Documents or otherwise relied on the Issuer, the Trustee, the Credit Provider or the Loan Servicer in any manner;

(17) neither the Company nor any "related person" to the Company (within the meaning of Section 147(a)(2) of the Code) will purchase Bonds pursuant to any arrangement, formal or informal;

(18) the acquisition, rehabilitation, renovation and equipping of the Facility were not commenced prior to the 60th day preceding the adoption of the resolution of the Issuer with respect to the Facility on May 11, 2005, and no obligation for which reimbursement will be sought from proceeds of the Bonds relating to the acquisition, rehabilitation, renovation or equipping of the Facility was paid or incurred prior to 60 days prior to such date;

(19) the Company is the sole obligor under this Lease Agreement and is a single asset entity, the single asset of which is the Facility;

(20) on the date hereof, the Company holds fee simple title to the Facility, the Issuer has and will have a valid leasehold interest in the Facility pursuant to the Company Lease, and the Company has and will have a valid possessory interest in the Facility pursuant to this Lease Agreement, subject in each case only to Permitted Encumbrances;

(21) the Facility is located entirely within the boundaries of The Town of Hempstead, in the State;

(22) the Facility, as renovated and rehabilitated in accordance with the plans and specifications, will conform in all material respects with, or will not violate, all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Facility, including, but not limited to, the Americans with Disabilities Act of 1990 ("ADA");

(23) all necessary utilities are available to the Facility in adequate supply;

(24) the Company has obtained or will obtain in due course as needed all requisite zoning, planning, building and environmental and other permits which may become necessary with respect to the rehabilitation, renovation, equipping, use and occupancy of the Facility;

(25) the Company has obtained all licenses, permits and approvals necessary for the ownership, operation and management of the Facility, including compliance with the ADA (as evidenced by an architect's certificate to such effect), and further including all approvals essential to the transactions contemplated by the Bond Documents, the Security Documents and the Construction Phase Credit Documents;

(26) the Company and the Facility satisfy all requirements of the Act applicable to commercial projects and of the Code applicable to sponsors of, and with respect to, multifamily rental housing;

(27) the Facility is, as of the Closing Date, in compliance with all requirements of the Regulatory Agreement to the extent such requirements are applicable on the Closing Date;

(28) the Company intends to cause the residential units in the Facility to be rented or available for rental on a basis which satisfies the requirements of the Regulatory

Agreement, including all applicable requirements of the Act and the Code, and pursuant to leases which comply with all applicable laws;

(29) the Company intends to hold the Facility for its own account and has no current plans, and has not entered into any agreement, to further lease the Facility or any part of it except for residential dwelling units in the ordinary course of its business;

(30) the Company intends to occupy the Facility or cause the Facility to be occupied and to operate it or cause it to be operated at all times during the term of this Lease Agreement as a "project" as defined in the Act and does not know of any reason why the Facility will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control;

(31) the factual statements and representations concerning the Company and the Facility made to the Loan Servicer are true, correct and complete;

(32) the information contained in the Official Statement with respect to the Bonds, insofar as such information relates to the Company and the Facility, is accurate in all material respects and does not contain any untrue statement of a material fact or omit to state a material fact required to be stated in the Official Statement or necessary to make the statements made in the Official Statement, in light of the circumstances under which they were made, not misleading;

(33) the Company has filed or caused to be filed all federal, state and local tax returns which are required to be filed, and has paid or caused to be paid all taxes as shown on those returns or on any assessment received by it, to the extent that such taxes have become due;

(34) the assistance of the Issuer in the financing of a portion of the costs of the acquisition, rehabilitation, renovation and equipping of the Facility is reasonably necessary to induce the Company to proceed to completion with the Facility;

(35) the completion of the Facility will not result in the removal of an industrial, manufacturing, warehousing or commercial plant or facility of the Company from one area of the State to another area of the State or in the abandonment of one or more of such plants or facilities of the Company within the State;

(36) the total cost of the Facility being funded with the Bonds is at least $5,590,000, which represents only a portion of the total cost to the Company;

(37) any costs incurred with respect to that part of the Facility paid from the proceeds of the sale of the Bonds shall be treated on the books of the Company as capital expenditures in conformity with generally accepted accounting principles applied on a consistent basis;

(38) the property included in the Facility is either property of the character subject to the allowance for depreciation under Section 167 of the Code, or land; and

(39) no part of the proceeds of the Bonds will be used to finance inventory or will be used for working capital; and

(40) the Facility does not include convention centers within the meaning of the Act.

(b) **Certificates**. Any certificate signed or to be signed by the general partner of the Company and delivered pursuant to any Bond Document, Security Document or Construction Phase Credit Document, when executed and delivered by the Company, constitutes a representation and warranty by the Company as to the statements contained in the certificate.

(c) **Incorporation of Other Representations, Warranties and Covenants**. The representations, warranties and covenants of the Company set forth in the Reimbursement Agreement are incorporated into this Lease Agreement as if restated in this Lease Agreement in full, for the benefit of, and may be relied upon by, the beneficiaries of this Lease Agreement.

(d) **Representations and Warranties Deemed True As of Closing Date**. The representations and warranties of the Company in this Lease Agreement are deemed to be made and be true as of the date of this Lease Agreement and as of the Closing Date.

ARTICLE III

THE FACILITY

SECTION 3.1 **The Facility.** (a) The Company has or shall convey, or shall cause to be conveyed, to the Issuer at the time of the delivery and payment of the Bonds (i) a valid leasehold interest in the Land, and (ii) a lien-free leasehold interest in the Improvements and the Equipment, free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances, all against payment therefor by the Issuer from the proceeds of the Bonds deposited in the Project Fund under the Indenture, and to the extent permitted under Section 3.2 hereof and the Indenture.

(b) As promptly as practicable after receipt of the proceeds of the Bonds and out of said proceeds of sale, the Company, on behalf of and as agent for the Issuer, will proceed to complete the acquisition, rehabilitation, renovation and equipping of the Facility. The cost of the Facility shall be paid from the Project Account in the Project Fund established under the Indenture or as otherwise provided in Section 3.2 hereof. All contractors, materialmen, vendors, suppliers and other companies, firms or persons furnishing labor, services or materials for or in connection with the Facility shall be designated and engaged by the Company.

(c) In order to accomplish the purposes of the Issuer, and to assure the effectuation of the acquisition, rehabilitation, renovation and equipping of the Facility in conformity with the requirements of the Company, the Company has undertaken to proceed with the design of the Facility, the preparation of the Facility site and the commencement of the Facility work.

(d) The Company shall pay (i) all of the costs and expenses in connection with the preparation of all instruments necessary or appropriate to so vest leasehold title to the Facility to the Issuer, the delivery of any instruments and documents and their filing and recording, if required, (ii) all taxes and charges payable in connection with such vesting of leasehold title, or attributable to periods prior to the vesting of such leasehold title, to the Issuer as set forth in Section 3.1(a) hereof, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Facility.

(e) The Company covenants that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies with respect to the Facility, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, including, with respect to any item of Equipment, all manufacturers' instructions and warranty requirements, and with the conditions and requirements of all policies of insurance with respect to the Facility and this Lease Agreement. Upon completion of the acquisition, rehabilitation, renovation and equipping of the Facility, the Company will promptly obtain or cause to be obtained all required occupancy and operation permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the Facility for the purposes contemplated by this Lease Agreement and shall furnish copies of same to the Issuer, the Credit Provider, the Construction Lender and the Trustee immediately upon receipt thereof.

(f) Upon request, the Company will extend to the Issuer, the Credit Provider, the Construction Lender and the Trustee all vendors' warranties received by the Company in connection with the Facility, including any warranties given by contractors, manufacturers or service organizations who perform work with respect to the Facility.

(g) The Company shall take such action and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers 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 or the Issuer in connection with the performance of their obligations to be considered a Cost of the Facility. The Company may, in its own name or, with the prior written consent of the Issuer, in the name of the Issuer, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, vendor or surety which the Company deems reasonably necessary, and in such event the Issuer hereby agrees, at the Company's sole expense, to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Issuer in any such action or proceeding. The Company shall advise the Issuer and the Trustee of any actions or proceedings taken hereunder. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the actions and proceedings instituted by the Company to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, and all expenses incurred by the Company or the Issuer in connection with the performance of their obligations after deduction of expenses incurred in such recovery, shall be paid by the Company to the Trustee for deposit to the Redemption Account of the Revenue Fund under the Indenture, pro rata unless otherwise

directed by the Credit Provider, to be applied to reimburse the Credit Provider for a redemption of the Bonds in an equivalent amount (to the nearest Authorized Denomination).

(h) Leasehold title to all materials, machinery, equipment, furnishings and other property intended to be incorporated or installed as part of the Facility shall vest in the Issuer immediately upon the earlier of their delivery to the Facility or payment therefor. The Company shall promptly, upon the acquisition thereof by or on behalf of the Company, convey or cause to be conveyed to the Issuer leasehold title to each item of Equipment, free and clear of all liens, claims, charges, security interests and encumbrances other than Permitted Encumbrances, and cause each such item to be subjected to the lien and security interest of the Security Instrument.

(i) The Issuer hereby appoints the Company as its true and lawful agent to perform under the following authority in compliance with the terms, purposes and intent of the Security Documents, and the Company hereby accepts such agency, (i) to acquire the Facility, rehabilitate, renovate the Facility and acquire and install the Equipment, (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 the acquisition, rehabilitation, renovation and equipping of the Facility, with the same powers and with the same validity as the Issuer could do if acting in its own behalf, provided that the liability of the Issuer thereunder shall be limited to moneys advanced under the Indenture, (iii) to pay all fees, costs and expenses incurred in the acquisition, rehabilitation, renovation and equipping of the Facility from funds made available therefor in accordance with the Lease Agreement and the Indenture, (iv) to request in behalf of the Issuer, and receive for the purpose of paying the Cost of the Facility, disbursements of the proceeds of the Bonds pursuant to the Indenture, (v) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Issuer under the terms of any contract, order, receipt or writing in connection with the acquisition, rehabilitation, renovation and equipping of the Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same, and (vi) to appoint subagents in connection with any of the foregoing.

(j) To the extent required by applicable law, the Company will cause (i) compliance with the requirements of Article 8 of the New York Labor Law, and (ii) any contractor, subcontractors and other persons involved in the acquisition, rehabilitation, renovation and equipping of the Facility to comply with Article 8 of the New York Labor Law.

(k) The Company, in compliance with Section 13 of the New York 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 Bond Proceeds, which have been deposited by the Issuer in a trust fund for the purpose of paying the Costs of the Facility, 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 New York 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. The covenant in this subsection (k) is not intended as a representation that Section 13 of the New

York Lien Law applies, nor is it intended as representation that the Lease Agreement or the Indenture is a "building loan contract", as defined in Section 2(13) of the New York Lien Law.

SECTION 3.2 **Completion by Company.** The Company unconditionally covenants and agrees that it will complete the acquisition, rehabilitation, renovation and equipping of the Facility, or cause the acquisition, rehabilitation, renovation and equipping of the Facility to be completed, by November 15, 2009, subject to two (2) extensions for additional six month periods to the extent permitted by the Construction Phase Financing Agreement, and that such completion will be effected in a first-class workmanlike manner, using high-grade materials, free of defects in materials or workmanship (including latent defects), as applicable, and in accordance with this Lease Agreement and the Indenture. In the event that moneys in the Project Fund are not sufficient to pay the costs necessary to complete the acquisition, rehabilitation, renovation and equipping of the Facility in full, the Company shall pay that portion of such costs of the acquisition, rehabilitation, renovation and equipping of the Facility as may be in excess of the moneys therefor in said Project Fund and shall not be entitled to any reimbursement therefor from the Issuer, the Trustee, the Credit Provider, the Construction Lender or the Holders of any of the Bonds, nor shall the Company be entitled to any diminution of the rents payable or other payments to be made under this Lease Agreement or under any other Security Document.

Upon the completion of the acquisition, rehabilitation, renovation and equipping of the Facility, the Company shall deliver to the Issuer, the Credit Provider, the Construction Lender and the Trustee a certificate signed by an Authorized Representative of the Company (i) stating that acquisition, rehabilitation, renovation and equipping of the Facility has been completed in accordance with the Plans and Specifications therefor; (ii) stating that payment for all labor, services, materials and supplies used in such acquisition, rehabilitation, renovation and equipping has been made or provided for; and (iii) such certificates as may be satisfactory to the Agency, including without limitation, a final certificate of occupancy, if applicable.

SECTION 3.3 **Issuance of Bonds.** Contemporaneously with the execution and delivery of this Lease Agreement, the Issuer will sell and deliver the Bonds in the Principal Amount, under and pursuant to a resolution adopted by the Issuer on November 22, 2005, authorizing the issuance of the Bonds pursuant to the Indenture Upon the issuance and delivery of the Bonds, the Issuer will deliver the Bond Proceeds to the Trustee. The Bond Proceeds shall be applied to the payment of Costs of the Facility in accordance with the provisions of the Indenture. Pending such application, amounts in each Project Fund may be invested as provided in the applicable Indenture. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT THE NET PROCEEDS OF THE BONDS WILL BE SUFFICIENT TO COMPLETE THE ACQUISITION, REHABILITATION, RENOVATION AND EQUIPPING OF THE FACILITY. THE ISSUER SHALL NOT BE LIABLE TO THE COMPANY, THE BONDHOLDERS OR ANY OTHER PERSON IF FOR ANY REASON THE FACILITY IS NOT COMPLETED.

SECTION 3.4 **Title Insurance.** Prior to the delivery of the Bonds to the original purchaser(s) thereof, the Company will obtain (i) mortgagee title insurance in the amount and on terms required by the applicable Security Documents, and (ii) leasehold title insurance in the amount of $500,000 for the benefit of the Issuer, and (iii) a survey of the Facility certified to the Issuer and such other parties as shall be required by the Security Documents. The title insurance policies shall provide for, among other things, the following: (i) full coverage against mechanics' liens; (ii) no exceptions other than those approved by the Issuer and each other insured party; and (iii) such other matters as the Issuer and such other insured party shall request.

SECTION 3.5 **Construction Signage.** The Issuer shall have the right to erect on the Facility site at the Issuer's own cost and expense a sign stating that financing and/or economic benefits in connection with the Facility for the Facility has been provided through the Issuer.

SECTION 3.6 **No Warranty of Condition or Suitability by Issuer; Acceptance "As Is."** THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF, OR TITLE TO, THE FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT THE FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE ISSUER FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

SECTION 3.7 **No Merger Clause**

. There shall be no merger between the interests of the Issuer and the Company unless all persons, including any mortgagee, having an interest in the Lease Agreement consent in writing to the merger. If a mortgagee acquires the fee estate and the leasehold estate (whether pursuant to the provisions of the Lease Agreement, by foreclosure, or otherwise), the fee estate and the leasehold estate shall not merge as a result of such acquisition and shall remain separate and distinct for all purposes after such acquisition unless and until such mortgagee shall elect to merge the fee estate and the leasehold estate.

SECTION 3.8 **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 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 and the leasehold interests therein secure the Company's obligations to the Agency under the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and this Lease Agreement, including the Company's obligation to acquire, construct, equip and maintain the Facility on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency.

ARTICLE IV

LEASE OF FACILITY AND PAYMENT PROVISIONS

SECTION 4.1 **Lease of the Facility.** Pursuant to the Company Lease, the Company has conveyed a leasehold interest in the Facility to the Issuer. The Issuer hereby leases to the Company, and the Company hereby leases from the Issuer, the Facility, all for and during the term provided herein and upon and subject to the terms and conditions herein set forth. The Company shall at all times during the term of this Lease Agreement occupy, use and operate the Facility, or cause the Facility to be occupied, used and operated, as a commercial facility in accordance with the provisions of the Act and for the general purposes specified in the recitals to this Lease Agreement. The Company shall not occupy, use or operate the Facility or allow the Facility or any part thereof to be occupied, used or operated for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

SECTION 4.2 **Duration of Term; Quiet Enjoyment.** (a) The term of this Lease Agreement shall commence on the Closing Date and shall expire on May 15, 2040 (midnight, New York City time) or such earlier date as this Lease Agreement may be terminated as provided herein. The Issuer hereby delivers to the Company and the Company accepts sole and exclusive possession of the Facility as the Issuer has received under the Company Lease.

(b) The Issuer shall take no action, other than pursuant to Article XII of this Lease Agreement, to prevent the Company from having quiet and peaceable possession and enjoyment of the Facility during the term of this Lease Agreement and will, at the request of the Company and at the Company's expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility.

SECTION 4.3 **Lease Provisions; Pledge of Lease Agreement and Lease Payments; Bonds.** (a) The Company covenants to make lease payments which the Issuer agrees shall be paid in immediately available funds by the Company, in an amount equal to the sum of (i) with respect to interest due and payable on the Bonds, on each Interest Payment Date, an amount equal to the interest becoming due and payable on the Bonds on the corresponding Interest Payment Date, (ii) on each Interest Payment Date, the principal amount of the Bonds then Outstanding which will become due on the corresponding Interest Payment Date (whether at maturity or by redemption or acceleration as provided in the Indenture), and (iii) on a redemption date with respect to the Bonds, the principal amount of and redemption premium, if any, on the Bonds to be redeemed which will become due on the corresponding redemption date together with accrued interest to the date of redemption; provided, however that the Company shall receive a credit for any amounts on deposit in the Revenue Fund under the Indenture on any such Interest Payment Date. The Company shall make all such payments directly to the Trustee prior to Conversion, for deposit in the Revenue Fund and thereafter to Trustee or, to the extent directed by the Credit Provider, to the Loan Servicer.

(b) In the event the Company should fail to make or cause to be made any of the payments required under the foregoing provisions as outlined under this heading, the item or installment not so paid shall continue as an obligation of the Company until the amount not so paid shall have been fully paid.

(c) The Company shall have the option to prepay its lease payments with respect to the Bonds, in whole or in part at the times and in the manner provided in this Lease Agreement as and to the extent provided in the Indenture for redemption of the Bonds.

(d) The Company and the Issuer acknowledge their intention to minimize the risk that any payment made to a Bondholder from amounts provided by or on behalf of the Company may be determined by a bankruptcy court to constitute a preference. To this end the parties agree that, as provided in the Indenture, payments to Bondholders shall be made only from Available Moneys, except when and to the extent no Available Moneys are available for the purpose. The payment obligations of the Company under this heading are subject in all respects to the use of Available Moneys for the payment of the Bonds. Optional prepayments permitted by the Company as provided in the Lease Agreement may not be made except from Available Moneys. The Issuer shall have no liability with respect to any payments made in violation of this paragraph.

(e) The Company will comply with the provisions of the Indenture with respect to the Company and the Trustee shall have the power, authority, rights and protections provided in the Indenture. The Company will use its best efforts to cause there to be obtained for the Issuer any documents or opinions required of the Issuer under the Indenture.

(f) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Revenue Fund under the Indenture is not sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the

Indenture), the Company shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in such Revenue Fund and such payment shall constitute lease payments under this heading.

(g) Without limiting anything in this Lease Agreement, the obligations set forth in this Section 4.3 shall be as more specifically set forth in the Payment Agreement.

SECTION 4.4 Company's Obligations With Respect to the Bonds.

(a) General Obligation. The Company is unconditionally obligated, anything else to the contrary notwithstanding, to timely pay amounts sufficient to pay, when due, the principal of, premium, if any, and interest on, and the purchase price of, the Bonds.

(b) Company's Obligations With Respect to Redemption.

(1) Optional Prepayment and Redemption. In the event of an optional redemption of Bonds pursuant to Section 3.2 of the Indenture, the Company shall timely pay, or cause to be paid, (i) an amount equal to the unpaid principal balance of the Bonds, (ii) interest payable on the Bonds to the Redemption Date, (iii) the premium, if any, payable with respect to the Bonds (the premium to be paid with Available Moneys), (iv) an amount sufficient to pay any fees, costs and expenses in connection with such redemption and (v) all other amounts payable under the Bond Documents and the Security Documents in connection with the prepayment of the lease payment obligations under Section 4.3 of this Lease Agreement and the corresponding redemption of the Bonds on the applicable Redemption Date.

(2) Special Mandatory Redemption. In the event of a special mandatory redemption of Bonds:

(i) in whole or in part pursuant to Section 3.3(g) of the Indenture, the Company shall timely pay, or cause to be paid, in addition to the proceeds of the Bonds on deposit in the Project Fund to be applied to the redemption of Bonds, (a) interest payable on the Bonds to be redeemed to the Redemption Date, (b) an amount sufficient to pay any fees, costs and expenses in connection with such redemption and (c) all other amounts payable under the Bond Documents and the Security Documents in connection with the prepayment of the lease payment obligations set forth in Section 4.3 hereof and the corresponding redemption of such Bonds on the applicable Redemption Date;

(ii) in whole or in part, pursuant to Section 3.3(a) of the Indenture, the Company shall timely pay or cause to be paid (a) in the event of the involuntary destruction or loss of the Facility in its entirety or nearly in its entirety as a result of casualty or condemnation, the unpaid principal balance of the Payment Agreement and an amount sufficient to effect the corresponding redemption of the Bonds on the applicable Redemption Date or (b) in the event of an involuntary destruction or loss of the Facility in part as a result of a casualty or condemnation, a principal amount equal to the insurance or condemnation proceeds received by the Company and applied, in accordance with the Security Documents, to the prepayment, in part, of the Payment Agreement and the corresponding redemption of Bonds on the applicable Redemption Date and, in the case of (a) or (b), (1) interest on the

Payment Agreement to the date of prepayment, (2) interest payable on the Bonds to be redeemed to the Redemption Date, (3) an amount sufficient to pay any fees, costs and expenses in connection with such redemption and (4) all other amounts payable under the Bond Documents and the Security Documents in connection with the prepayment of the Payment Agreement and the corresponding redemption of the Bonds to be redeemed on the applicable Redemption Date; and

(iii) in whole pursuant to Section 3.3(f) or Section 3.3(b) of the Indenture or in part pursuant to Section 3.3(b) of the Indenture, the Company shall timely pay, or cause to be paid (a) the principal amount of the Payment Agreement, (b) interest on the Payment Agreement to the date of prepayment, (c) interest payable on the Bonds to be redeemed to the Redemption Date, (d) an amount sufficient to pay any fees, costs and expenses in connection with such redemption and (e) all other amounts payable under the Bond Documents and the Security Documents in connection with the prepayment of the Payment Agreement and the corresponding redemption of the Bonds to be redeemed in whole or in part, as applicable, on the applicable Redemption Date.

(3) **Pre-Conversion Financing Equalization Payment and Special Mandatory Redemption**. In the event of a Pre-Conversion Financing Equalization Payment and a special mandatory redemption of Bonds in part, pursuant to Section 3.3(e) of the Indenture, the Company shall pay, or cause to be paid (i) a principal amount sufficient to equalize the principal amount of the Payment Agreement to the Permanent Phase Mortgage Amount (as determined in accordance with the Construction Phase Financing Agreement) and to redeem a corresponding principal amount of Bonds, (ii) interest on the principal amount of the Payment Agreement to the date of prepayment in an amount sufficient to pay interest payable on the Bonds to be redeemed to the Redemption Date, (iii) an amount sufficient to pay any fees, costs and expenses in connection with such redemption and (iv) all other amounts payable under the Indenture and this Lease Agreement in connection with the prepayment of the Payment Agreement and the corresponding redemption of the Bonds to be redeemed on the applicable Redemption Date.

(4) **Payment Procedures**. All payments shall be made in accordance with the payment procedures set forth in the Payment Agreement.

SECTION 4.5 **Credit Facility.** (a) As security for the performance of its lease payment obligations with respect to the Bonds, the Company agrees to cause credit enhancement for the Bonds and liquidity support for the Bonds to be in effect in the amounts and during the periods as required by the Indenture. From time to time, the Company may arrange for the delivery to the Trustee of one or more Alternate Credit Facilities meeting the requirements of the Indenture in substitution for the Credit Facility then in effect with respect to the Bonds. The Company authorizes and directs the Trustee to draw moneys under the Credit Facility in accordance with the provisions of the Indenture to the extent and at the times necessary to pay the principal of, purchase price, Redemption Price of, and interest on the Bonds when due.

(b) As security for the performance of its lease payment obligations with respect to the Bonds, the Company agrees to cause credit enhancement for the Bonds to be in

effect in the amounts and during the periods as required by the Indenture. The Company authorizes and directs the Trustee to draw moneys under the Credit Facility in accordance with the provisions of the Indenture to the extent and at the times necessary to pay the principal of, Redemption Price of, and interest on the Bonds when due.

SECTION 4.6 **Company's Obligations Upon Tender of Bonds.** The Company agrees to pay additional lease payments to the Tender Agent for the account of the Issuer equal to all amounts necessary for the purchase of any Bonds which bears interest at the Weekly Variable Rate or the Reset Rate. If any Tendered Bond is not remarketed on any Tender Date and a sufficient amount is not available in the Bond Purchase Fund for the purpose of paying the purchase price of such Bond, the Company will cause such amount to be paid to the Trustee pursuant to the Credit Facility or otherwise pay by the applicable times provided in the Indenture, an amount equal to the principal amount of all Bonds tendered and not remarketed, together with interest accrued to the Tender Date.

SECTION 4.7 **Security Instruments.** (a) As security for the obligations of the Company under the Reimbursement Agreement and under the Payment Agreement and as security for the obligations of the Issuer with respect to the Bonds, the Issuer and the Company shall, pursuant to the Security Instrument, grant to the Credit Provider and the Trustee a lien on and security interest in the Facility. As security for the Bonds and for the Credit Provider as credit enhancer of the Bonds, the Issuer shall pledge and assign to the Trustee and the Credit Provider pursuant to the Indenture all of the Issuer's right, title and interest in this Lease Agreement (except for the Issuer's Reserved Rights), on a pari passu basis with the pledge and assignment pursuant to the Indenture, in accordance with and subject to Assignment including all lease payments under this Lease Agreement, and in furtherance of said pledge the Issuer will unconditionally assign such lease payments to the Trustee for deposit in the Revenue Fund under the Indenture in accordance with the Indenture.

b. The Company consents to the above-described lien and security interest, and pledge and assignment of this Lease Agreement.

SECTION 4.8 **Initial Deposit.**

Closing Date Deposit. On the Closing Date, the Company shall pay to the Trustee (i) the amount of $272,260 for deposit into the Costs of Issuance Fund under the Indenture, (ii) the Company shall pay to the Trustee the amount of $7,332,647, representing the amount to be deposited in the Equity Account in the Project Fund under the Indenture, and (iii) the amount of $177,222 representing a portion of the amount to be deposited in the Capitalized Moneys Account in the Project Fund under the Indenture. The Issuer shall have no obligation to undertake the acquisition, rehabilitation, renovation and equipping of the Facility unless and until the Company delivers the Costs of Issuance Deposit and the equity deposit.

SECTION 4.9 **Payment of Fees, Costs and Expenses.** The Company shall pay when due, without duplication, the fees, expenses and other sums specified in this Section as additional lease payments under this Lease Agreement.

(a) **Fees Due at Closing**. The Company shall pay or provide for the payment of all Costs of Issuance and the Trustee's acceptance fee, if any, with respect to the Bonds on the Closing Date, including, without limitation, (i) the balance of the Issuer's administrative fee in the amount of $27,950, less the $1,000 deposit previously paid by the Company to the Issuer, and (ii) the Issuer's initial compliance fee of $2,500.

(b) **Third Party Fees**. The Company shall pay the Third Party Fees on a monthly basis. Each monthly payment shall be in an amount equal to the aggregate of all of the Third Party Fees prorated monthly so that the Trustee shall have the full amount of each fee available in the Fees Account to pay each Third Party Fee as it falls due without regard to whether any Third Party Fee is payable monthly, annually or on any other periodic basis. The Third Party Fees with respect to the Bonds are as follows:

(1) Issuer. The Issuer's annual compliance fee of $1,000 per annum due each January commencing, January, 2008, and all fees and expenses incurred by the Issuer at any time in connection with the Bonds.

(2) Trustee. The annual continuing trust administration fee of the Trustee equal to $5,000 per annum payable by the Company as provided in the Lease Agreement.

(3) Remarketing Agent. The quarterly continuing fee of the Remarketing Agent for its remarketing services with respect to the Bonds.

(4) Rebate Analyst. The annual continuing fee of the Rebate Analyst, if any, for its rebate calculation services.

(c) **Other Fees and Expenses**. In addition to all fees, costs, expenses, and other amounts required to be paid by the Company under the Payment Agreement, the Reimbursement Agreement and the Construction Phase Credit Documents, the Company shall pay, without duplication, the following fees not included in Third Party Fees with respect to the Bonds:

(1) Rating Agency. The annual rating maintenance fee of each Rating Agency.

(2) Extraordinary Items. The Extraordinary Items.

(3) Certain Advances, Expenses and other Items. All other advances, out-of-pocket expenses, costs and other charges of each of the Issuer, the Rebate Analyst, the Remarketing Agent, the Tender Agent and the Trustee incurred from time to time, but only to the extent that any such amounts are payable by the Company pursuant to an agreement between the Company and such Person regarding its services in connection with the Bonds or the Facility.

(4) Bond Costs. All costs of registering, printing, reprinting, preparing and delivering any replacement bonds required under the Indenture and in connection with the registration, printing, reprinting or transfer of Bonds.

(5) Adjustment or Conversion of Interest Rate; Tender, Purchase, Remarketing or Reoffering of Bonds. All fees, costs and expenses of any change in Mode or of any tender, purchase, remarketing or reoffering of any Bonds. The fees, costs and expenses of any tender, purchase, remarketing or reoffering must be paid by the Company in advance in accordance with the Remarketing Agreement or other agreement relating to the remarketing or reoffering of the Bonds.

(6) Conversion. All fees, costs and expenses in connection with Conversion.

(7) Loan Servicer. All fees and expenses due to the Loan Servicer in connection with the Payment Agreement in accordance with the Reimbursement Agreement;

(8) Credit Provider. All fees and expenses required to be paid to the Credit Provider, to the extent not previously paid by the Company, at the times and in the manner required by the Reimbursement Agreement;

(9) Issuer. All amounts required to pay to the Issuer all expenses incurred at any time in connection with the financing of the acquisition, rehabilitation, renovation and equipping of the Facility or the Bonds, including without limitation counsel fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of the Bond Documents, the Security Documents or any other documents relating to the Facility or the Bonds or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit; all payments for fees and expenses shall be made by the Company to the Issuer or any payee designated by the Issuer not later than thirty (30) days after receipt of invoices by the Company; and

(10) Trustee. All amounts required to pay to the Trustee all expenses incurred at any time in connection with its obligations under the Bond Documents, the Security Documents (exclusive of the fees payable as set forth in subsections (a) or (b) above), including without limitation counsel fees and expenses incurred in connection with the interpretation, performance, enforcement or amendment of such Bond Documents or Security Documents, or any other documents relating to the Facility or the Bonds or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit; all payments for fees and expenses other than the portion of the Trustee's fee included in subsections (a) or (b) above shall be made by the Company to the Trustee or any payee designated by the Trustee not later than thirty (30) days after receipt of invoices by the Company.

The Company further agrees to timely honor any demand for payment by the Trustee pursuant to Section 5.7(b) of the Indenture on account of any insufficiency in the Fees Account thereunder.

SECTION 4.10 **Liability for Fees, Costs and Expenses.** Neither the Issuer nor the Trustee shall have any obligation to pay any of the fees, costs or expenses referred to in Section 4.09. The payment of all fees and expenses not included in the Payment Agreement or provided for in the Reimbursement Agreement shall be unsecured obligations

of the Company and shall be subordinate to the Company's obligations under the Security Documents.

SECTION 4.11 **Redemption Premium.** The Company shall pay all redemption premium, if any, payable with respect to each redemption of any of the Bonds. The Company shall make each such payment, or cause such payment to be made, in Available Moneys.

SECTION 4.12 **Obligation of the Company to Pay Deficiencies.** The Company shall pay any deficiency resulting from any loss due to a default under any investment in any Fund or Account or a change in value of any investment.

SECTION 4.13 **Company's Approval of Transaction Documents.** The Company acknowledges that it participated in the drafting and negotiation of the Transaction Documents and approves and agrees to each of the provisions of the Transaction Documents. The Company agrees that it is bound by, shall adhere to, and shall have the rights set forth by, the Indenture.

ARTICLE V

DAMAGE, DESTRUCTION, CONDEMNATION

SECTION 5.1 **Damage or Destruction.** (a) If the Facility shall be damaged or destroyed, in whole or in part:

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

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

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

(4) except as otherwise provided in subsection (b) of this Section 5.1 or in the Security Documents,

(i) the Company shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Issuer and the Bondholders, provided that such changes, alterations or modifications do not (y) so change the nature of the Facility that it does not constitute a "project", as such quoted term is defined in the Act, or change the use of the Facility as specified in Section 3.2 hereof without the prior written consent of the Issuer, or (z) adversely affect the

exclusion from gross income for federal income tax purposes of the interest payable on the Bonds; and

(ii) pursuant to and in accordance with the Security Instrument and the applicable provisions of the Indenture, the Trustee shall make available to the Company (from the Net Proceeds of any insurance settlement) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Facility. In the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. Any balance of such Net Proceeds remaining after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be applied as provided in the Indenture.

(b) Notwithstanding anything to the contrary contained in subsection (a) of this Section 5.1, and except as otherwise provided in the Security Documents, in the event that the damage to the Facility exceeds the sum of all indebtedness then secured by a lien on the Facility or any part thereof, the Company shall not be obligated to replace, repair, rebuild or restore the Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (a) of this Section 5.1, if the Company shall notify the Issuer and the Trustee that it elects to cause the Bonds to be redeemed. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (i) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Facility, or (ii) the amount necessary to redeem the Bonds in whole and all interest accrued thereon, together with any other sums payable to the Issuer or the Trustee pursuant to the Lease Agreement, shall be applied to the redemption of the Bonds and payment of all such amounts to the Issuer and the Trustee. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to redeem the Bonds in full and pay any and all amounts payable to the Issuer and the Trustee, the Company shall pay the difference between such amounts and the Net Proceeds of all insurance settlements so that all of the Bonds then Outstanding shall be redeemed and any and all amounts payable under the Bond Documents to the Issuer and the Trustee shall be paid in full.

(c) If there are no Bonds Outstanding and all other amounts due under the Lease Agreement and the other Bond Documents and Security Documents are paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(d) Unless an Event of Default shall have occurred and be continuing, and except as otherwise provided in the Security Documents, the Company may adjust all claims under any policies of insurance required by Section 9.5 and 9.6 hereof.

(e) In the event of any conflict between the provisions of this Section 5.1 and the Security Documents, the terms of the Security Documents shall control.

SECTION 5.2 **Condemnation.** (a) If title to, or the use of, less than substantially all of the Facility shall be taken by Condemnation:

(1) the Issuer shall have no obligation to restore the Facility;

(2) there shall be no abatement or reduction in the amounts payable by the Company under the Lease Agreement (whether or not the Facility is restored);

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

(4) except as otherwise provided in subsection (b) of this Section 5.2 or in the Security Documents,

(i) the Company shall promptly restore the Facility (excluding any part of the Land or the Facility taken by Condemnation) to substantially the same condition and value as an operating entity as existed prior to such Condemnation; and

(ii) pursuant to and in accordance with the Reimbursement Agreement and the Indenture, the Trustee shall make available to the Company (from the Net Proceeds of any Condemnation award) such moneys as may be necessary to pay the costs of the restoration of the Facility. In the event such Net Proceeds are not sufficient to pay in full the costs of such restoration, the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. Any balance of such Net Proceeds remaining after payment of all of the costs of such restoration shall be applied in accordance with the Indenture.

(b) Notwithstanding anything to the contrary contained in subsection (a) of this Section 5.2, and except as otherwise provided in the Security Documents, in the event the taking of the Facility or any part thereof exceeds the sum of all indebtedness then secured by a lien on the Facility or any part thereof, the Company shall not be obligated to restore the Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (a) of this Section 5.2, if the Company shall notify the Issuer and the Trustee that it elects to cause the redemption of the Bonds. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (i) the Net Proceeds of any Condemnation award, or (ii) the amount necessary to redeem the Bonds in whole and all interest accrued thereon, together with any other sums payable to the Issuer or the Trustee pursuant to the Lease Agreement shall be applied to the redemption of the Bonds and payment of all such amounts to the Issuer and the Trustee. If the Net Proceeds of any Condemnation award are less than the amount necessary to redeem the Bonds in full and pay any and all amounts payable to the Issuer and the Trustee, the Company shall pay the difference between such amounts and such Net Proceeds so that all of the Bonds Outstanding shall be redeemed and any and all amounts payable under the Bond Documents to the Issuer and the Trustee shall be paid in full.

(c) If title to, or use of, all or substantially all of the Facility shall be taken by Condemnation:

(1) neither the Issuer nor the Company shall have any obligation to restore the Facility;

(2) there shall be no abatement or reduction in the amounts payable by the Company under the Lease Agreement; and

(3) except as otherwise provided in the Security Documents, the Net Proceeds of any Condemnation award shall be applied as provided in subsection (b) of this Section 5.2.

(d) If there are no Bonds Outstanding and all other amounts due under the Lease Agreement and the other Bond Documents and Security Documents have been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(e) Unless an Event of Default under any of the Bond Documents shall have occurred and be continuing, and except as otherwise provided in the Security Documents, the Company shall have sole control of any Condemnation proceeding with respect to the Facility or any part thereof and may negotiate the settlement of any such proceeding. The Company shall notify the Issuer and the Trustee of the institution of any condemnation proceedings and within seven days after inquiry from the Issuer or the Trustee inform the Issuer and the Trustee in writing of the status of such proceeding.

(f) In the event of any conflict between the provisions of this Section 5.2 and the Security Documents, the terms of the Security Documents shall control.

SECTION 5.3 **Additions to the Facility.** All replacements, repairs, rebuilding or restoration made pursuant to Sections 5.1 or 5.2, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

ARTICLE VI

NATURE OF COMPANY'S OBLIGATIONS; SECURITY FOR OBLIGATIONS

SECTION 6.1 **Obligations of the Company Unconditional.** To the fullest extent permitted by law, the obligations of the Company to make all lease payments and to make all other payments and perform its other obligations under this Lease Agreement and to maintain the Facility in accordance with Section 9.1 of this Lease Agreement shall be absolute, unconditional and irrevocable, shall be paid and performed strictly in accordance with the applicable Transaction Documents under all circumstances, including, without limitation, the following circumstances: (i) any invalidity or unenforceability of the Credit Facility or any of the other Transaction Documents; (ii) any amendment or waiver of, or any consent to departure from, the terms of the Credit Facility or any of the other Transaction Documents, any extension of time or other modification of the terms and conditions for any

act to be performed in connection with the Credit Facility or any of the other Transaction Documents; (iii) the existence of any claim, set-off, defense or other right which the Company may have at any time against the Issuer, the Trustee, the Tender Agent, the Credit Provider, the Loan Servicer, the Remarketing Agent or any other Person, whether in connection with any of the Transaction Documents, the Facility, or any unrelated transaction; (iv) the surrender or impairment of any security for the performance or observance of any of the agreements or terms of any of the Transaction Documents; (v) defect in title to the Facility, any act or circumstance that may constitute failure of consideration, destruction of, damage to or condemnation of the Facility, commercial frustration of purpose, or any change in the tax or other laws of the United States of America or of the State or any political subdivision of either, (vi) the breach by the Issuer, the Trustee, the Tender Agent, the Remarketing Agent, the Credit Provider, the Loan Servicer or any other Person of any of its obligations under any Transaction Document, (vii) whether or not the acquisition, rehabilitation, renovation and equipping of the Facility has been completed as provided in this Lease Agreement, or (viii) any other circumstance, happening or omission whatsoever, whether or not similar to any of the foregoing.

SECTION 6.2 **Nature of Company's Financial Obligations**. The Issuer, the Company and the Trustee acknowledge that (i) the Facility will be encumbered by the Security Documents and (ii) all obligations of the Company under this Lease Agreement (in contrast to the Company's obligations under the Security Documents) or under the Regulatory Agreement (if any) for the payment of money, including, without limitation, fees, costs and expenses, obligations with respect to Reserved Rights, claims for damages occasioned by the breach or alleged breach by the Company of its obligations under this Lease Agreement or the Regulatory Agreement and claims for indemnification, are not secured by, and do not in any manner constitute a lien on, the Facility.

SECTION 6.3 **Reserved**.

SECTION 6.4 **Subordination**. This Lease Agreement is subordinate in all respects to the Security Documents. Accordingly, notwithstanding anything to the contrary contained in this Lease Agreement or in the Regulatory Agreement, all obligations under this Lease Agreement, except with respect to obligations owing to the Credit Provider, or the Regulatory Agreement for the payment of money, if any, and all claims for damages or reimbursement or indemnification against the Company occasioned by breach or alleged breach by the Company of its obligations under this Lease Agreement or the Regulatory Agreement shall be subordinate and junior in priority, in right of payment and in all other respects to the obligations of the Company under or in respect of the Security Documents and to the Credit Provider under or in respect of the Credit Facility Documents.

SECTION 6.5 **Security Interest**. The Company acknowledges that this Lease Agreement is intended as security for payment of the principal of, Redemption Price of, and interest on the Bonds. In addition, to secure payment of all basic lease payments with respect to the Facility and other sums owing by the Company hereunder and to secure the payment and performance of all debts, liabilities and obligations of the Company under all of the Bond Documents, the Company hereby grants a security interest to the Issuer in (i) all of the Company's right, title and interest in and to the Facility, whether now or hereafter

demised or leased under this Lease Agreement, together with any and all substitutions, additions, attachments, parts, fittings, accessories, special tools, accessions or replacements, and the proceeds and all general intangibles arising from all of the foregoing, (ii) all insurance, now owned or hereafter acquired, insuring the Facility against any loss or damage whatsoever, and all proceeds thereof, (iii) all awards heretofore and hereafter paid or payable to the Company by reason of a taking or condemnation of any part of the Facility (including any Equipment) or any right of the Company appurtenant thereto by competent authority as a result of the exercise of the power of eminent domain, including, but not limited to any awards or payments for use and occupation or for change of grade of streets, together with any and all claims of the Issuer with respect thereto, and the proceeds thereof, and (iv) all moneys and securities from time to time held by the Trustee pursuant to and under any of the Bond Documents, and all investments and re-investments of any such moneys and securities, and the proceeds thereof, except moneys and securities held in the Rebate Fund. The security interest referred to in this Section 6.5 shall be assigned by the Issuer to the Trustee and the Credit Provider, as their interests may appear, pursuant to the Assignment.

SECTION 6.6 **Financing Statements**. The Company hereby irrevocably appoints both the Issuer and the Trustee, or either of them, as the Company's lawful attorneys-in-fact and agents, to prepare any UCC Financing Statements or UCC Amendments or Assignments on the Company's behalf in order to protect the Issuer's and the Trustee's security interests in payments made pursuant to this Lease Agreement and any assignment thereof and in any Property demised under this Lease Agreement, and on the Company's behalf to file such Financing Statements in any appropriate public office.

ARTICLE VII

SERVICING; MONITORING

SECTION 7.1 **Servicing**. The Issuer, the Trustee and the Company acknowledge that on and after the Conversion Date with respect to the Bonds, the obligations under this Lease Agreement and the Payment Agreement will be serviced by the Credit Provider or, in the sole discretion of the Credit Provider, the Loan Servicer, pursuant to contractual arrangements between the Credit Provider and the Loan Servicer, or by any other servicer selected by the Credit Provider pursuant to contractual arrangements between the Credit Provider and such servicer. The Issuer, the Trustee and the Company acknowledge and agree that (i) the selection of any servicer is in the sole and absolute discretion of the Credit Provider, (ii) neither the Issuer nor the Trustee shall terminate or attempt to terminate the Loan Servicer or any successor servicer as the servicer of the Payment Agreement or appoint or attempt to appoint a substitute servicer for the Payment Agreement, (iii) the servicing arrangements between the Credit Provider and the Loan Servicer are subject to amendment or termination without the consent of the Issuer, the Trustee or the Company, (iv) none of the Issuer, the Trustee or the Company shall have any rights under, or be a third party beneficiary of, any such servicing arrangements and (v) any servicer of a Payment Agreement shall be entitled to the payment of a servicing fee. The Issuer, the Trustee and the Company acknowledge the right of the Credit Provider to remove the Loan Servicer and to terminate the Loan Servicer's right to service the Company's lease payment obligations under the Payment Agreement.

SECTION 7.2 **Monitoring**. So long as the Loan Servicer is servicing the Payment Agreement, the Company shall furnish to the Loan Servicer copies of all reports with respect to the Facility required to be filed by the Company pursuant to this Lease Agreement and/or the Regulatory Agreement. Notwithstanding anything contained in this Lease Agreement to the contrary, neither the Trustee nor the Loan Servicer shall have any duty or obligation to analyze or review any such reports for determining whether or not the Company and/or the Facility are in compliance with the requirements of the Code for maintaining the excludability from gross income, for federal income tax purposes, of the interest payable on the Bonds.

ARTICLE VIII

COVENANTS OF THE COMPANY

SECTION 8.1 **Compliance With Laws.** The Company will comply with all laws, ordinances, regulations and requirements of any duly constituted public authorities which may be applicable to the Facility and the acquisition, rehabilitation, renovation and equipping thereof and all recorded lawful covenants and agreements relating to or affecting the Facility and the acquisition, rehabilitation, renovation and equipping thereof, including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Facility, fair housing, zoning and land use, and Leases (as such term is defined in the Security Instrument). The Company also will comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. The Company will at all times maintain records sufficient to demonstrate compliance with the provisions of this Section. The Company will take appropriate measures to prevent, and will not engage in or knowingly permit, any illegal activities at the Facility that could endanger tenants or visitors, result in damage to the Facility, result in forfeiture of the Facility, or otherwise materially impair the lien created by the Security Instrument. The Company represents and warrants that, to the best of the Company's knowledge, no portion of the Facility has been or will be purchased with the proceeds of any illegal activity. Nothing contained in this Section is intended to modify or limit any provisions of the Regulatory Agreement or any Security Document.

SECTION 8.2 **Maintenance of Legal Existence.** The Company will maintain its existence, continue to be duly qualified to do business in the State and will not terminate or dissolve. With the prior written consent of the Issuer and the Credit Provider, the Company may consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, but subject to the satisfaction of the following conditions: (i) the entity resulting from or surviving such merger or consolidation (if other than the Company) ("**Surviving Entity**") is duly organized and existing in good standing and qualified to do business in the State, (ii) if the Company does not survive the consolidation or merger, the Surviving Entity expressly assumes in writing all of the Company's obligations under this Lease Agreement and the other Company Documents and (iii) the Company delivers an opinion of Bond Counsel to the effect that such consolidation or merger will not cause interest on the Bonds to be included in gross income for federal income tax purposes.

SECTION 8.3 **Access to the Facility and Records.** Subject to reasonable notice, the Issuer and the Trustee and the respective duly authorized agents of each have the right, during normal business hours, to enter the Facility and any location containing records relating to any of the Company, the Facility or the acquisition, rehabilitation, renovation and equipping thereof, and the Transaction Documents, to inspect, audit and make copies of the Company's records or accounts pertaining to the Company, the Facility or the acquisition, rehabilitation, renovation and equipping thereof, the Transaction Documents, and the Company's compliance with the Transaction Documents, and to require the Company, at the Company's sole expense, to furnish such documents to the Issuer and the Trustee, as the Issuer or the Trustee from time to time deems necessary in order to determine that the Company is in compliance with the Transaction Documents and to make copies of any records that the Issuer or the Trustee, or their respective duly authorized agents, may reasonably require. The Company will make available to the Issuer and the Trustee such other information concerning the Company, the Facility or the acquisition, rehabilitation, renovation and equipping thereof, the Facility and the Transaction Documents as any of them may reasonably request.

SECTION 8.4 **Reports and Information.** (a) The Company will file such certificates and other reports with the Issuer and the Trustee as are required by the Transaction Documents. The Company will file with the Loan Servicer and, if requested in writing by the Issuer or the Trustee, to the Issuer and the Trustee, copies of all reports and notices required by the Security Documents. The Company will provide to the Issuer all information necessary to enable the Issuer to complete and file all forms and reports required by the laws of the State and the Code in connection with the Facility and the Bonds.

(b) The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company.

(c) As soon as possible after the end of each fiscal year of the Company, but in any event within ninety (90) days after such date, the Company shall furnish to the Issuer and the Trustee a certificate of an Authorized Representative of the Company stating that no Event of Default hereunder has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto.

(d) Without limiting the foregoing, the Company will file such certificates and other reports with the Issuer, the Trustee, the Loan Servicer and the Credit Provider as are required by the Regulatory Agreement, including but not limited to the filing with the Issuer and the Trustee 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 Regulatory Agreement).

SECTION 8.5 **Tax Covenants.** The Company covenants that it will comply with the requirements and conditions of the Tax Certificate and the Regulatory Agreement. Without limiting the foregoing and notwithstanding anything to the contrary in this Lease

Agreement, the Company will not take, or permit to be taken on its behalf, any action which would cause interest on the Bonds to be included in gross income for federal income tax purposes and will take such reasonable action as may be necessary to continue such exclusion from gross income, including:

(a) the Company will not use the proceeds of the Bonds, or any other funds which may be deemed to be proceeds of the Bonds pursuant to Section 148 of the Code, in the manner which will cause the Bonds to be "arbitrage bonds" within the meaning of such Section, and will comply with the requirements of such Section throughout the term of the Bonds;

(b) the Company will prepare and file any statements required to be filed by it in order to maintain such exclusion;

(c) the Company will engage a Rebate Analyst to calculate the rebate amount, as required by the Indenture and will provide a copy of each rebate report to the Issuer and the Trustee, and the Company will pay to the United States any amount required to be paid by the Issuer or the Company pursuant to Section 148(f) of the Code, at the times, in the amounts and at the places required in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes; and

(d) the Company will cause all of the residential units in the Facility to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the Regulatory Agreement.

The Company irrevocably authorizes and directs the Issuer, the Trustee and any other agent designated by the Issuer to make payment of such amounts from funds of the Company, if any, held by the Issuer, the Trustee, or any agent of the Issuer or the Trustee. The Company further covenants and agrees that, pursuant to the requirements of Treasury Regulation Section 1.148-1(b), it (or any related person contemplated by such regulations) will not purchase Bonds in an amount related to the amount of the Bonds, other than Pledged Bonds.

SECTION 8.6 **Notice of Certain Events.** The Company will advise the Issuer and the Trustee promptly in writing of the occurrence of any 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 in any of the other Company Documents, or of any Event of Default or Potential Default under this Lease Agreement known to it or of which it has received notice, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect to such default. Such notice shall be given promptly, and in no event less than ten Business Days after the Company receives notice or has knowledge of the occurrence of any such event. The Company further agrees, that it will give prompt written notice to the Trustee if insurance proceeds or condemnation awards are received with respect to the Facility. The Company and the Issuer hereby agree, at the sole cost and expense of the Company, to provide estoppel certificates to the Credit Provider upon written request of such Credit Provider. Such estoppel certificates shall state: (i) whether there have been any amendments

to the Lease Agreement or the Company Lease, (ii) that the Lease Agreement and the Company Lease are in full force and effect, (iii) whether there are any defaults or Events of Default known to the Issuer or the Company, and (iv) whether all lease payments are current.

SECTION 8.7 **Compliance with Orders, Ordinances, Etc.** (a) The Company, throughout the term of this Lease Agreement, agrees that it will promptly comply, and take all reasonable steps to cause any tenant or occupant of the Facility to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof or to the acquisition, rehabilitation, 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, rehabilitation, renovation, equipping and furnishing thereof, or to any use, manner of use or condition of the Facility or any part thereof and of all companies or associations insuring the premises.

(b) The Company shall keep or cause the Facility to be kept free of Hazardous Substances, except in compliance with applicable law. 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, regulations and permits, nor shall the Company cause or permit except in compliance with all applicable federal, state and local laws, regulations and permits, 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 or onto any other property. The Company shall comply with and shall take all reasonable steps to ensure compliance 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 with, and shall take all reasonable steps to ensure that all contractors, subcontractors, tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company shall (a) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions required to clean up and remove all Hazardous Substances not in compliance with all applicable federal, state and local laws, regulations and permits, on, from, or affecting the Facility (i) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies, and (ii) in accordance with the orders and directives of all federal, state, and local governmental authorities in compliance with such laws, regulations and permits; and (b) defend, indemnify, and hold harmless the Trustee and the Issuer, their employees, agents, officers, and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (i) the presence, disposal, release, or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise, (ii) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such

Hazardous Substances, (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, and/or (iv) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of the Trustee and the Issuer, which are based upon or in any way related to such Hazardous Substances, including, without limitation, reasonable attorney and consultant fees, reasonable investigation and laboratory fees, court costs, and reasonable litigation expenses. In the event the Security Instrument is foreclosed, or the Company tenders a deed in lieu of foreclosure, the Company shall deliver the Facility free of any and all Hazardous Substances not in compliance with such laws, regulations or permits 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 Trustee and the Issuer 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 or the Trustee shall notify the Company that by failure to comply with such requirement or requirements, the lien of the Security Instrument as to any part of the Facility may likely 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 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 all reasonable efforts to not cause or permit such use or occupancy to be discontinued without the prior written consent of the Issuer and the Trustee.

(d) Notwithstanding the provisions of this Section 8.7, 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 Trustee, or any of their respective members, directors, officers, agents, or employees, shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Issuer or the Trustee, the Company shall immediately provide legal protection and/or pay amounts necessary in the opinion of the Issuer 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 and the Issuer retain the right to defend themselves in any action or actions which are based upon or in any way related to such Hazardous Substances. In any such defense of themselves, the Trustee and the Issuer shall each select their own counsel, and any and all reasonable costs of such defense, including, without limitation, reasonable attorney and consultant fees, reasonable investigation and laboratory fees, court costs, and reasonable litigation expenses, shall be paid by the Company.

SECTION 8.8 **Discharge of Liens and Encumbrances.** (a) The Company hereby covenants that the Security Instrument is a valid and first priority lien on the Facility subject only to the Permitted Encumbrances, and the Company agrees not to create or suffer to be created any other lien, except for Permitted Encumbrances, on the Facility or any part thereof or any funds of the Issuer applicable to the Facility.

(b) Notwithstanding the provisions of subsection (a) of this Section 8.8, the Company may in good faith actively contest any such lien, provided that the Company (i) first shall have notified the Issuer and the Trustee in writing of such contest, (ii) is not in default under any of the Transaction Documents, (iii) shall have set aside adequate reserves from the discharge of any such lien, and (iv) demonstrates to the reasonable satisfaction of the Issuer and the Trustee that the failure to discharge any such lien will not subject the Facility or any part thereof or any funds of the Issuer applicable to the acquisition, rehabilitation, renovation and equipping of the Facility to loss or forfeiture.

SECTION 8.9 **Reserved.**

SECTION 8.10 **Regulatory Agreement**. The covenants of the Company in the 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 (i) such time as such restrictions expire under their own terms, or (ii) the Issuer (in its sole and absolute discretion) and the Trustee consent to the release of such restrictions, or (iii) the Regulatory Agreement is otherwise terminated by its terms. The Company covenants to file of record the Regulatory Agreement and such other documents and take such other steps as are necessary in order to assure that the restrictions contained in the Regulatory Agreement will, subject to the terms of the 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 XII, 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 Regulatory Agreement or this Lease Agreement.

SECTION 8.11 **Depreciation Deductions and Tax Credits**. The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Facility which constitutes "Section 38 Property" and to all other state and/or federal income tax deductions and credits which may be available with respect to the Facility. The Company shall include all income earned from the operation of the Facility on its annual federal, state and local tax returns. Subject to the Company's obligations set forth herein, the Company shall have the right to receive all economic benefits and bear the economic risk of loss associated with the Facility.

SECTION 8.12 **Identification of Equipment.** All Equipment which is or may become part of the Facility pursuant to the provisions of the Lease Agreement shall be properly identified by the Company by appropriate records.

SECTION 8.13 **Sale or Lease of Facility.** (a) The Company may not sell, lease, transfer, convey or otherwise dispose of the Facility or any part thereof without the prior written consent of the Issuer and the Trustee, which consents shall not be unreasonably withheld, provided that no such sale, lease, transfer, sublease, conveyance or other disposition of the Facility, or any part thereof will adversely affect the exclusion from gross income for federal income tax purposes of the interest payable on the Bonds; and provided further that any such action shall be subject to the terms of the Security Documents.

(b) Subject to the foregoing, in any instance after the Completion Date where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item of Equipment and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Issuer or Trustee, provided that such removal will not materially impair the value of the Facility as collateral and will not change the nature of the Facility such that it no longer constitutes a "project" under the Act. At the request of the Company, the Issuer shall execute and deliver, and shall request the Trustee to execute and deliver, to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment free from the liens of the Bond Documents. The Company shall pay all costs and expenses (including counsel fees) incurred in transferring title to and releasing from the liens of the Bond Documents any item of Equipment removed pursuant to this Section 8.13.

SECTION 8.14 **Employment Opportunities. Notice of Jobs**. The Company covenants and agrees that, in consideration of the participation of the Issuer in the transactions contemplated herein, it will, except as otherwise provided or governed by collective bargaining contracts or agreements to which it is a party, cause any new permanent employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively, the "Referral Agencies"). The Company also agrees that, except as otherwise provided or governed by collective bargaining contracts or agreements to which it is a party, it will use its best efforts to consider first for

such new permanent employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

SECTION 8.15 **Disclosure Agreement.** The Company acknowledges and agrees that the Issuer is not an "obligated person" (as defined in the Disclosure Agreement) with respect to the Bonds and represents that the Company is the only obligated person with respect to the Bonds. The Issuer acknowledges the entry by the Company and the Trustee into the Disclosure Agreement which is for the benefit of the owner of the Bonds. The Company agrees to perform its obligations under the Disclosure Agreement, including, without limitation, the payment of compensation to the Trustee and payment or reimbursement of expenses, disbursements and advances incurred or made by the Trustee and the Indenture. Notwithstanding any other provision of this Lease Agreement, any failure by the Company to comply with any provision of the Disclosure Agreement shall not be a failure or a default, or an Event of Default, under this Lease Agreement or the Indenture.

SECTION 8.16 **Prevailing Wages.** The Company hereby agrees to comply with the prevailing wages policy of the Issuer in connection with the rehabilitation, renovation and equipping of the Facility. The Company acknowledges receipt of a copy of said prevailing wages policy.

ARTICLE IX

MAINTENANCE, TAXES, PAYMENT IN LIEU OF TAXES AND INSURANCE

SECTION 9.1 **Maintenance, Alterations and Improvements.**

(a) **Maintenance of Facility; Operation.** The Company will (i) own and operate the Facility (1) in accordance with the requirements of this Lease Agreement, the Regulatory Agreement, the Security Documents, the Act and with all other applicable federal, state and local laws, ordinances, orders, rules and regulations, including, without limitation, those relating to zoning, building, safety and environmental quality, and (2) strictly as a "project" as defined in the Act, (ii) keep and maintain the Facility, including all appurtenances to it and any personal property in or on the Facility (other than property of tenants), in good repair and good operating condition and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted and (iii) insure the Facility as required by the Security Documents.

(b) **Remodeling and Improvements.** Subject to the terms of the Security Documents, the Company may remodel the Facility or make modifications or improvements on or to the Facility from time to time as it, in its discretion, may deem to be desirable for its uses and purposes, provided that such remodeling, modifications or improvements (i) do not materially alter the scope or character or diminish the value of the Facility, (ii) are permitted under the Act and the Code and (iii) are approved by the Loan Servicer and the Credit Provider. The cost of such remodeling, modifications or improvements shall be paid by the Company.

SECTION 9.2 **Compliance With Laws**. The Company will, throughout the term of this Lease Agreement, promptly comply or cause compliance with all laws, ordinances, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Facility or to the acquisition, rehabilitation, renovation, repair and alteration of the Facility, or to the use or manner of use of the Facility, including, but not limited to, the Act, the ADA, Environmental Laws and all federal, State and local labor, health and safety laws, rules and regulations. Subject to the provisions of the Security Documents, the Company may, at its expense and in its own name, provided it is not in default under any Security Document or any Bond Document, in good faith contest compliance with any such legal requirement and, in the event of any such contest, upon notice to the Issuer, the Trustee, the Loan Servicer and the Credit Provider, may permit the legal requirement so contested to remain in noncompliance during the pendency of such contest and any appeal from it, unless the Issuer, the Trustee, the Loan Servicer or the Credit Provider shall notify the Company that, in the opinion of counsel to the Issuer, the Trustee, the Loan Servicer or the Credit Provider, noncompliance with any such legal requirement may subject the Facility or any part of it to foreclosure or forfeiture, in which event the legal requirement must be complied with. Nothing contained in this Section 9.2 is intended to modify or limit any provisions of the Regulatory Agreement or any Security Document.

SECTION 9.3 **Payment in Lieu of Real Estate Taxes.** It is recognized that under the provisions of the Act, the Issuer is required to pay no taxes or assessments upon any of the Property acquired by it or under its jurisdiction, control or supervision or upon its activities. It is not the intention, however, of the parties hereto that the Facility be treated as exempt from real property taxation. Accordingly, the parties acknowledge that the PILOT Agreement has been executed with respect to the Facility. Until the expiration date of the PILOT Agreement, the Issuer and the Company hereby agree that the Company (or any subsequent user of the Facility under the Lease Agreement) shall be required to make or cause to be made payments in lieu of real estate taxes in the amounts and in the manner set forth in the PILOT Agreement.

SECTION 9.4 **Taxes, Assessments and Charges.** The Company will pay, or cause to be paid, promptly as the same become due and payable, every obligation of every kind and nature, foreseen or unforeseen, for the payment of which the Issuer, the Trustee or the Credit Provider, or any other party, is or may become liable by reason of its or their estate or interest in the Facility, by reason of any right or interest of the Issuer, the Trustee or the Credit Provider in or under this Lease Agreement, or by reason of or in any manner connected with or arising out of the possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Facility or any portion of it, including, without limitation, all taxes, assessments, whether general or special, utilities, and governmental charges of any kind that may at any time be lawfully assessed or levied against or with respect to the Facility or any machinery, equipment or other property installed or brought by the Company in or on the Facility; provided that any amounts payable under this Lease Agreement that are also required to be paid by the terms of the Security Instrument shall be paid on the terms provided in the Security Instrument. Upon request, the Company will furnish to the Issuer, the Trustee, the Loan Servicer and the Credit Provider proof of the payment of any such tax, assessment or other governmental or similar charge, or any other charge payable by the Company.

SECTION 9.5 **Insurance.** At all times throughout the term of this Lease Agreement, including, when indicated herein, during the Construction Period, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by facilities of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than the principal amount of the Bonds. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

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

(c) Insurance protecting the Issuer and the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Article X hereof), or arising from personal injury, including bodily injury or death, or damage to the property of others caused by an accident or occurrence, with a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage) and with a blanket excess liability coverage in an amount not less than $5,000,000 protecting the Issuer and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

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

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

(ii) Commercial general liability providing coverage for:

Premises and Operations
Products and Completed Operations
Owners Protective
Contractors Protective

Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iii) Business auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than $1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iv) Excess "umbrella" liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than $5,000,000.

SECTION 9.6 **Additional Provisions Respecting Insurance.**

(a) All insurance required by Section 9.5 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 9.5 hereof shall be rated "A" or better by A.M. Best Co., Inc. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Section 9.5(a) hereof shall contain a standard New York non-contributory mortgagee clause showing the interest of the Trustee and the Credit Provider as first mortgagee, shall provide for payment to the Trustee of the Net Proceeds of insurance resulting from any claim for loss or damage thereunder and all policies of insurance required by Section 9.5 hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Issuer and the Trustee. The policy evidencing the insurance required by Section 9.5(c) hereof shall name the Issuer and the Trustee as additional named insureds. All policies evidencing the insurance required by Sections 9.5(d)(ii) and (iv) shall name the Issuer, the Trustee and the Company as additional named insureds. The Company acknowledges that a mortgage and security interest in the policies of insurance required by Section 9.5(a) and the Net Proceeds thereof have been or may be granted by the Issuer to the Trustee and the Credit Provider pursuant to the Security Instrument and the Company consents thereto. Upon request of the Trustee and/or the Credit Provider, the Company will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under the Security Instrument) to the Trustee and/or the Credit Provider, the policies of insurance required under Section 9.5(a), so and in such manner and form that the Trustee shall at all times, upon such request and until the payment in full of the Bonds, have and hold said policies and the Net Proceeds thereof, as collateral and further security under the

Security Instrument for the payment of the Bonds. The policies under Section 9.5(a) shall contain appropriate waivers of subrogation.

(b) The policies (not certificates or binders) of insurance required by Section 9.5(a) hereof shall be deposited with the Trustee on or before the Closing Date. A copy of the policy (not a certificate or binder) of insurance required by Section 9.5(c) hereof shall be delivered to the Issuer on or before the Closing Date. The Company shall deliver to the Issuer and the Trustee before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 9.5 hereof and complying with the additional requirements of Section 9.6(a) hereof. Prior to the expiration of each such policy or policies, the Company shall furnish to the Issuer and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Lease Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Lease Agreement as the Issuer and the Trustee may from time to time reasonably require.

SECTION 9.7 **Application of Net Proceeds of Insurance.** The Net Proceeds of the insurance carried pursuant to the provisions of Section 9.5 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 9.5(a) hereof shall be applied as provided in Section 5.1 hereof, and (ii) the Net Proceeds of the insurance required by Sections 9.5(b), (c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

ARTICLE X

INDEMNIFICATION

SECTION 10.1 **Company's Obligations.** The Company releases the Issuer, the Trustee, the Tender Agent and their respective officers, directors, agents, officials, employees (and, as to the Issuer, members of its governing body) and any person who controls the Issuer, the Trustee or the Tender Agent within the meaning of the Securities Act of 1933, from, and covenants and agrees to indemnify, hold harmless and defend the Issuer, the Trustee, the Tender Agent and their respective officers, directors, employees, agents, members of its governing body, officials and any person who controls such party within the meaning of the Securities Act of 1933 and employees and each of them (each an "**Indemnified Party**") from and against, any and all losses, claims, damages, liabilities and expenses (including attorneys' fees and expenses), taxes, causes of action, suits and judgments of any nature, joint or several, by or on behalf of any person arising out of:

(a) the approval of or the undertaking of the acquisition, rehabilitation, renovation and equipping of the Facility;

(b) the issuance and sale, resale or remarketing, defeasance and/or redemption of any Bonds or any certifications or representations made by any person other than the party seeking indemnification in connection therewith, including, but not limited to,

any (i) statement or information made by the Company with respect to the Company or the Facility in any offering document or materials regarding the Bonds, the Facility or the Company or in the Tax Certificate of the Company or in any other certificate executed by the Company which, at the time made, is misleading, untrue or incorrect in any material respect, (ii) untrue statement or alleged untrue statement of a material fact relating to the Company or the Facility 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 Facility required to be stated in such offering material or necessary in order to make the statements in such offering material not misleading, (iii) 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;

(c) the interpretation, performance, enforcement, breach, default or amendment of the Bond Documents, the Security Documents or any other documents relating to the Facility or the Bonds or in connection with any federal or state tax audit, or any questions or other matters arising under such documents;

(d) the Company's failure to comply with any requirement of this Lease Agreement or the Regulatory Agreement;

(e) the condition of the Facility (environmental or otherwise), including any violation of any law, ordinance, court order or regulation affecting the Facility or any part of it;

(f) 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 or any of its agents, servants, employees or licensees, whether or not related to the Facility, or resulting from the acquisition, construction, design, rehabilitation, repair, operation, use or management of all or any part of the Facility;

(g) the Trustee's acceptance or administration of the trusts created by, and the exercise of its powers or duties under, the Indenture or under this Lease Agreement, the Regulatory Agreement, the Credit Facility or any other agreements in connection with such agreements to which it is a party; and

(h) to the extent not mentioned in any of the preceding subsections, any cause whatsoever in connection with transactions provided for in this Lease Agreement and the other Transaction Documents or otherwise in connection with the Facility, the Bonds or the execution or amendment of any document relating to the Bonds or the Facility.

This indemnification shall extend to and include, without limitation, all reasonable costs, counsel fees, expenses and liabilities incurred in connection with any such claim, or proceeding brought with respect to such claim, except (i) in the case of the foregoing indemnification of the Trustee or any of its Indemnified Parties, to the extent such damages are caused by the negligence or willful misconduct of such Person, and (ii) in the case of the

foregoing indemnification of the Issuer or any of its Indemnified Parties, to the extent such damages are caused by the gross negligence or willful misconduct of such Person.

SECTION 10.2 **Defense of Claims.** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought under Section 10.1, the Company, upon written notice from the Indemnified Party, will assume the investigation and defense of the action or proceeding, including the engagement of counsel selected by the Company, subject to the approval of the Indemnified Party in such party's sole, reasonable discretion, and shall assume the payment of all expenses related to the action or proceeding, with full power to litigate, compromise or settle the same in its sole discretion; provided, however, that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to engage separate counsel in any action or proceeding and participate in the investigation and defense of such action or proceeding, and the Company shall pay the reasonable fees and expenses of such separate counsel if (i) the Indemnified Party determines that a conflict exists between the interests of the Indemnified Party and the interests of the Company or (ii) such separate counsel is engaged with the approval of the Company, which approval shall not be unreasonably withheld, conditioned or delayed.

SECTION 10.3 **Company's Continuing Obligations.** Notwithstanding any transfer of the Facility to another owner in accordance with the Regulatory Agreement, the Company shall remain obligated to indemnify each Indemnified Party pursuant to this Article X for all matters arising prior to 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 this Lease Agreement and the other Company Documents on and after the transfer date. Each Indemnified Party's rights under this Article X shall survive the termination of this Lease Agreement, the payment of the lease payments under this Lease Agreement and the Payment Agreement and the payment or defeasance of the Bonds.

ARTICLE XI

ASSIGNMENT OF CERTAIN RIGHTS; MERGER OF ISSUER

SECTION 11.1 **Reserved.**

SECTION 11.2 **Assignment of Certain Rights.** The Company acknowledges that the Issuer has, pursuant to the Assignment, assigned certain of its rights in this Lease Agreement and the Payment Agreement to the Trustee and the Credit Provider, as their interests appear. Such pledge and assignment shall in no way impair or diminish any obligations of the Issuer under the Lease Agreement. The Company hereby acknowledges receipt of notice of and consents to such pledge and assignment by the Issuer to the Trustee and specifically agrees to perform for the benefit of the Trustee all of its duties and undertakings hereunder (except duties undertaken with respect to the Issuer's Reserved Rights).

SECTION 11.3 **Merger of Issuer.** (a) Nothing contained in the Lease Agreement shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or

assignment by the Issuer of its rights and interests hereunder to, any other public benefit corporation of the State or political subdivision thereof which has the legal authority to perform the obligations of the Issuer hereunder, provided that:

(1) the exclusion from gross income for federal income tax purposes of the interest payable on the Bonds shall not be adversely affected thereby; and

(2) upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of the Lease Agreement, the Bonds and the Indenture to be kept and performed by the Issuer shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Issuer's rights and interests hereunder or under the Lease Agreement shall be assigned.

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

SECTION 11.4 **Right To Enforce Compliance**. The Issuer, the Trustee, the Loan Servicer and the Credit Provider 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 Regulatory Agreement. Notwithstanding the foregoing, the Trustee agrees that it will, subject to the provisions of Article IX of the Assignment, the Indenture and Article XII 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 Regulatory Agreement.

SECTION 11.5 **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, the Credit Provider and/or the Loan 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, the Credit Provider or the Loan Servicer shall become an additional obligation of the Company under this Lease Agreement, payable on demand, with interest on such obligation at the rate of fifteen percent (15%) per annum or the maximum permitted by law, whichever is less. In the event of an advance made due to the Company's default, the interest on the advance shall be at the default rate of interest payable under the Payment Agreement.

SECTION 11.6 **No Modification of Security Documents.** Nothing contained in Section 11.5 is intended to modify or limit any provisions of the Security Documents which provide for sums advanced by the Loan Servicer or the Credit Provider to be added to the principal balance of the obligations payable by the Company and to be secured by the Security Instrument.

SECTION 11.7 **Third-Party Beneficiaries**. The Loan Servicer, the Trustee, the Credit Provider and the Construction Lender (so long as the Letter of Credit is in effect) are intended to be, and shall be, third-party beneficiaries of this Lease Agreement, and the Credit Provider shall have the right (but not the obligation) to enforce the terms of this Lease Agreement insofar as this Lease Agreement sets forth obligations of the Company under this Lease Agreement.

ARTICLE XII

EVENTS OF DEFAULT AND REMEDIES

SECTION 12.1 **Events of Default.** The occurrence of any one or more of the following events shall constitute an Event of Default under this Lease Agreement:

(a) The Company fails to pay when due any amount payable by the Company under this Lease Agreement.

(b) The Company fails to observe or perform any covenant or obligation in this Lease Agreement on its part to be observed or performed for a period of 30 days after receipt of written notice from the Issuer or the Trustee specifying such failure and requesting that it be remedied, provided, however, that if the failure cannot be corrected within such period, it shall not constitute an Event of Default if the failure is correctable without material adverse effect on the validity or enforceability of the Bonds or on the exclusion from gross income, for federal income tax purposes, of the interest on the Bonds, and if corrective action is instituted by the Company within such period and diligently pursued until the failure is corrected, and provided further that any such failure is cured within 90 days of receipt of notice of such failure.

(c) The Credit Provider provides written notice to the Trustee of an Event of Default under this Lease Agreement by reason of the occurrence of an Event of Default under the Reimbursement Agreement. No Event of Default under the Reimbursement Agreement shall constitute a default under this Lease Agreement unless specifically declared to be so by the Credit Provider. The Credit Provider shall make such declaration by written notice to the Trustee.

(d) the occurrence of an "Event of Default" under any of the other Bond Documents;

(e) any representation or warranty made by the Company herein or in any other Bond Document proves to have been false at the time it was made or intended to be effective, or a breach of any warranty made by the Company herein;

(f) the Company shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due;

(g) if at any time any insurance policy required to be maintained pursuant to Section 9.5 of the Lease Agreement shall be cancelled, terminated or lapse and shall not have been replaced prior to the effective date of such cancellation, termination or lapse by a

policy covering the same matters as the lapsed policy, which new policy shall comply with all requirements in Sections 9.5 and 9.6 of the Lease Agreement relating to such type of insurance;

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

(i) the failure by the Company to pay or cause to be paid on the dates due, the amounts specified to be paid pursuant to the PILOT Agreement; or

(j) the material breach of any covenant or representation contained in the Environmental Compliance and Indemnification Agreement for a period of 30 days after receipt of written notice from the Issuer specifying such failure and requesting that it be remedied, provided, however, that if the failure cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Company within such period and diligently pursued until the failure is corrected, and provided further that any such failure is cured within 90 days of receipt of notice of such failure.

SECTION 12.2 **Remedies upon an Event of Default.** Subject to the Assignment, whenever any Event of Default occurs and is continuing under this Agreement, the Issuer may take one or any combination of the following remedial steps:

(a) by written notice to the Company, declare all amounts then due and payable under this Lease Agreement and under the Payment Agreement to be immediately due and payable;

(b) exercise any of the rights and remedies provided in the Bond Documents and the Security Documents;

(c) take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and afterward to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Lease Agreement; or

(d) with respect to an Event of Default specified in Section 12.1(i) and (j) above, the Issuer shall have the right to terminate this Lease Agreement and the Company Lease and terminate the PILOT Agreement; provided, however, that the Issuer shall not have the right to terminate the Company Lease, the Lease Agreement and the PILOT Agreement so long as the Credit Provider cures or undertakes to cure such Event of Default in writing. The Agency shall have the right to execute appropriate terminations of lease with respect to the Facility and to place the same on record in the Nassau County Clerk's Office, at the expense of the Company and in such event the Company waives delivery and acceptance of such terminations and the Company hereby appoints the Agency 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 terminations.

No action taken pursuant to this Section 12.2 shall relieve the Company from its obligations to make all payments required by this Lease Agreement and the other Bond Documents.

Subject to Section 12.2(d) above, the Issuer may not terminate this Lease Agreement or the Company Lease without the prior written consent of the Credit Provider.

SECTION 12.3 **No Levy or Other Execution Against the Facility.** Neither the Issuer nor the Trustee shall have any right to levy, execute or enforce any judgment in respect of the Company's obligations under this Lease Agreement, including the Reserved Rights, against the Facility or any other property of the Company which secures the obligations of the Company under the Security Documents or to the Credit Provider under any of the Credit Facility Documents.

SECTION 12.4 **Waiver and Annulment.** Unless the Credit Provider otherwise consents in writing, neither the Issuer nor the Trustee may waive or annul any Event of Default under this Lease Agreement unless (i) all amounts which would then be payable under this Lease Agreement by the Company if such Event of Default had not occurred and was not continuing are paid by or on behalf of the Company, and (ii) the Company also performs all other obligations in respect of which it is then in default under this Lease Agreement and pays the reasonable charges and expenses of the Issuer and the Trustee, including reasonable attorneys' fees and expenses paid or incurred in connection with such default. No waiver or annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent on such Event of Default.

SECTION 12.5 **No Remedy Exclusive.** All rights and remedies provided in this Lease Agreement are cumulative, nonexclusive and in addition to any and all rights and remedies that the Issuer and the Trustee may have or may be given by reason of any law, statute, ordinance or otherwise.

SECTION 12.6 **No Waiver.** No delay or omission to exercise any right or power accruing upon any Event of Default under this Lease Agreement shall impair any such right or power or shall be construed to be a waiver of such Event of Default, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

SECTION 12.7 **No Notices.** In order to entitle the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Article or by any Bond Document.

SECTION 12.8 **Attorneys' Fees and Expenses.** In the event the Company should default under this Lease Agreement and the Issuer or Trustee employs attorneys or incurs other expenses for the collection of payments under, or the enforcement of performance or observance of any obligation or agreement on the part of the Company contained in, this Lease Agreement, the Company agrees that it will pay, on demand, to the Issuer or the Trustee, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred by the Issuer or Trustee, whether an action is commenced or not.

ARTICLE XIII

OPTIONS

SECTION 13.1 **Option to Terminate.** The Company shall have the option to terminate this Lease Agreement at any time by causing the redemption, purchase or defeasance in whole of all of the Outstanding Bonds in accordance with the terms set forth in the Indenture and subject to the terms of the Reimbursement Agreement. As a condition precedent to such termination, the Company shall pay or cause to be paid, through causing a draw under the Credit Facility, subject to the respective terms thereof, and paying the amounts set forth below to the Trustee, in consideration thereof, in legal tender, advance lease payments equal to the sum of (i) all amounts which, when added to the Available Moneys on deposit in the Bond Fund and available therefor, will be sufficient to pay, retire and redeem the Outstanding Bonds in accordance with the terms of the Indenture, including without limitation principal of, or Redemption Price of, together with interest to maturity or the redemption date; (ii) any amounts required to be rebated to the federal government pursuant to the Tax Certificate and the Indenture; and all fees and expenses of the Issuer, the Trustee, the Credit Provider, the Loan Servicer, the Remarketing Agent, and all other amounts due and payable under this Lease Agreement, the Bond Documents, the Security Documents, the Credit Facility Documents, and subject to Section 14.12 hereof. As a further condition precedent to any such termination, the Company shall pay or cause to be paid to the to the Issuer or the Taxing Authorities (as such term is defined in the PILOT Agreement), as appropriate pursuant to the PILOT Agreement: all amounts due and payable under the PILOT Agreement as of the date of the conveyance described in Section 13.2 hereof.

SECTION 13.2 **Obligation to Accept Facility.**

(a) Upon termination or expiration of this Lease Agreement, in accordance with Sections 4.2 and 13.1 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 and to the Trustee:

(i) declaring the Company's election to prepay all rent under Section 5.3 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 13.3 **Surrender of Facility**. At the closing of any surrender of the Facility pursuant to Section 11.3 hereof, the Issuer shall, upon receipt of $1.00, 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, and

(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).

ARTICLE XIV

MISCELLANEOUS

SECTION 14.1 **Notices.** All notices, certificates or other communications provided in this Lease Agreement shall be given in writing, and shall be sufficiently given and shall be deemed given if given in the manner provided in Section 13.4 of the Indenture. Copies of each notice, certificate or other communication given under this Lease Agreement by any party shall be given to the other parties. By notice given under this Lease Agreement, any party may designate further or different addresses to which subsequent notices, certificates or other communications are to be sent. A duplicate copy of each notice, certificate, request or other communication given under this Lease Agreement to the Issuer, the Company or the Trustee shall also be given to the Credit Provider, the Loan Servicer and prior to the Conversion Date, the Construction Lender.

SECTION 14.2 **Amendment.** No amendment to this Lease Agreement shall be binding upon the parties to this Lease Agreement until such amendment is reduced to writing and executed by such parties; provided, however, that no amendment, supplement or other modification to this Lease Agreement or any other Bond Document shall be effective without the prior written consent of the Credit Provider, subject to the provisions of Section 14.13.

SECTION 14.3 **Entire Agreement.** This Lease Agreement is one agreement in a set of agreements, documents and instruments representing an integrated transaction. The agreements, documents and instruments are the Transaction Documents. The Transaction Documents contain all agreements between the parties to the integrated

transaction, and there are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among them, unless reference is made in a Transaction Document. Nothing in this Lease Agreement shall relieve the Company of its obligations under the Security Documents or the Credit Facility Documents.

SECTION 14.4 **Binding Effect.** This Lease Agreement is a continuing obligation and shall (i) be binding upon each of the parties to this Lease Agreement and their successors and assigns and (ii) inure to the benefit of and be enforceable by such parties and their respective successors, transferees and assigns; provided, however, that the Company may not assign all or any part of this Lease Agreement without the prior written consent of the Issuer.

SECTION 14.5 **Further Assurances and Corrective Instruments.** The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such amendments to this Lease Agreement and to the other Transaction Documents contemplated by this Lease Agreement as reasonably may be required to carry out the intention of, or to facilitate the performance of this Lease Agreement, or to perfect or give further assurances of any of the rights granted or provided for in this Lease Agreement.

SECTION 14.6 **Severability.** Should one or more of the provisions of this Lease Agreement be held to be invalid, illegal or unenforceable in any jurisdiction, such provision shall be severable from the remainder as to such jurisdiction and the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired in any jurisdiction.

SECTION 14.7 **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.

SECTION 14.8 **Governing Law.** This Lease Agreement shall be construed, and the obligations, rights and remedies of the parties under this Lease Agreement shall be determined, in accordance with the laws of the State without regard to conflicts of laws principles, except to the extent that the laws of the United States of America may prevail.

SECTION 14.9 **Waiver of Jury Trial.** THE COMPANY, THE ISSUER AND THE TRUSTEE (A) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING UNDER THIS LEASE AGREEMENT TRIABLE BY A JURY AND (B) WAIVE ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT NOW EXISTS OR SHALL LATER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL BY THE COMPANY, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. FURTHER, THE COMPANY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE ISSUER (INCLUDING, BUT NOT LIMITED TO, THE ISSUER'S COUNSEL) HAS REPRESENTED,

EXPRESSLY OR OTHERWISE, TO THE COMPANY THAT THE ISSUER WILL NOT SEEK TO ENFORCE THE PROVISIONS OF THIS SECTION.

SECTION 14.10 **Limited Liability of the Issuer.** All obligations of the Issuer under this Lease Agreement, the Payment Agreement, the Regulatory Agreement and the Indenture shall be limited obligations of the Issuer, payable solely and only from the Trust Estate. No owner or owners of any of the Bonds shall ever have the right to compel any exercise of the taxing power of the State or any political subdivision or other public body for the payment of the Bonds, nor to enforce the payment of the Bonds against any property of the State or any such political subdivision or other public body, including the Issuer except as provided in the Indenture. No member, officer, agent, employee or attorney of the Issuer, including any person executing this Lease Agreement on behalf of the Issuer, shall be liable personally under this Lease Agreement. No recourse shall be had for the payment of the principal of or the interest on the Bonds, for any claim based on or in respect of the Bonds or based on or in respect of this Lease Agreement, against any member, officer, employee or agent, as such, of the Issuer or any successor whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance of this Lease Agreement and as part of the consideration for the issuance of the Bonds, expressly waived and released.

The obligations and agreements of the Issuer contained herein and in the other Bond Documents and any other instrument or document executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Issuer, and not of any member, officer, agent (other than the Company) or employee of the Issuer in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Issuer shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Issuer contained herein and therein shall not constitute or give rise to an obligation of the State of New York or the Town of Hempstead, New York and neither the State of New York nor the Town of Hempstead, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Issuer, but rather shall constitute limited obligations of the Issuer payable solely from the revenues of the Issuer derived and to be derived from the lease or other disposition of the Facility (except for revenues derived by the Issuer with respect to the Reserved Rights). No order or decree of specific performance with respect to any of the obligations of the Issuer hereunder shall be sought or enforced against the Issuer unless (A) 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, (B) 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 (C) 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 or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Issuer and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Issuer, furnish to the Issuer satisfactory security to protect the Issuer and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

SECTION 14.11 **Exculpation**. Notwithstanding anything to the contrary contained in the Lease Agreement, and except with respect to the Issuer's Reserved Rights, the liability and obligation of the Company to perform and observe and make good the obligations contained in the Lease Agreement shall not be enforced by any action or proceeding wherein damages or any money judgment or any deficiency judgment or any judgment establishing any personal obligation or liability shall be sought, collected or otherwise obtained against any past, present or future partner, officer, director or shareholder of the Company, and, except with respect to the Issuer's Reserved Rights, the Issuer for itself and its successors and assigns irrevocably waives any and all right to sue for, seek or demand any such damages, money judgment, deficiency judgment or personal judgment against any past, present or future partner, officer, director or shareholder of the Company under or by reason of or in connection with the Lease Agreement and agrees to look solely to the security and collateral held under or in connection with the Lease Agreement for the enforcement of such liability and obligation of the Company. Nothing contained in this Section 14.11 shall be construed (A) as preventing the Issuer from naming the Company or any past, present or future partner, officer, director or shareholder of the Company in any action or proceeding brought by the Issuer to enforce and to realize upon the security and collateral provided under or in connection with the Lease Agreement so long as no judgment, order, decree or other relief in the nature of a personal or deficiency judgment or otherwise establishing any personal obligation shall be asked for, taken, entered or enforced against any past, present or future partner, officer, director or shareholder of the Company, in any such action or proceeding, or (B) as modifying, qualifying or affecting in any manner whatsoever the lien and security interests created by the Lease Agreement or the enforcement thereof by the Issuer, or (C) as modifying, qualifying or affecting in any manner whatsoever the personal recourse undertaking, obligation and liability of the Company with respect to the Issuer's Reserved Rights, or (D) as a waiver by the Issuer of any rights to damages or other monetary relief, injunctive relief or any other remedy at law or equity against any past, present or future partner, officer, director or shareholder of the Company by reason of (1) waste of any portion of the Facility resulting from the reckless, willful, wanton or fraudulent acts or omissions of the Company, (2) fraud, knowingly false representations and warranties of a material fact, willfully tortious acts or omissions, or criminal acts or (3) the retention or misapplication of any rental or other income, or any insurance proceeds or Condemnation awards, arising with respect to the Facility.

SECTION 14.12 **Term of this Agreement.** This Lease Agreement shall be in full force and effect from its date to and including such date as all of the Bonds are fully paid or retired (or provision for such payment shall have been made as provided in the Indenture) and any additional lease payments, including fees, costs, and expenses owing to the Issuer,

the Trustee, the Loan Servicer, the Credit Provider under this Lease Agreement or under the Reimbursement Agreement, as applicable, shall have been paid; provided, however, that Sections 2.2 and 8.5 and Articles III, VI and X shall survive the termination of this Lease Agreement. The obligations of the Company with respect to the Issuer's Reserved Rights shall survive the termination of the Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the Issuer's Reserved Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Issuer, or its officers, members, agents or employees, relating thereto.

SECTION 14.13 **References to the Credit Provider.** All provisions in this Lease Agreement regarding consents, approvals, directions, waivers, appointments, requests or other actions by the Credit Provider shall be deemed not to require or permit such consents, approvals, directions, waivers, appointments, requests or other actions and shall be read as if the Credit Provider were not mentioned (i) if a Wrongful Dishonor has occurred and is continuing, or (ii) from and after the date on which the Credit Facility is declared to be null and void by final judgment of a court of competent jurisdiction; provided, however, that the payment of any amounts due to the Credit Provider pursuant to this Lease Agreement shall continue in full force and effect. The foregoing shall not affect any other rights of the Credit Provider. All provisions in this Lease Agreement relating to the rights of the Credit Provider shall be of no force and effect if the Credit Facility has terminated or expired in accordance with its terms and there are no Pledged Bonds or Bonds in which the Credit Provider has a security interest and all amounts owing to the Credit Provider under the Reimbursement Agreement have been paid.

SECTION 14.14 **Recording and Filing.** (a) The Lease Agreement (or memorandum thereof), the Security Instrument, the Assignment, and financing statements perfecting the security interests created and/or assigned thereby shall be recorded or filed, as the case may be, by the Issuer in the office of the County Clerk of Nassau County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

(b) The Issuer and the Company, at the sole cost and expense of the Company shall execute and deliver all instruments and shall furnish all information which the Trustee may deem necessary or appropriate to protect any lien created or contemplated by the Lease Agreement, the Indenture and the Security Instrument.

(The remainder of this page is intentionally blank.)

The parties to this Lease Agreement have caused this Lease Agreement to be executed by their duly authorized representatives as of the date set forth above.

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY:

By: _____

Name: Frederick E. Parola

Title: Executive Director and Chief Executive Officer

HEMPSTEAD VILLAGE HOUSING ASSOCIATES, L.P.

By: Wilder Richman Corporation, general partner

By: _____

Gary E. Friedland, Vice President

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

On the 30th day of October 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.

Edith M. Longo
Notary Public

EDITH M. LONGO
Notary Public State of New York
No. 01L06063912
Qualified in Nassau County
Commission Expires September 10, 2009

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

On the 30th day of October in the year 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Gary E. Friedland, 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

PAUL J. RICHARDS
Notary Public, State of New York
No. 60-4743465
Qualified in Westchester County
Commission Expires April 30, 2007

EXHIBIT A

DESCRIPTION OF LAND

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

BEGINNING at a point on the southerly side of Jerusalem Avenue distant 526.32 feet easterly from the corner formed by the intersection of the easterly side of Henry Street and the southerly side of Jerusalem Avenue;

RUNNING THENCE along the southerly side of Jerusalem Avenue, North 75 Degrees 36' East 314.14 feet;

THENCE South 22 Degrees 20' 35" East 15.10 feet;

THENCE South 14 Degrees 24' East 28.946 feet;

THENCE South 22 Degrees 20' 35" East 140.232 feet;

THENCE North 67 Degrees 39' 25" East 4 feet;

THENCE South 22 Degrees 20' 35" East 174.91 feet;

THENCE South 74 Degrees 26' West 374.17 feet;

THENCE North 12 Degrees 46' West 363.23 feet to the southerly side of Jerusalem Avenue, the point or place of BEGINNING.

EXHIBIT B

DESCRIPTION OF EQUIPMENT

All articles of personal property and all appurtenances acquired or to be acquired with the proceeds of the Bonds or any payment made by Hempstead Village Housing Associates, L.P. (the "Company") pursuant to Section 3.2 of the Lease Agreement, dated as of November 1, 2006 (the "Lease Agreement"), by and between the Town of Hempstead Industrial Development Agency and the Company and now or hereafter attached to, contained in or used in connection with the Hempstead Village Housing Associates, L.P. Facility in Village of Hempstead, Town of Hempstead, Nassau County, New York.