
**NASSAU COUNTY
INDUSTRIAL DEVELOPMENT AGENCY**

AND

BRUSH HOLLOW INN LLC

LEASE AGREEMENT

DATED AS OF JUNE 1, 2006

**ADDRESS: 4000 Brush Hollow Road
TOWN: Oyster Bay
COUNTY: Nassau
STATE: New York
SECTION: 11
BLOCK: B
LOTS: 1054**

Record and Return to:

**Phillips Lytle LLP
1100 Franklin Avenue, Suite 400
Garden City, NY 11530
Attention: Milan K. Tyler, Esq.**

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Agreement"), made and entered into as of June 1, 2006, by and between **NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York (the "Agency"), having its principal office at 1100 Franklin Avenue, Suite 300, Garden City, NY 11530, party of the first part, and **BRUSH HOLLOW INN LLC**, a limited liability company organized and existing under and by virtue of the laws of the State of New York (the "Lessee"), having its principal office at 30 Cutter Mill Road, Great Neck, NY 11021, as party of the second part (capitalized terms used but not defined in the recitals to this Agreement shall have the respective meanings assigned to such terms in Section 1.1 hereof):

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act"), was duly enacted by the Legislature of the State of New York as Chapter 1030 of the Laws of 1969 of the State of New York for the purposes, among others, of providing for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York, to promote, develop, encourage, assist and advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Agency has been heretofore established under said Enabling Act pursuant to Chapter 674 of the 1975 Laws of New York, as amended (which Chapter 674 of the 1975 Laws of New York, as amended, and the Enabling Act are herein collectively called the "Act") and is authorized to acquire real property and interests therein, buildings and other improvements thereon and machinery and equipment in connection therewith for the purposes set forth above, and to lease the same as herein more particularly described; and

WHEREAS, on or about February 28, 2006, Brush Hollow Inn LLC, a limited liability company organized and existing under the laws of the State of New York (the "Lessee"), presented an application (as amended, the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 1.27 acre parcel of land located at 4000 Brush Hollow Road, Westbury, Town of Oyster Bay, County of Nassau, New York (the "Land" and together with the improvements thereon, collectively, the "Facility Realty" or the "Facility"); (B) the financing of all or a portion of the costs of the foregoing by the issuance of taxable revenue bonds of the Agency in one or more series; (C) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from mortgage recording taxes and real property taxes (but not including special assessments and ad valorem levies) (together with such bonds, collectively, the "Financial

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Assistance”); and (D) the lease (with an obligation to purchase) or sale of the Facility to the Lessee or such other entity as may be designated by the Lessee and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in that certain resolution adopted by the members of the Agency on March 8, 2006 (the “Public Hearing Resolution”), the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on April 5, 2006 to the chief executive officer of Nassau County and of each other affected tax jurisdiction within which the Facility is to be located, (B) caused notice of the Public Hearing to be published on April 5, 2006 in *Newsday*, a newspaper of general circulation available to residents of the Town of Oyster Bay, New York, (C) conducted the Public Hearing on May 11, 2006 at 10:00 a.m., local time at Town Hall, 54 Audrey Avenue, Town of Oyster Bay, Nassau County, New York, and (D) prepared a report of the Public Hearing (the “Report”) which fairly summarized the views presented at the Public Hearing and distributed same to the members of the Agency; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Executive Director of the Agency (A) caused notice of a meeting of the Agency (the “IDA Meeting”) with respect to the proposed deviation from the Agency’s uniform tax exemption policy and guidelines to be mailed on April 5, 2006 to the chief executive officer of Nassau County and of each other affected tax jurisdiction, and (B) conducted the IDA Meeting on June 6, 2006 and reviewed and responded to any comments or correspondence received from the affected tax jurisdictions at or before the IDA Meeting regarding the proposed deviation from the Agency’s uniform tax exemption policy; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the Agency, conducting an uncoordinated review of the Project pursuant to SEQRA, by resolution dated June 6, 2006, determined that the Project will not have a significant adverse impact on the environment; and

WHEREAS, by resolution adopted by the members of the Agency on June 6, 2006 (the “Inducement Resolution”), the Agency, following a review of the Report, made a determination to proceed with the Project and to grant the Financial Assistance; and

WHEREAS, by further resolution adopted by the members of the Agency on June 6, 2006 (the “Authorizing Resolution” or the “Bond Resolution”), the Agency determined to provide the Financial Assistance contemplated by this Agreement, the Series 2006A Bonds referenced below and the Project Documents; and

WHEREAS, to facilitate the Project, the Agency and the Lessee have heretofore entered into negotiations to effect a transaction in which the Agency will acquire fee simple title to
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the Facility and the Agency, as lessor, will lease its interest in the Facility to the Lessee, as lessee, pursuant to this Agreement, and, in furtherance of such purposes, the Agency adopted the Inducement Resolution and the Authorizing Resolution authorizing the undertaking of the Project and the acquisition of the Facility by the Agency and the lease of the Facility by the Agency to the Lessee and undertaking to issue its taxable revenue bonds to finance a portion of the Project Costs; and

WHEREAS, immediately prior to the execution and delivery of the Lease, the Lessee will execute and deliver or cause to be executed and delivered to the Agency a certain deed of even date herewith (the "Deed to the Agency") from the Lessee to the Agency, which conveys to the Agency all right, title and interest of the Lessee in and to the Facility; and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement of even date herewith (the "PILOT Agreement") between the Lessee and the Agency, the Lessee has agreed to make certain payments in lieu of real estate taxes with respect to the Facility, and such obligation is to be secured pursuant to a Mortgage and Assignment of Leases and Rents of even date herewith (the "PILOT Mortgage") from the Lessee and the Agency, as mortgagors, to the County of Nassau (the "County"), as mortgagee, pursuant to which the Agency and the Lessee will grant a first mortgage lien on, and a security interest in, the Facility; and

WHEREAS, to provide funds for a portion of the costs of the Project and for incidental and related costs and to provide funds to pay the costs and expenses of the issuance of the Series 2006A Bonds hereinafter mentioned, the Agency has authorized the issuance of its Taxable Variable Rate Demand Revenue Bonds (Brush Hollow Inn Project), Series 2006A, in the aggregate principal amount of \$3,000,000 (the "Series 2006A Bonds") pursuant to the Act, the Bond Resolution and an Indenture of Trust of even date herewith (the "Indenture") by and between the Agency and Manufacturers and Traders Trust Company, as trustee (the "Trustee"), securing said Series 2006A Bonds; and

WHEREAS, the Lessee will enter into a Reimbursement Agreement of even date herewith (as amended from time to time, the "Reimbursement Agreement") with Manufacturers and Traders Trust Company (the "Bank") pursuant to which, simultaneously with the issuance of the Series 2006A Bonds, an irrevocable direct pay letter of credit (the "Letter of Credit") will be issued by the Bank in favor of the Trustee for the benefit of the Holders of the Series 2006A Bonds, to secure the payment of the principal or Redemption Price of (other than redemption premium, if any), Purchase Price, and interest on the Series 2006A Bonds; and

WHEREAS, concurrently with the execution hereof and in order to further secure the Series 2006A Bonds, the Lessee will enter into a guaranty agreement (the "Trustee Guaranty") in favor of the Trustee guaranteeing, among other things, the payment of the principal of, Redemption Price of (including redemption premium, if any), Purchase Price, and interest on the Bonds; and

WHEREAS, concurrently with the execution hereof and as further security to the Agency, the Lessee and Alan Mindel and Mary Mindel (each individually and together the "Individual Guarantor"), as guarantors, will enter into a guaranty agreement (the "Agency Guaranty") in favor of the Agency guaranteeing, among other things, certain payments, obligations, covenants and agreements of the Lessee under the Lease, the PILOT Agreement and the PILOT Mortgage; and

WHEREAS, concurrently with the execution hereof and in order to further secure the obligations of the Lessee to the Bank under the Reimbursement Agreement, the Agency and the Lessee will grant a mortgage lien on, and a security interest in, the Facility to the Bank (the "Bank Mortgage") which shall be second in priority to the PILOT Mortgage;

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided that in the performance of the agreements of the Agency herein contained, any obligation it may incur for the payment of money shall not subject the Agency to any pecuniary or other liability nor create a debt of State or of the County, and neither the State nor the County shall be liable on any obligation so incurred, but any such obligation shall be payable by the Agency solely out of the lease rentals, revenues and receipts derived from or in connection with the Project, including moneys received under this Agreement):

ARTICLE I

DEFINITIONS AND REPRESENTATIONS

Section 1.1 Definitions. Terms used and not defined in this Agreement (including the recitals set forth above) shall have the meanings ascribed to such terms in the Indenture hereinbelow defined. The following terms shall have the following meanings in this Agreement:

Act or Acts shall mean, collectively, the New York State Industrial Development Agency Act (constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York), as amended, and Chapter 674 of the 1975 Laws of New York, as amended through the Lease Commencement Date.

Additional Bonds shall mean one or more Series of additional bonds described in Section 6.10 hereof and issued, executed, authenticated and delivered under the Indenture.

Affiliate of a Person shall mean a Person who directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by, such Person. The term "control" (including the related terms "controlled by" and "under common control with") means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership voting securities, by contract or otherwise, and (ii) the ownership, either directly or indirectly, of at least 50% of the voting stock or other equity interest of such Person.

Agency shall mean the Nassau County Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State, duly organized and existing under the laws of the State, and any body, board, authority, agency or other governmental agency or instrumentality which shall hereafter succeed to the powers, duties, obligations and functions thereof.

Agency's Reserved Rights shall mean, collectively,

(i) the right of the Agency on its own behalf to receive all Opinions of Counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications required to be delivered to the Agency under this Agreement;

(ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency under this Agreement;

(iii) the right of the Agency to enforce on its own behalf the obligation of the Lessee to complete the Project;

(iv) the right of the Agency to exercise on its own behalf its rights under Section 2.4 of this Agreement with respect to the proceeds of fee title insurance;

(v) the right of the Agency to enforce or otherwise exercise on its own behalf all agreements of the Lessee to ensure that the Facility shall always constitute a qualified "project" as defined in and as contemplated in the Act;

(vi) the right of the Agency to amend with the Lessee the provisions of Section 4.3 of this Agreement with respect to payments in lieu of taxes without the consent of the Trustee, the Bank or any Bondholder;

(vii) the right of the Agency on its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 1.5, 1.6, 2.1, 2.2, 2.3(c), 2.5, 3.1, 3.4, 3.5, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.5, 6.6(b), 6.8, 6.11, 6.13, 6.14, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 8.1, 8.2, 8.4, 8.5, 9.3, 9.10, 9.13, 9.17, 9.18, 9.19 and 9.22 of this Agreement;

(viii) the right of the Agency to enforce the PILOT Agreement, the Agency Guaranty and the Environmental Indemnification; and

(ix) the right of the Agency on its own behalf to declare an Event of Default under Section 7.1 of this Agreement with respect to any of the Agency's Reserved Rights.

Agency Guaranty shall mean the Agency Guaranty Agreement of even the date herewith from the Lessee and the Individual Guarantor in favor of the Agency.

Agency Security Documents shall mean, collectively and severally, this Agreement, the Indenture, the Trustee Guaranty, the Letter of Credit and any other document inuring to the benefit of the Trustee and the Holders of Bonds, if any.

Agreement or Lease shall mean this Lease Agreement between the Agency, as lessor, and the Lessee, as lessee, and shall include any and all amendments hereof and supplements hereto hereafter made in conformity herewith and with the Indenture.

Ancillary Bank Documents shall have the meaning assigned to such term in the Indenture.

Applicable Laws shall mean all current and future statutes, codes, laws, acts, ordinances, treaties, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, determinations and requirements, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Facility or any part thereof or the conduct of work on the Facility or any part thereof or to the operation, use, manner of use or condition of the Facility or any part thereof (the applicability of the foregoing to be determined both as if the Agency were the owner of the Facility and as if the Lessee and not the Agency were the owner of the Facility), including but not limited to (1) applicable health, building, zoning, use, rent, accessibility, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, (3) judgments, decrees, orders or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority, and (4) applicable covenants and restrictions relating in any way to the Facility.

Application shall mean the Application for Financial Assistance with respect to the Project submitted by the Lessee to the Agency on or about February 28, 2006, as amended and supplemented, in connection with the Project.

Authorized Representative shall mean (i) in the case of the Agency, the Chairman, Vice Chairman, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary or Executive Director of the Agency authorized to perform specific acts or to discharge specific duties; (ii) in the case of the Lessee, its Managing Member, or any other person designated in writing to the Agency and the Trustee by any Authorized Representative of Lessee; and (iii) in the case of the Individual Guarantor, the Individual Guarantor or his duly authorized attorney-in-fact; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of this Agreement, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

Bank shall mean (i) Manufacturers and Traders Trust Company, a banking corporation organized and existing under the laws of the State of New York, and its successors and

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assigns, in its capacity as issuer of the Letter of Credit, or (ii) a commercial bank (other than Manufacturers and Traders Trust Company), or a savings and loan association, which has issued a Substitute Letter of Credit or an entity which has issued a Substitute Credit Facility.

Bank Mortgage shall mean the Mortgage and Assignment of Leases and Rents of even date herewith from the Agency and the Lessee to the Bank, as hereafter amended and supplemented from time to time.

Bank Security Documents shall mean the Reimbursement Agreement, the Bank Mortgage and the Ancillary Bank Documents.

Bond Resolution or Authorizing Resolution shall mean the resolution of the Agency adopted on June 6, 2006, authorizing, among other things, the issuance of the Series 2006A Bonds.

Bonds shall mean the Series 2006A Bonds and any Additional Bonds.

Business Day shall mean any day other than (i) a Saturday or Sunday, (ii) a day on which banks in the State of New York, or in the cities in which the office of the Trustee, the Paying Agent, the Bond Registrar or the Remarketing Agent, or the office of the Bank at which demands for payment under the Letter of Credit are to be presented, are authorized or required by law to close, or (iii) a day on which the New York Stock Exchange, Inc. is closed.

Closing Date shall mean the date of issuance and delivery of the Series 2006A Bonds.

County shall mean the County of Nassau, New York.

Default Interest Rate shall mean a per annum rate of interest equal to eighteen percent (18%) per annum, or the maximum rate permitted by applicable law, whichever is less.

Environmental Indemnification shall mean the Environmental Compliance and Indemnification Agreement of even date herewith from the Lessee and the Individual Guarantor in favor of the Agency.

Environmental Report shall mean the Phase I Environmental Site Assessment dated January 31, 2006 prepared by JAC Planning Corp.

Event of Default shall have the meaning specified in Section 7.1 hereof.

Facility or Facility Realty shall mean the land described in the Description of Facility Realty in the Appendices to the Indenture, to the Bank Mortgage and hereto, and all rights or interests therein or appertaining thereto, together with all structures, buildings, foundations, related facilities, fixtures (other than trade fixtures) and other improvements now or at any time made, erected or situated thereon (including the improvements made pursuant to Section 2.1 hereof), and all replacements, improvements, extensions, substitutions, restorations, repairs or additions thereto;

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but excluding, however, any real property or interest therein released pursuant to Section 4.1 or 6.4 hereof.

Financial Assistance shall have the meaning given to such term in the recitals to this Agreement.

Force Majeure shall have the meaning specified in Section 9.2 hereof.

Governmental Authority shall mean the United States of America, the State, any other state and any political subdivision thereof, and any court, tribunal, arbitrator, mediator, agency, department, commission, board, bureau, authority or instrumentality of any of them.

Guarantors shall mean any current or future guarantor or all guarantors under the Agency Guaranty and the Trustee Guaranty.

Hazardous Materials shall mean all hazardous materials including, without limitation, any explosives, radioactive materials, radon, asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, lead based paints, petroleum, petroleum products, methane, hazardous materials, hazardous chemicals, hazardous wastes, extremely hazardous wastes, restricted hazardous wastes, hazardous or toxic substances, toxic pollutants, hazardous air pollutants, pollutants, contaminants, toxic chemicals, toxics, pesticides or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Clean Water Act, as amended (33 U.S.C. Section 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.) the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.), Articles 15 or 27 of the New York State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule or regulation other than office supplies used in the ordinary course of business in reasonable quantities which do not violate environmental laws.

Indenture shall mean the Indenture of Trust of even date herewith by and between the Agency and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

Independent Engineer shall mean a Person (not an employee of the Lessee or any Affiliate thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Lessee, and approved, in writing, by the Bank, the Trustee and the Agency (which approvals shall not be unreasonably withheld).

Individual Guarantor shall mean individually or collectively, as the context may require, Alan Mindel and Mary Mindel.

Interest Payment Date shall mean each date upon which interest, with respect to a Series of Outstanding Bonds, shall be due and payable.

Issue Date shall mean, with respect to each Bond of a Series, the date of the initial authentication and delivery of any of the Bonds of such Series, as stated by the Trustee in the Trustee's Certificate of Authentication appearing thereon to be the "Issue Date."

Lease or Agreement shall mean this Lease Agreement between the Agency, as lessor, and the Lessee, as lessee, and shall include any and all amendments hereof and supplements hereto made in conformity herewith and with the Indenture.

Lease Commencement Date shall mean the date of original issuance of the Series 2006A Bonds.

Lease Rental Payment Date shall mean each such date that is three (3) Business Days prior to each date upon which principal, interest, Redemption Price, if applicable, or other amounts shall be due under the Series 2006A Bonds.

Lessee means Brush Hollow Inn LLC, a limited liability company organized and existing under the laws of the State of New York, and its permitted successors and assigns under this Agreement.

Lessee's Property shall have the meanings specified in Section 4.1(c) hereof.

Letter of Credit shall mean (i) that certain letter of credit issued by Manufacturers and Traders Trust Company on the Closing Date, in connection with the Project, including any extensions or renewals thereof, and (ii) any Substitute Letter of Credit or Substitute Credit Facility (as such terms are defined in the Indenture), and, in each case, shall include any and all amendments thereof and supplements thereto made in conformity with this Agreement and with the Indenture.

Liens shall have the meaning specified in Section 6.6(a) hereof.

Loss Event shall have the meaning specified in Section 5.1(a) hereof.

Moody's shall mean Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency reasonably designated by the Agency by notice to the Lessee and the Trustee.

Nationally Recognized Bond Counsel shall mean Phillips Lytle LLP or other counsel acceptable to the Agency and experienced in matters relating to municipal securities issued by states and their political subdivisions.

Net Proceeds shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all reasonable expenses (including attorneys' fees and any other expenses of the Agency or the Trustee) incurred in the collection thereof.

Opinion of Counsel shall mean a written opinion of counsel who may (except as otherwise expressly provided in this Agreement or the Indenture) be counsel for the Lessee and who shall be reasonably acceptable to the Agency.

Paying Agent shall mean any paying agent or co-paying agent for the Bonds (and may include the Trustee) and its successor or successors and any other Person which may at any time be substituted in its place pursuant to the Indenture.

Permitted Encumbrances shall mean, as of any particular time,

(i) this Agreement (including the rights of the Lessee contained in Sections 4.1 and 8.1 hereof), the PILOT Mortgage, the Bank Mortgage, the Ancillary Bank Documents and the Indenture and any other Security Document or Project Document;

(ii) liens for real estate taxes, assessments, levies and other governmental charges, and any liens for water and sewer rents and taxes, and any other governmental charges and impositions, not yet due and payable or the payment of which is not in default;

(iii) utility, access and other similar easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the Lessee certifies to the Agency, the Bank and the Trustee will not interfere with or impair the Lessee's use of the Facility as provided herein;

(iv) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to the Facility Realty and which do not, as set forth in a certificate of an Authorized Representative of the Lessee delivered to the Agency, the Bank and the Trustee, either individually or in the aggregate, materially impair the rights of the owner of the property affected thereby for the purpose for which it was acquired and held by the Agency hereunder or purport to impose any liabilities or obligations on the Agency;

(v) those exceptions to title to the Facility Realty enumerated in the title insurance policy delivered pursuant to Section 2.4 hereof insuring the Agency's fee title interest in and the Bank's mortgagee interest in the Facility Realty, copies of which policy are on file at the principal corporate trust office of the Trustee and at the office of the Agency;

(vi) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien or right in respect thereof if payment is not yet due and payable, all if and to the extent permitted by Section 6.6 hereof and the Reimbursement Agreement; and

(vii) any mortgage, lien, security interest or other encumbrance which exists in favor of the Bank or the Trustee, and to which the Bank, the Trustee and the Agency shall consent (which approval shall not be unreasonably withheld or delayed).

Person shall mean any individual, corporation, partnership, joint venture, association, joint stock or limited liability company, trust, savings or banking or thrift institution, unincorporated organization or government or any agency or political subdivision thereof or other entity.

PILOT Agreement shall mean the Payment in Lieu of Taxes Agreement of even date herewith between the Agency and the Lessee with respect to the Facility.

PILOT Mortgage shall mean the Mortgage and Assignment of Leases and Rents of even date herewith from the Agency and the Lessee to the County with respect to the PILOT Agreement and which encumbers the Facility and shall include any and all amendments thereof and supplements thereto made in conformity therewith, this Agreement and the Indenture.

Principal Payment Date shall mean each date upon which principal, with respect to a Series of Outstanding Bonds, shall be due and payable.

Prohibited Person shall mean (i) any Person (A) that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency or Nassau County, New York, or (B) that directly or indirectly controls, is controlled by or is under common control with a Person that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency or Nassau County, New York, unless such default or breach has been waived in writing by the Agency or Nassau County, New York, as the case may be, and (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

Project shall include, from time to time during the term of this Agreement, the acquisition of the Facility, as more particularly described in the Description of Project attached hereto in the Appendices. When the context of this Agreement shall require that the term "Project" refer to more than physical facilities and structures, such term shall also include the provision of Financial Assistance and the creation of contractual rights and obligations in connection therewith.

Project Costs shall mean all costs paid or incurred by the Lessee:

- (i) for the Acquisition of the Facility;

(ii) for title insurance as provided in Section 2.4 of this Agreement;

(iii) legal and financial fees and expenses, printing and engraving costs, and all other costs and expenses incurred by or for the account of the Agency in connection with the preparation, authorization, sale, printing, rating and issuance of the Bonds, Blue Sky fees and expenses, fees and expenses (including legal fees) of Manufacturers and Traders Trust Company acting through M&T Investment Banking Group, as Placement Agent, fees and expenses (including legal fees) of Manufacturers and Traders Trust Company, as issuer of the Letter of Credit, counsel fees of the Lessee incurred in connection with the Project, and costs and expenses incurred in the preparation and execution of the Lease and the Indenture and all other documents (including Security Documents) in connection therewith or herewith;

(iv) all costs which the Lessee shall be required to pay, under the terms of any contract or contracts, for the completion of the Project, including any amounts required to reimburse the Lessee for advances made for any item otherwise constituting a Project Cost or for any other costs incurred and for work done which are properly chargeable to the Project;

(v) all other costs and expenses relating to the acquisition of the Project or the issuance of Additional Bonds; and

(vi) for the payment of such other costs with respect to the Project as may hereafter be agreed upon by the Agency, the Bank, the Trustee and the Lessee.

Project Costs shall expressly not include (i) counsel fees of the Lessee or any Affiliates not incurred in connection with the Project, (ii) fees or commissions of real estate and other salespersons and brokers, (iii) moving, transportation and installation expenses, (iv) operational costs, (v) charges for utilities services, (vi) working capital costs, (vii) management, development or leasing fees or commissions, (viii) costs for inventory or rolling stock, (ix) costs or expenses with respect to property not constituting part of the Project, or (x) expenses for supervision by the officers or employees of the trustees or any Affiliates, and expenses for work done by any such officers or employees, in connection with the Project.

Project Documents shall mean, collectively, this Agreement, the Indenture, the Bonds, the PILOT Agreement, the PILOT Mortgage, the Agency Guaranty, the Trustee Guaranty, the Environmental Indemnification and any and all other instruments, agreements, certificates and documents related thereto and executed in connection therewith, and any other instrument, agreement, certificate or document supplemental thereto.

Rating Category shall mean one of the generic rating categories of either Moody's or S&P without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

Redemption Price shall mean, with respect to any Bond, the principal amount thereof to be redeemed in whole or in part, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or the Indenture.

Reimbursement Agreement shall mean the Reimbursement Agreement, of even date herewith, between the Lessee and the Bank, and shall include any and all amendments thereto and supplements thereto hereafter made, and such equivalent agreement as may hereafter be entered into by the Lessee with a Substitute Bank (as defined in the Indenture).

S&P shall mean Standard & Poor's Ratings Services, division of The McGraw Hill Companies, Inc., a corporation organized and existing under the laws of the State, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency reasonably designated recognized by the Agency by notice to the Lessee and the Trustee.

Scheduled Completion Date shall have the meaning assigned to such term in Section 2.1(b) of this Agreement.

Security Documents shall mean, collectively and severally, the Agency Security Documents and the Bank Security Documents.

Series shall mean all of the Bonds designated as of the same Series authenticated and delivered on original issuance in a simultaneous transaction, and any Bonds of the same Series thereafter authenticated and delivered in lieu thereof or in substitution therefor pursuant to the Indenture.

Series 2006A Bonds shall mean the Agency's Taxable Variable Rate Demand Revenue Bonds (Brush Hollow Inn Project), Series 2006A, issued pursuant to the Bond Resolution and the Indenture, in the principal amount of \$3,000,000.

State shall mean the State of New York.

Trustee shall mean Manufacturers and Traders Trust Company, in its capacity as trustee, and its successors in such capacity and assigns hereafter appointed in the provided in the manner provided in the Indenture.

Trustee Guaranty shall mean the Trustee Guaranty Agreement of even date herewith from the Lessee in favor of the Trustee, and shall include any and all amendments thereof and supplements thereto made in conformity with this Agreement and with the Indenture.

Section 1.2 Construction. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of the execution and delivery of this Agreement.

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies as well as natural persons.

(d) Any headings preceding the texts of the several and Articles and Sections of this Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(e) References to documents, instruments or agreements shall mean such documents, instruments and agreements as they may be amended, modified, renewed, replaced or restated from time to time.

Section 1.3 Representations and Warranties by Agency. The Agency makes the following representations and warranties:

(a) The Agency is a corporate governmental agency constituting a body corporate and politic and a public benefit corporation duly organized and existing under the laws of the State and is authorized and empowered to enter into the transactions contemplated in this Agreement and has taken all requisite action to carry out its obligations hereunder. By proper action of its members, the Agency has duly authorized the execution and delivery of this Agreement.

(b) The execution, delivery and performance by the Agency of this Agreement and each other Project Document to which it is a party, as applicable, and the consummation by the Agency of the transactions herein and therein contemplated, have been duly authorized by all requisite corporate action on the part of the Agency and will not violate any provision of law (including the Act), any order of any court or agency of government, or the certificate of establishment, or by-laws of the Agency, or any indenture, agreement or other instrument to which the Agency is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) This Agreement and each other Project Document to which the Agency is a party constitute the legal, valid and binding obligations of the Agency enforceable against the Agency in accordance with its (or their) terms, except as such validity, binding effect and enforceability may be limited by (and subject to) bankruptcy, moratorium, or insolvency or other laws affecting creditors' rights generally (regardless of whether such proceeding court of law or equity).

(d) There is no action or proceeding pending or, to the knowledge of the Agency and those of its respective officers reason to be familiar with any such action or proceeding, threatened by or against the Agency by or before any court or administrative agency that might materially adversely affect its ability to perform its obligations under this Agreement and each other Project Document to which it is party, and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the date hereof in connection with the execution and delivery of this Agreement and each other Project Document to which it is a party or in connection with the performance of its obligations hereunder and thereunder have been obtained.

Section 1.4 Findings by Agency. The Agency, based upon the representations and warranties of the Lessee contained in this Agreement and the information contained in the Application and other materials heretofore submitted by or on behalf of the Lessee to the Agency, hereby finds and determines that the financing of a portion of the Project Costs by the Agency and the providing of the Financial Assistance in connection therewith is reasonably necessary to induce the Lessee to proceed with the Project in contemplation of subsequently proceeding with the construction, installation and equipping of a hotel facility or other economic development project, in each case acceptable to the Agency in its sole discretion, on the Facility Realty.

Section 1.5 Representations, Warranties and Covenants by Lessee. The Lessee makes the following representations, warranties and covenants, all as of the date hereof:

(a) Lessee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, and is qualified to do business and in good standing under the laws of the State, is not in violation of any provision of its articles of organization or operating agreement, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform its obligations under this Agreement and the Security Documents and the Project Documents to which it is a party. By proper action of its members or managing members, the Lessee has been duly authorized to execute, deliver and perform this Agreement and the other Security Documents and Project Documents to which the Lessee is a party. No other consent or approval by the members or managing members of the Lessee or any other consent or approval (governmental or otherwise) or the taking of any other action is required as a condition to the validity or enforceability of this Agreement or any of the other Security Documents and Project Documents.

(b) The execution, delivery and performance by the Lessee of this Agreement and each other Security Document and Project Document to which Lessee is a party and the consummation by the Lessee of the transactions herein contemplated, have been duly authorized by all requisite action on the part of the Lessee and will not violate any provision of law, any order of any court or agency of government, or the articles of organization or operating agreement of Lessee, or any material indenture, agreement or other instrument to which Lessee is a party or by which Lessee or any of Lessee's property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any such material indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever other than Permitted Encumbrances.

(c) The assistance of the Agency in the financing of a portion of the Project Costs is reasonably necessary to induce the Lessee to proceed with the Project.

(d) The completion of the Project by the Agency, the lease of the Facility by the Agency to the Lessee and the maintenance thereof by the Lessee will not result in the removal of a facility or plant of the Lessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Lessee located in the State (but outside of Nassau County).

(e) Intentionally omitted.

(f) The total cost of the Project being funded with the Bonds is at least \$3,000,000, which represents only a portion of the total cost to the Lessee.

(g) Any costs incurred with respect to that part of the Project paid or reimbursed from the proceeds of the sale of the Bonds shall be treated on the books of the Lessee as capital expenditures in conformity with generally accepted accounting principles applied on a consistent basis.

(h) No part of the proceeds of the Bonds will be used to finance inventory or will be used for working capital.

(i) The Project constitutes a commercial facility and will advance the Agency's purposes by promoting employment opportunities and preventing economic deterioration in the County. The Facility is, and so long as this Lease shall remain in effect, the Facility will continue to be a "project", as such quoted term is defined in the Act, and the Lessee will not take any action (or omit to take any action), or allow any action to be taken or not taken, which action, inaction or omission would in any way cause the Facility not to constitute a "project", as such quoted term is defined in the Act.

(j) No part of the proceeds of the Bonds will be used to finance a project where facilities or properties that are primarily used in making retail sales to customers who personally visit

such facilities constitute more than one third of the total project cost. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under article twenty-eight of the Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraphs (i) of paragraph four of subdivision (b) of section eleven hundred one of the Tax Law; or (ii) sales of a service to such customers.

(k) The Project is included within the definition of "project" under the Act.

(l) This Agreement and each other Security Document and Project Document to which Lessee is a party constitute the legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with its terms, except as such validity, binding effect and enforceability may be limited by (and subject to) bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally (regardless of whether such proceeding is in a court of law or equity).

(m) There is no action or proceeding pending or, to the knowledge of the Lessee and those of Lessee's officers having reason to be familiar with any such action or proceeding, threatened by or against Lessee by or before any court or administrative agency that might materially adversely affect its ability to perform its obligations under this Agreement and each other Security Document and Project Document to which it is a party, and all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the date hereof in connection with the execution and delivery of this Agreement and each other Security Document and Project Document to which it is a party or in connection with the performance of its obligations hereunder and thereunder have been obtained.

(n) Each representation or warranty made by the Lessee in the Application and related materials submitted to the Agency for approval of the Project or its financing, or by the Lessee in this Agreement and in each other Security Document and Project Document to which it shall be a party, is true, correct and complete in all material respects as of the date made. Such representation or warranty made in any report, certificate, financial statement or other instrument furnished pursuant to this Agreement on the date hereof is true, correct and complete in all material respects as of the date made.

(o) As of the date hereof, no existing leases are in effect with respect to the Facility except for this Agreement, and no person other than the Lessee is in occupancy or possession of any portion of the Facility.

(p) The Lessee agrees to indemnify and hold harmless the Agency and its members, officers, agents and employees, and each person, if any, who controls the Agency within the meaning of Section 15 of the Securities Act of 1933 amended, or Section 20 of the Securities Exchange Act of 1934, as amended, against (i) any and all losses, claims, damages, expenses or liabilities, joint or several, to which they or any of them may become subject under any statute or at common law or otherwise, and will reimburse the Agency and each such member, director, officer, employee and agent and each such controlling person, if any, for any reasonable legal or other

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expense incurred by them or any of them in connection with investigating or defending any actions, whether or not resulting in any liability, insofar as such losses, claims, damages, expenses, liabilities or actions arise out of or are based upon any untrue statement or alleged untrue statement of a material fact made in connection with the offering, sale, issuance or remarketing of the Bonds of which arise out of or are based upon the omission or alleged omission to state in such connection a material fact required to be stated therein or necessary in order to make the statements made therein not misleading in light of the circumstances under which they are made, and (ii) any and all losses, claims, damages, expenses or liabilities, joint or several, to which they or any of them may become subject under the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or the Trust Indenture Act of 1939, as amended, the rules and regulations under said Acts, or any amendments of said Acts, insofar as such lessee, claims, damages, expenses, liabilities or actions arise out of or are based upon the failure to register the Bonds under the Securities Act of 1933, as amended, or to qualify the Indenture under the Trust Indenture Act of 1939, as amended.

(q) The Facility and the maintenance thereof will comply with all Applicable Laws, and the Lessee will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents, attorneys, servants and employees, past, present and future, harmless from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure to comply therewith. The Lessee shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project or the maintenance of the Facility, and the Lessee will indemnify, defend (with counsel selected by the Agency) and save the Agency and its officers, members, agents, attorneys, servants and employees, past, present and future harmless from all claims, liabilities, damages, fees, expenses, fines and penalties due to failure to comply therewith.

(r) The Project will not have a "significant effect on the environment" (as such term is used in SEQRA).

(s) Intentionally omitted.

(t) The Lessee acknowledges receipt of notice of Section 858-b of the Act, which requires that the Lessee list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300), or any successor statute thereto, in which the Facility is located. The Lessee agrees, where practicable, to first consider, for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(u) The funds available to the Lessee are sufficient to pay all costs in connection with the undertaking of the Project.

(v) The Lessee is not a Prohibited Person, none of the Guarantors is a Prohibited Person, and no Affiliate of the Lessee or any Guarantor is a Prohibited Person and no member, partner or principal of the Lessee or of any Guarantor is a Prohibited Person.

(w) Neither this Agreement nor any other Security Document or Project Document nor any other document, certificate, agreement or instrument furnished by or on behalf of the Lessee or any Guarantor contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading.

(x) No funds of the Agency shall be used in connection with the transactions contemplated by this Agreement for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given hereunder to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State.

(y) No person other than the Lessee is or will be in use, occupancy or possession of any portion of the Facility.

(z) The Lessee is, and shall at all times during the term of this Agreement continue to be, owned solely by Alan Mindel and Mary Mindel (except as expressly permitted pursuant to Section 9.3).

(aa) The Project is located entirely within the boundaries of the Town of Oyster Bay, Nassau County, New York, and is not located in whole or in part within the boundaries of any incorporated village.

Section 1.6 Hazardous Materials. (a) The Lessee represents, warrants and covenants that, except as set forth in the Environmental Report, (i) the Lessee has not used Hazardous Materials on, from or affecting the Facility in any manner which violates any Applicable Law, including, but not limited to, those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, (ii) the environmental and ecological condition of the Facility is not in violation of any Applicable Law, including, without limitation, those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials (collectively, the "Environmental Laws"), (iii) the Lessee has all Environmental Permits required to acquire and maintain the Facility and is in substantial compliance with their requirements, (iv) the Facility Realty is not listed in Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), the National Priority List (NPL) or any similar state or local listing nor is it included in an area included in such a list, and the Lessee has no knowledge that such a listing is pending or contemplated, (v) no event has occurred which, with the passage of time or the giving of notice or both, would constitute a violation of any Environmental Law, (vi) to Lessee's knowledge, there are not now, nor have there ever been, underground storage tanks on or under the Facility

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Realty, (vii) there are no actions, suits, claims or proceedings seeking money damages, injunctive relief, remedial action or any other remedy pending or, to the Lessee's knowledge, threatened relating to a violation of Environmental Law or the disposal, discharge or release of Hazardous Materials, and (viii) to Lessee's knowledge, no prior owner of the Facility or any tenant, subtenant, operator, occupant, prior tenant, prior subtenant, prior operator or prior occupant, has used Hazardous Materials on, from or affecting the Facility in any manner which violates any Environmental Law, except as has been disclosed to the Agency pursuant to the Environmental Report.

(b) The Lessee shall keep and shall cause the Facility to be kept free of Hazardous Materials except in compliance with Applicable Law. Without limiting the foregoing, the Lessee shall not cause or permit the Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all Applicable Laws, nor shall the Lessee cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee, or any tenant, subtenant, operator or occupant of the Facility, an unlawful release of Hazardous Materials onto, under or from the Facility or onto any other property. The Lessee shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of the Lessee or its members, partners, directors, officers, agents, servants, employees or representatives, a release of Hazardous Materials on, under or from the Facility except in compliance with Applicable Law.

(c) The Lessee shall comply with, and use reasonable efforts to ensure compliance by all tenants, subtenants and occupants of the Facility with, all Applicable Laws regarding Hazardous Materials whenever and by whomever triggered, and shall obtain and comply with, and use reasonable efforts to ensure that all tenants, subtenants, operators and occupants of the Facility obtain and comply with, any and all approvals, registrations or permits required thereunder. The Lessee agrees to provide the Agency with copies of any notifications given by the Lessee to any Governmental Authorities or received by the Lessee from any Governmental Authorities with respect to the environmental or ecological condition of the Facility.

(d) The Lessee shall (1) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Material on, from or affecting the Facility (a) in accordance with all Applicable Laws, (b) to the reasonable satisfaction of the Agency, and (c) in accordance with the orders and directives of all Governmental Authorities, and (2) defend (with counsel selected by the Agency), indemnify, and hold harmless the Agency and its employees, agents, officers, attorneys, servants and members, past, present and future, and the Trustee, the Bank, the Bond Registrar and the Paying Agent (collectively, the "Indemnified Parties") 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: (a) the presence, disposal, release or threatened release of any Hazardous Materials on, from, under or affecting the Facility, (b) any personal injury (including wrongful death) or property damage (real or

personal) arising out of or related to such Hazardous Materials, (c) any lawsuit brought or threatened, settlement reached, or any government order relating to such Hazardous Materials, and/or (d) any violations of Applicable Laws which are based upon or in any way related to such Hazardous Materials, including, without limitation, reasonable attorney and consultant fees, costs of remediation, investigation and laboratory fees, court costs and litigation expenses. Costs under this subsection (d) will be repaid within 30 days after request thereafter. Thereafter such costs shall bear interest at the Default Interest Rate. Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in Section 1.6(d) shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

(e) The indemnifications and protections set forth in this Section 1.6 shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under its control or supervision.

(f) In the event this Lease is terminated, the Lessee shall deliver the Facility to the Agency free of any and all Hazardous Materials (except Hazardous Materials the presence of which do not violate any Applicable Laws), so that the condition of the Facility shall conform with all Applicable Laws affecting the Facility.

(g) The Lessee agrees that the Agency and its officers, agents, employees, members, servants or representatives, may at any reasonable time and upon reasonable notice and at the Lessee's expense inspect the Lessee's books and records and inspect and conduct any tests on the Facility, including taking soil samples, in order to determine that the Lessee is in compliance with all Applicable Laws.

(h) To effectuate the purposes of this Section 1.6, the Lessee will provide for and insure, in the public liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to Section 1.6(d).

(i) For the purposes of this Section 1.6, the Lessee shall not be deemed employee, agent or servant of the Agency or a person under the Agency's control or supervision.

ARTICLE II

THE PROJECT

Section 2.1 The Project. (a) On the Lease Commencement Date, title to the Facility shall be conveyed by the Lessee to the Agency by deed and shall be automatically vested in the Agency and subject to the provisions of this Agreement, in each case free and clear of all liens, encumbrances, security interests and servitudes other than Permitted Encumbrances, all against payment therefor by the Agency from the proceeds of the Series 2006A Bonds deposited in the

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Project Fund to the extent permitted in Section 2.2 hereof and Section 5.02 of the Indenture, but subject to the terms of this Agreement.

(b) From and after receipt of the proceeds of sale of the Series 2006A Bonds, the Lessee will, on behalf of the Agency, and with due diligence, proceed with the acquisition of the Facility, to be effected in accordance with this Agreement. The Project Costs with respect to the Facility shall be paid from the Project Fund established under the Indenture or as otherwise provided in this Section 2.1.

(c) The Lessee shall be responsible for the payment of (i) all reasonable costs and expenses in connection with the preparation of any instruments of conveyance and transfer of the Facility to the Agency, the delivery of any instruments and documents and their filing and recording, if required, (ii) all taxes and charges payable in connection with such conveyance and transfer, or attributable to periods prior to the conveyance and transfer to the Agency, and (iii) all other reasonable expenses or claims incurred by or on behalf of the Agency, the Trustee, and/or the Lessee in connection with the Project.

(d) Intentionally omitted.

(e) Intentionally omitted.

(f) The Lessee will obtain or cause to be obtained all necessary approvals from any agencies requisite to the effectuation by the Lessee of the Project and all the maintenance thereof, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, and shall upon request furnish copies of same to the Agency.

(g) Intentionally omitted.

(h) Intentionally omitted.

(i) Intentionally omitted.

(j) Intentionally omitted.

(k) Intentionally omitted.

(l) The Agency hereby appoints the Lessee, and the Lessee hereby accepts such appointment, as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Agency Security Documents and the Project Documents: (1) to acquire the Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be required or proper, all for the acquisition of the Facility, with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the liability of the Agency thereunder shall

be limited to the moneys made available therefore by the Lessee and advanced for such purposes by the Lessee pursuant to Section 2.1(b) of this Lease, (3) to pay all reasonable fees, costs and expenses incurred in the acquisition of the Facility from funds made available therefor in accordance with this Lease, and (4) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt, writing or instruction in connection with the acquisition and installation of the Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same.

(m) The Lessee has given or will give or cause to be given all notices and has complied and will comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project, and the Lessee will defend (with counsel selected by the Agency), indemnify and save the Agency and its officers, members, agents, attorneys, servants and employees, past, present and future, harmless from all fees, expenses, fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Facility shall be procured promptly by the Lessee.

(n) The Lessee shall not take any action, or neglect to take any action, including, without limitation, the employment of any contractor, if such action or inaction results in jurisdictional disputes or strikes or labor disharmony in connection with the Project.

(o) The Lessee agrees, for the benefit of the Agency, to undertake the Project and to pay, all such sums as may be required in connection therewith in the event that the funds in the Project Fund are insufficient therefor. Title to portions of the Facility acquired at the Lessee's cost shall immediately upon such acquisition vest in the Agency. The Lessee shall execute, deliver and record or file such instruments as the Agency may reasonably request in order to perfect or protect the Agency's title to such portions of the Facility.

(p) No payment by the Lessee pursuant to this Section 2.1 shall entitle the Lessee to any reimbursement for any such expenditure from the Agency or to any diminution or abatement of any amounts payable by the Lessee under this Lease.

(q) The Lessee agrees, at the option of the Agency and at the sole expense of the Lessee, to erect signage at the Facility, which signage shall be in form and content satisfactory to the Agency and shall identify the Agency and its role in the Project.

(r) The Lessee agrees to solicit bids from at least one (1) contractor or vendor based in the County (if any such contractors or vendors are located in the County) for each contract the Lessee (or any Affiliate thereof) proposes to enter into with respect to the Facility, including, without limitation, any contracts for management, purchase of goods or services, maintenance and repair. Further, the Lessee covenants to use commercially reasonable efforts to let any such contracts, where practicable, to contractors or vendors based in the County. The Lessee shall furnish to the Agency all information and/or documentation requested by the Agency pursuant to this

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subsection and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this subsection.

(s) W/MBE Contractors. (1) The Lessee will use its best efforts to take “affirmative steps” (as defined below) to assure that qualified women-owned and/or minority-owned business enterprises (“W/MBE’s”) are used, when possible, for each contract the Lessee (or any Affiliate thereof) proposes to enter into with respect to the Facility, including, without limitation, any contracts for management, purchase of goods and services, maintenance and repair.

(2) For purposes of this subsection, the term “affirmative steps” shall mean: (a) placing qualified W/MBE’s on solicitation lists; (b) assuring that qualified W/MBE’s are solicited whenever they are potential sources; (c) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified W/MBE’s; (d) establishing delivery schedules, where the requirement permits, that encourage participation by qualified W/MBE’s; and (e) requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in clauses (a) through (d).

(3) For purposes of this subsection, the term “qualified W/MBE’s” shall mean those women-owned and/or minority-owned business enterprises designated as such by New York State.

(4) The Lessee shall furnish to the Agency all information and/or documentation requested by the Agency pursuant to this subsection and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this subsection.

Section 2.2 Commitment to Project; Completion. (a) The Lessee unconditionally covenants and agrees that Lessee will, with due diligence, proceed with the acquisition of the Facility, all on behalf of and as agent for the Agency, and all in accordance with this Agreement and the Indenture. In the event that moneys in the Project Fund are not sufficient to pay Project Costs in full, the Lessee shall either (y) request additional Series of Bonds to be issued in accordance with Section 2.11 of the Indenture and Section 6.10 hereof or (z) subject to the agreements set forth in Sections 2.1 and 2.3 hereof, pay that portion of such Project Costs as may be in excess of the moneys therefor in the Project Fund and, subject to the provisions below, shall not be entitled to any reimbursement therefor from the Agency, the Trustee or the Holders of any of the Bonds or any other Person, nor shall the Lessee be entitled to any diminution of the rents payable or other payments to be made under this Agreement or any other Project Document, provided that Project Costs may be refunded or reimbursed out of any funds which thereafter may be in the Project Fund.

(b) Intentionally omitted.

(c) Intentionally omitted.

Section 2.3 Issuance of Series 2006A Bonds. (a) In order to finance all or a portion of the Project Costs, the Agency proposes to issue the Series 2006A Bonds, in the amount of

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\$3,000,000 pursuant to the Indenture and the Bond Resolution. The Series 2006A Bonds will mature, bear interest, be redeemable and have the other terms and provisions set forth in the Indenture.

(b) Contemporaneously with the execution and delivery of this Agreement, the Agency will issue the Series 2006A Bonds under and pursuant to the Bond Resolution and the Indenture. The Lessee may request the Agency to issue further Series of Additional Bonds from time to time during the term of this Agreement pursuant to Section 6.10 of this Agreement and Section 2.11 of the Indenture, and the Lessee shall make such requests, deliver such documents, agreements and certificates (all as more fully set forth in the Indenture), and, subject to the provisions of Section 6.3 hereof, shall pay such costs reasonable and expenses as shall enable the Agency to issue each such Series of Additional Bonds. Nothing contained in this Section 2.3(b) shall be deemed to be an obligation of the Agency to obtain a purchaser for the Series 2006A Bonds or for any Series of Additional Bonds.

(c) The aggregate principal amount of the Series 2006A Bonds to be issued under the Indenture will not be in excess of the aggregate Project Costs and shall only be used for the payment or reimbursement of Project Costs.

Section 2.4 Title Insurance. Prior to the delivery of the Series 2006A Bonds to the original purchaser(s) thereof, the Lessee will obtain (a) title insurance in an amount equal to \$3,000,000 insuring the Agency's fee interest in the Facility Realty against loss as a result of title defects in such interest of the Agency, (b) mortgagee title insurance in an amount not less than \$3,000,000 insuring the Bank's interest as a holder of a mortgage lien on the Facility Realty under the Bank Mortgage, (c) mortgagee title insurance in an amount determined by the Agency insuring the County's interest as a holder of the PILOT Mortgage on the Facility Realty, in each case subject only to the Permitted Encumbrances, and (d) a current survey of the site of the Facility Realty certified to the Agency, the County and the Bank. Any proceeds of such title insurance insuring the Agency's fee title interest under clause (a) above shall be paid to the Trustee for deposit in the Renewal Fund and applied to remedy the defect in title. If not so capable of being applied or if any amounts remain, the amounts in the Renewal Fund shall be used to reimburse the Bank for an equivalent redemption of the Bonds (to the nearest \$100,000 or any integral multiple of \$5,000 in excess of thereof). Any proceeds of such mortgagee title insurance insuring against loss as a result of defects affecting the Bank's interest as holder of a mortgage lien on the Facility Realty shall be used to reimburse the Bank for an equivalent redemption of the Bonds (to the nearest \$100,000 or any integral multiple of \$5,000 in excess thereof). Any proceeds of mortgagee title insurance insuring against loss as a result of defects affecting the County's interest as a holder of the PILOT Mortgage in the Facility Realty, shall be paid to the County.

Section 2.5 Intentionally omitted.

Section 2.6 Expenses Chargeable to the Lessee. The Lessee shall pay all reasonable expenses or other costs incurred in connection with the Project including, but not limited to:

- (1) All reasonable charges incurred in connection with the preparation, delivery, filing, recording (if required) or effectuation of any instruments of conveyance or transfer required by this Agreement, the Indenture, the Bank Mortgage, the PILOT Agreement and the PILOT Mortgage;
- (2) Any reasonable closing costs or costs relating to issuance of the Bonds other than those in paragraph (1) above;
- (3) All lawful claims which might or could if unpaid become a lien or charge on the Facility;
- (4) All pre-closing and post-closing taxes, assessments or other governmental or utility charges or impositions relating to the Facility;
- (5) The Agency's administration fee;
- (6) Any reasonable legal fees or expenses incurred by the Agency, the Trustee, the Remarketing Agent, or the Bank in connection with the foregoing items of costs related to the issuance of the Bonds; and
- (7) Any other reasonable costs incurred by the Agency in undertaking the Project.

ARTICLE III

LEASE OF FACILITY AND RENTAL PROVISIONS

Section 3.1 Lease of the Facility. The Agency hereby leases to the Lessee, and the Lessee hereby leases from the Agency, the Facility, all for and during the term herein provided and upon and subject to the terms and conditions herein set forth and subject to Permitted Encumbrances. The Lessee shall, subject to the provisions of this Agreement, at all times during the term of this Agreement, use and maintain the Project property as a qualified "project" and shall acquire the Facility in contemplation of undertaking the construction, installation and equipping of a hotel facility or other economic development project, in each case acceptable to the Agency in its sole discretion, all in accordance with the provisions of the Act; provided, however, that the Lessee acknowledges and agrees that (i) the Agency has not undertaken or committed to provide any Financial Assistance with respect to the construction, installation and equipping of such hotel facility or other economic development project, and (ii) the Lessee shall not undertake any such construction, installation or equipping or the development or operation of any project or facility upon the Facility without the prior written consent of the Agency, which consent may be granted or

withheld in the sole discretion of the Agency. The Lessee shall not occupy, use or operate the Facility, or any part thereof, or allow the Facility or any part thereof, to be occupied, used or operated (1) for any unlawful purpose, or (2) in violation of any certificate of occupancy affecting the Facility, or (3) for any use which may constitute a nuisance, public or private, or (4) for any use that would make void or voidable any insurance then in force with respect thereto, or (5) by any tenant or occupant whose use, occupancy or operation of the Facility would be in violation of Applicable Laws. All permits and licenses necessary for the maintenance of the Facility as contemplated by this Section 3.1 shall be procured promptly by the Lessee. Any provision of this Agreement to the contrary notwithstanding, the Lessee shall be liable at all times for all risk, loss and damage with respect to the Facility.

Section 3.2 Duration of Term. The term of this Agreement shall commence on the date of execution and delivery of this Agreement and shall expire on June 1, 2029, or such earlier date as this Agreement may be terminated as hereinafter provided, subject, in any event to the provisions of Section 8.4 of this Agreement. The Agency hereby delivers to the Lessee, and the Lessee hereby accepts, such possession of the Facility as the Agency has or may have therein.

Section 3.3 Rental Provisions; Pledge of Agreement and Rents. (a) The Lessee covenants to make rental payments which the Agency agrees shall be paid by the Lessee in immediately available funds directly to the Trustee on each Lease Rental Payment Date for deposit in the Reimbursement Account of the Lease Payments Fund in an amount (together with amounts then on deposit in such Reimbursement Account of the Lease Payments Fund, if any) as shall be equal to the sum of all principal and Redemption Price of and interest due with respect to the Series 2006A Bonds.

(b) As security for the performance of its rental payment obligations with respect to the Series 2006A Bonds, the Lessee shall, simultaneously with the issuance and delivery of the Series 2006A Bonds, arrange for delivery of the Letter of Credit to the Trustee. The Lessee hereby authorizes and directs the Trustee to draw moneys under the Letter of Credit in accordance with the provisions of the Indenture to the extent and at the times necessary to pay the principal of, Redemption Price (other than redemption premium) of, and interest on the Series 2006A Bonds when due. The obligations of the Lessee to make payments pursuant to Section 3.3(a) hereof with respect to the Series 2006A Bonds shall be deemed to be satisfied and discharged to the extent of any corresponding drawing made by the Trustee under the Letter of Credit and applied to such payment with respect to the Series 2006A Bonds; provided, however, such payments under Section 3.3(a) hereof shall nonetheless be made in order to effect the deposit in full into the Reimbursement Account of the Lease Payments Fund as is required pursuant to the terms of Section 3.3(a) hereof.

(c) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund is not sufficient to pay the principal of, Redemption Price (including 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 Lessee shall forthwith

pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund and such payment shall constitute rental payments under this Section 3.3.

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

(e) The Lessee shall have the option to prepay its rental obligation with respect to the Bonds, in whole or in part at the times and in the manner provided in Article VIII hereof as and to the extent provided in the Indenture for redemption of the Bonds.

(f) Intentionally omitted.

(g) In addition to the rental payments described above, the Lessee shall pay to the Agency directly as additional rent, within ten (10) days of receipt of demand therefor, all fees, expenses, costs and other sums due the Agency under this Agreement, the Indenture or any other document executed by the Agency in connection herewith or collateral hereto.

(h) No further rental payments need be made to the Agency on account of the Bonds during the term of this Agreement when and so long as the amount of cash and/or Government Obligations on deposit in the Bond Fund and as shall in each case constitute Priority Amounts, is sufficient to satisfy and discharge the obligations of the Agency under the Indenture and pay the Bonds as provided in section 10.01 of the Indenture.

(i) The Lessee and the Agency acknowledge their intention to minimize the risk that any payment made to a Bondholder from amounts provided by or on behalf of the Lessee may be determined by a bankruptcy court to constitute a preference. To this end the parties agree that, as provided in Section 5.06(a) of the Indenture, payments to Bondholders shall be made only from Priority Amounts, except when and to the extent no Priority Amounts are available for the purpose. The payment obligations of the Lessee under this Section 3.3 are subject in all respects to the use of Priority Amounts for the payment of the Bonds. Optional prepayments permitted by the Lessee as provided in Article VIII hereof may not be made except from Priority Amounts. The Agency shall have no liability with respect to any payments made in violation of this paragraph.

(j) As security for the Bonds and the obligations of the Lessee under the Reimbursement Agreement, the Agency shall, pursuant to the Indenture, pledge and assign to the Trustee and the Bank all of the Agency's right, title and interest in this Agreement, including all rental payments hereunder (except for the Agency's Reserved Rights), and in furtherance of said pledge the Agency will unconditionally assign such rental payments to the Trustee for deposit in the Lease Payments Fund in accordance with the Indenture. The Lessee hereby consents to the above-described lien and security interest, and pledge and assignment of this Agreement. As security for the Reimbursement Agreement, the Agency (together with the Lessee), shall, pursuant to the Bank

Mortgage, grant to the Bank a lien on and security interest in the Facility prior to the lien of this Agreement, except as and to the extent otherwise provided for in Section 9.4 hereof.

(k) The Lessee covenants and agrees that it will comply with the provisions of the Indenture with respect to the Lessee and that the Trustee shall have the power, authority, rights and protections provided in the Indenture. The Lessee further covenants to use its reasonable efforts to cause there to be obtained for the Agency any documents or opinions required under the Indenture.

Section 3.4 Obligation of Lessee Unconditional. The obligation of the Lessee to pay the rent and all other payments provided for in this Agreement and to maintain the Facility in accordance with Section 4.1 of this Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency, the Trustee, the Bank, the Holder of any Bond or any other Person whatsoever and the obligation of the Lessee shall arise whether or not the Bank shall honor or be honoring its obligations under the Letter of Credit. For so long as any of the Bonds remain Outstanding, the Lessee will not suspend or discontinue any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Lessee waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Lessee under this Agreement except as provided in this Agreement, or to any abatement, suspension, deferment, diminution or reduction in the rentals or other payments hereunder.

Section 3.5 Intentionally omitted.

Section 3.6 Intentionally omitted.

Section 3.7 Payment for Tendered Series 2006A Bonds. (a) The Lessee agrees, as provided in Sections 2.04, 2.06, 2.07 and 5.13 of the Indenture, to pay rent to the Tender Agent, for the account of the Agency, as lessor, equal to all amounts necessary for the purchase of Series 2006A Bonds pursuant to Section 2.04, 2.06 and 2.07 of the Indenture and not deposited with the Tender Agent by the Remarketing Agent from the proceeds of the sale of such Bonds under Section 5.13 of the Indenture or from drawings on or other realizations under the Letter of Credit pursuant to Section 5.06(b) of the Indenture. Each such payment by the Lessee to the Tender Agent in accordance with this Section shall be in immediately available funds and paid to the Tender Agent at its principal office by 4:00 P.M. (New York City time) on each Purchase Date. The Lessee further agrees to pay such immediately available funds to the Tender Agent at the times and in the manner specified in the Indenture.

(b) The Lessee shall provide for the payment of the amount to be paid pursuant to this Section 3.7 by delivery of the Letter of Credit to the Trustee, simultaneously with the issuance and delivery of the Series 2006A Bonds. The Lessee hereby authorizes and directs the Trustee to draw moneys under the Letter of Credit in accordance with the provisions of the Indenture to the

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extent necessary to make such payments when due. The obligation of the Lessee pursuant to this Section 3.7 shall be deemed to be satisfied and discharged to the extent of any corresponding drawing made by the Trustee on the Letter of Credit and applied to such payment.

(c) If the Trustee shall draw amounts under the Letter of Credit for the Purchase Price of Series 2006A Bonds pursuant to the last paragraph of Section 5.06(b) of the Indenture, and the aggregate of the amounts transferred to the Bank by the Tender Agent pursuant to Section 5.13 of the Indenture after such drawing from the Reimbursement Account of the Purchase Fund shall be less than the amount required to reimburse the Bank in whole pursuant to the Reimbursement Agreement, the Lessee will immediately on demand therefor by the Bank, pay an amount equal to such insufficiency to the Bank.

(d) The Lessee hereby approves and agrees to be bound by the provisions of the Indenture regarding the purchase, offer, sale and delivery of Series 2006A Bonds tendered for purchase thereunder, including particularly those set forth in Sections 2.04, 2.06 and 2.07 of the Indenture and in Articles V, XIII and XIV thereof. The Lessee shall have all of the rights and obligations provided in the Indenture with respect to the Lessee in connection with such transactions and the appointment of the Tender Agent and the Remarketing Agent thereunder. The Agency shall have no obligation or responsibility with respect to the purchase of Series 2006A Bonds or any related arrangements, except that the Agency at the expense of the Lessee shall cooperate in the making of any such arrangements.

(e) If the Lessee elects to cause the interest rate on the Series 2006A Bonds to be converted to the Fixed Interest Rate pursuant to the Indenture, the Lessee shall deliver or cause to be delivered the notice, the opinion of Nationally Recognized Bond Counsel and such other documents required under the Indenture in connection with such Conversion, all as provided in Section 2.04 of the Indenture.

Section 3.8 Non-Merger. During the term of this Agreement, there shall be no merger of this Agreement or the leasehold estate created by this Agreement with the fee estate in the Facility Realty or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Agreement or the leasehold estate created by this Agreement or any interest in this Agreement, and (2) the fee estate in the Facility Realty or any part thereof or any interest in such fee estate, and no such merger shall occur unless and until all Persons, including any mortgagee having any interest in (y) this Agreement or the leasehold estate created by this Lease, and (z) the fee estate in the Facility Realty or any part thereof or any interest in such fee estate, shall join in a written instrument effecting such merger and shall duly record the same.

ARTICLE IV
MAINTENANCE, TAXES, PAYMENTS IN LIEU OF TAXES AND INSURANCE

Section 4.1 Maintenance, Alterations and Improvements. (a) During the term of this Agreement, the Lessee will keep the Facility in good and safe order and condition, ordinary wear and tear excepted, and will maintain the Facility in the manner for which it was designed and intended and as contemplated by this Agreement, will make all necessary replacements and repairs thereto (whether ordinary or extraordinary, foreseen or unforeseen) to ensure that the security for the Bonds will not be impaired, will not abandon the Facility, and will not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility or any part thereof, or the interest of the Agency or the Lessee in the Facility or this Lease, except for the Permitted Encumbrances. All replacements and repairs shall be performed in a good workmanlike manner and be made and installed in compliance with the requirements, if any, of all governmental bodies. The Agency shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facility, to effect the replacement of any inadequate, obsolete, worn-out or unsuitable parts of the Facility, or to furnish any utilities or services for the Facility and the Lessee hereby agrees to assume full responsibility therefor.

(b) The Lessee shall have the right to make such repairs of the Facility or any part thereof from time to time as Lessee in its discretion may determine to be desirable for its uses and purposes, provided that (i) such repairs are effected in compliance with all applicable legal requirements, (ii) subject to the provisions of Sections 2.1(h) and 3.5 hereof, such repairs are paid for by the Lessee in accordance with the terms of the applicable contract(s) therefore, and (ii) such repairs do not change the nature of the Facility so that it not qualify as a "project" as defined in and as contemplated by the Act or would not comply with the provisions of Section 3.1 hereof. All repairs to the Facility shall automatically vest in the Agency immediately upon delivery to or incorporation or installation in the Facility Realty and be deemed to constitute a part of the Project, subject to this Agreement.

(c) The Lessee shall have the right to install, remove, repair, replace, finance or permit to be installed, removed, repaired, replaced and financed, at the Facility Realty, machinery, equipment, furniture, furnishings and other personal property (the "Lessee's Property") not financed from the proceeds of the Bonds, all without conveying title to or any license or leasehold interest in such property to the Agency nor subjecting such property to this Agreement and the lien and security interest of the Bank Mortgage and the PILOT Mortgage. The Agency shall not be responsible for any loss of or damage to the Lessee's Property and none of the Lessee's Property shall be subject to any sales tax exemption or abatement solely on account of the Agency's involvement in the Project. The Lessee shall have the right to create or permit to be created any mortgage, encumbrance, lien or charge on, or conditional sale or other title retention agreement with respect to, the Lessee's Property.

(d) The Lessee shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against the Facility Realty or any part thereof, or the interest of the Lessee in the Facility Realty or this Agreement, except for Permitted Encumbrances and except as provided in Section 6.6 hereof. The Lessee covenants that it shall take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that the Bank Mortgage shall constitute a prior mortgage lien on the Facility Realty, subject only to the PILOT Mortgage as the first mortgage lien on the Facility Realty. The Lessee covenants that it shall take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that the PILOT Mortgage shall constitute a first mortgage lien on the Facility Realty.

Section 4.2 Removal of Property of the Facility Realty. (a) The Lessee shall have the privilege from time to time of removing from the Facility Realty any fixture constituting part of the Facility Realty (the "Existing Facility Property") and thereby acquiring such Existing Facility Property, provided that:

(i) such Existing Facility Property is substituted or replaced by property (A) having equal or greater fair market value, operating efficiency and utility and (B) being free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances; or

(ii) if such Existing Facility Property is not to be substituted or replaced by other property, but instead to be sold, scrapped, traded in or otherwise disposed of in any arm's-length bona fide transaction for consideration in excess of \$100,000, the Lessee shall pay to the Bank and thereby cause a redemption of Bonds to be effected (through a draw on the Letter of Credit) in an amount (to the nearest \$100,000 integral multiple) equal to the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition;

provided, however, no such removal, as set forth in paragraph (i) or (ii) above shall be effected if (w) such removal would change the nature of the Facility so it would not qualify as a "project" as defined in and as contemplated by the Act or would not comply with the provisions of Section 3.1 hereof, (x) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility Realty, (y) such removal would reduce the fair market value of the Facility Realty below its value immediately before such removal (except by the amount by which the Bonds are to be redeemed as provided in paragraph (ii) above), or (z) if there shall exist and be continuing an Event of Default hereunder. Any amounts received pursuant to paragraph (ii) above which are not in excess of \$100,000 shall be retained by the Lessee.

(b) The Lessee shall deliver or cause to be delivered to the Agency, the Bank and the Trustee appropriate documents conveying to the Agency title to any property installed or placed upon the Facility Realty pursuant to Section 4.2(a)(i) hereof and subjecting such substitute or replacement property to this Agreement and the lien and security interest of the Bank Mortgage and the PILOT Mortgage, and upon written request of the Lessee, the Agency shall deliver to the Lessee appropriate documents conveying to the Lessee title to any property removed from the Facility

Realty pursuant to Section 4.2(a) hereof. The Lessee agrees to pay all reasonable costs and expenses (including reasonable counsel fees and disbursements) incurred in subjecting to this Agreement and the lien and security interest in the Bank Mortgage and the PILOT Mortgage of any property installed or placed on the Facility Realty as part of the Facility Realty pursuant to Section 4.2.

(c) The removal from the Facility Realty of any Existing Facility Property pursuant to the provisions of Section 4.2(a) hereof shall not entitle the Lessee to any abatement or reduction in the rentals or other amounts payable by the Lessee under this Agreement.

Section 4.3 Payments in Lieu of Real Estate Taxes. (a) It is recognized that under the provisions of the Act, the Agency 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 the intention of the parties hereto that the Facility Realty be treated as exempt from real property taxation to the extent set forth in the PILOT Agreement. Accordingly, the parties hereto acknowledge that the Agency shall file New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Facility Realty.

(b) The Agency and the Lessee hereby agree that the Lessee shall be required to make or cause to be made payments in lieu of taxes to the school district or school districts, city, town, county, village and other political units wherein the Facility Realty is located having taxing powers (such political units are hereinafter collectively referred to as the "Taxing Entities") in such amounts and at such times as are required by the PILOT Agreement. The Lessee covenants and agrees to perform, or cause to be performed, all of its obligations, covenants and agreements pursuant to the terms and provisions of the PILOT Agreement.

Section 4.4 Taxes, Assessments and Charges. The Lessee shall pay or cause to be paid when the same shall become due, if and to the extent payable, any and all taxes and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Agreement, any estate or interest of the Agency or the Lessee in the Facility Realty or the rentals or other payments hereunder, during the term of this Agreement, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the maintenance or upkeep of the Facility, all of which are herein called "Impositions". The Lessee may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

The Lessee may at its sole cost and expense and in good faith commence and prosecute proceedings to contest the amount or validity or application, in whole or in part, of any such Imposition, (upon prior written notice to the Agency and the Trustee) provided, that, (i) if the Lessee withholds payment, such proceeding shall suspend the execution or enforcement of any lien arising from the non-payment of such Imposition against this Agreement or the Agency, the Lessee or the Trustee or against any of the rentals or other amounts payable under this Agreement, (ii) neither the Facility nor any portion thereof or interest therein would be in any danger of being

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sold, forfeited or lost, (iii) neither the Lessee (nor any Affiliate thereof), the Agency, the Bank nor the Trustee would be in any danger of any civil or any criminal liability for failure to pay such Imposition, and (iv) the Lessee shall have furnished such security, if any, as may be reasonably requested by the Agency, the Trustee or the Bank to protect the security intended to be offered by the Security Documents and the Project Documents and the Reimbursement Agreement in a manner in which the lien of the Bank Mortgage and the PILOT Mortgage is not impaired in any way.

Section 4.5 Insurance. (a) At all times throughout the term of this Agreement, including without limitation during any period of renovation, improvement, construction or reconstruction of the Facility, the Lessee shall maintain or cause to be maintained insurance with respect to the Facility, with insurance companies licensed to do business in the State, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Lessee, including, without limitation:

(i) To the extent not covered by the public liability insurance referred to below, comprehensive general public liability insurance for the benefit of the Lessee, the Trustee, the Bank and the Agency in a minimum amount of \$5,000,000 aggregate coverage per occurrence for personal injury and property damage;

(ii) Extended coverage casualty insurance, with endorsements containing New York standard mortgage and loss payee clauses, in an amount not less than the actual replacement cost of the Facility, less the value of the Land, foundations and footings. At the request of the Agency, the Bank, or the Trustee, the actual replacement cost shall be determined by a qualified insurance appraiser selected by the Lessee and approved by the Agency and the Bank, at the Lessee's expense;

(iii) During any period of construction or reconstruction of the Facility, builders' All Risk Insurance written on "100% builders' risk completed value, non-reporting form" including coverage therein for "completion and/or premises occupancy" during any period of construction or reconstruction of the Facility, and coverage for property damage insurance, all of which insurance shall include coverage for removal of debris, insuring the buildings, structures, facilities, machinery, equipment, fixtures and other property constituting a part of the Facility against loss or damage to the Facility by fire, lightning, vandalism, malicious mischief and other casualties, with standard extended coverage endorsement covering perils of windstorm, hail, explosion, aircraft, vehicles and smoke (except as limited in the standard form of extended coverage endorsement at the time in use in the State) at all times in an amount such that the proceeds of such insurance shall be sufficient to prevent the Lessee, the Agency, the Bank or the Trustee from becoming a co-insurer of any loss under the insurance policies but in any event in amounts equal to not less than the actual replacement value of the Facility, less the value of the Land, foundations and footings as determined by a qualified insurance appraiser or insurer (selected by the Lessee and approved by the Agency and the Bank) not less than once every year, at the expense of the Lessee; any such insurance may provide

that the insurer is not liable to the extent of the first \$10,000 with the result that the Lessee is its own insurer to the extent of \$10,000 of such risks;

(iv) Public liability insurance in accordance with customary insurance practices for similar operations with respect to the Facility and the business thereby conducted in a minimum amount of \$10,000,000 per occurrence, which insurance (A) will also provide coverage of the Lessee's obligations of indemnity under Section 6.2 and Section 1.6 hereof, (B) may be effected under overall blanket or excess coverage policies of the Lessee or any Affiliate thereof, provided, however, that at least \$1,000,000 per occurrence, \$2,000,000 aggregate, is effected by a comprehensive liability insurance policy, and (C) shall not contain any provisions for a deductible amount or for risk retention in any amount by the Lessee;

(v) Workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Lessee or the Agency is required by law to provide covering loss resulting from injury, sickness, disability or death of the employees of the Lessee or any Affiliate thereof, or any contractor or subcontractor performing work with respect to the Facility; the Lessee shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by laws; and

(vi) Such other customary insurance in such amounts and against such insurable hazards as the Agency, the Bank or the Trustee from time to time may reasonably require.

(b) All insurance required by Section 4.5(a) above shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State, either (i) having a rating of "XIII-A" or better by A.M. Best & Co., or (ii) approved by the Agency and the Bank (such approval not to be unreasonably withheld or delayed).

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

(i) designate (except in the case of workers' compensation and disability insurance) the Lessee, the Trustee, the Bank and the Agency and as additional insureds as their respective interests may appear;

(ii) provide that all insurance proceeds with respect to loss or damage to the Facility be endorsed and made payable to the Trustee and shall name the Trustee, the Agency and the Bank as a mortgagee under the terms of a standard mortgagee clause, which insurance proceeds shall be paid over to the Trustee and deposited in the Renewal Fund;

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

(iv) provide that in respect of the interest of the Agency, the Bank or the Trustee in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other Person and shall insure the Agency, the Bank and the Trustee regardless of, and any losses shall be payable notwithstanding, any such action or inaction;

(v) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency, the Trustee or the Bank to the extent that such other insurance provides the Agency, the Trustee or the Bank, as the case may be, with contingent and/or excess liability insurance with respect to its respective interest as such in the Facility;

(vi) provide that if the insurers cancel such insurance for any reason whatsoever, including the insured's failure to pay any accrued premium, or the same is allowed to lapse or expire, or there be any material reduction in amount, or any material change is made in the coverage, such cancellation, lapse, expiration, reduction or change shall not be effective as to the Agency, the Bank or the Trustee until at least thirty (30) days after receipt by the Agency, the Bank and the Trustee of written notice by such insurers of such cancellation, lapse, expiration or change;

(vii) waive any right of subrogation of the insurers thereunder against the Agency, and waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy;

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

(ix) may be maintained as part of a blanket policy.

(d) The Net Proceeds of any insurance received with respect to any loss or damage to the property of the Facility shall be deposited in the Renewal Fund and applied in accordance with Section 5.1 hereof and the Indenture.

(e) Concurrently with the execution of this Agreement, the Lessee shall deliver or cause to be delivered to the Agency, the Bank and the Trustee duplicate copies of insurance, policies, binders or certificates of insurance evidencing compliance with the insurance requirements of this Section 4.5. At least ten (10) Business Days prior to the expiration of any such policy, the Lessee shall furnish the Agency, the Bank and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Lessee shall, at its own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by the Agency, the Bank or the Trustee to collect from insurers for any loss covered by any insurance required to be obtained by this Section 4.5. The

Lessee shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section 4.5 would or might be suspended or impaired. Notwithstanding the foregoing, the Lessee shall have the right to settle all property claims.

(g) THE AGENCY DOES NOT IN ANY WAY REPRESENT THAT THE INSURANCE SPECIFIED HEREIN, WHETHER IN SCOPE OR COVERAGE OR LIMITS OF COVERAGE, IS ADEQUATE OR SUFFICIENT TO PROTECT THE BUSINESS OR INTERESTS OF THE LESSEE OR ANY OTHER PERSON.

Section 4.6 Advances by Agency. In the event the Lessee fails to make any payment or perform or observe any obligation required of it under this Agreement which failure could have effect of endangering life or property or result in liability to the Agency, the Agency, after first delivering seven (7) days' prior written notice to the Lessee of any such failure on its part (except in the event of an emergency condition which, in the reasonable judgment of the Agency, necessitates immediate action) may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement, make such payment or otherwise cure any failure by the Lessee to perform and preserve their other obligations hereunder. All amounts so advanced therefor by the Agency shall become an additional obligation of the Lessee to the Agency, which amounts, together with interest thereon at the Default Interest Rate from the date advanced, shall be paid by the Lessee promptly upon demand therefor by the Agency. Any remedy herein vested in the Agency for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency for the collection of all such amounts so advanced.

Section 4.7 Compliance with Applicable Laws. (a) The Lessee agrees, for the benefit of the Agency, that it will, during the term of this Lease, promptly comply with all Applicable Laws.

(b) Notwithstanding the provisions of subsection (a) of this Section 4.7, the Lessee may in good faith actively contest the validity or the applicability of any Applicable Law, provided that the Lessee, (1) first shall have notified the Agency in writing of such contest, (2) is not in default, beyond any applicable notice and cure period, under any of the Security Documents or any of the Project Documents, (3) shall have set aside adequate reserves for any such requirement, (4) demonstrates to the reasonable satisfaction of the Agency that noncompliance with such Applicable Law will not subject the Facility or any part thereof to loss or forfeiture, (5) demonstrates to the reasonable satisfaction of the Agency that such contest shall not result in the Lessee or the Agency being in any danger of any civil or criminal liability for failure to comply therewith, and (6) diligently prosecutes such contest to completion. Otherwise, the Lessee shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

(c) Notwithstanding the provisions of subsection (b) of this Section 4.7, if the Agency or any of its members, officers, agents (other than the Lessee), attorneys, servants or employees, past, present or future, may be liable for prosecution for failure to comply therewith, the Lessee shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

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(d) The provisions of this Section 4.7 are for the sole benefit of the Agency, the Trustee and the Holders of the Bonds and no other Person whatsoever shall be or be deemed to be a third party beneficiary thereof or hereof.

ARTICLE V

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1 Damage, Destruction or Condemnation. (a) In the event that at any time during the term of this Agreement, the whole or any part of the Facility shall be damaged or destroyed, or taken or condemned by a competent, authority for any public use or purpose, or by eminent domain or by agreement (at the request of or with the consent of the Lessee) between the Agency and those authorized to exercise such right, or if the use of the Facility shall be so taken by condemnation or agreement (a "Loss Event"):

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

(ii) there shall be no abatement, postponement or reduction in the rent or other amounts payable by the Lessee under this Agreement or any other Project Document or Security Document (whether or not the Facility is replaced, repaired, rebuilt or restored), and

(iii) the Lessee will promptly give notice of such Loss Event to the Agency, the Bank and the Trustee, generally describing the nature and extent thereof.

(b) Upon the occurrence of a Loss Event, the Net Proceeds derived therefrom shall be paid to the Trustee and deposited in the Renewal Fund and the Lessee shall either (unless otherwise directed by the Bank pursuant to the Reimbursement Agreement):

(i) at its own cost and expense (except to the extent paid from the Net Proceeds deposited in the Renewal Fund as provided below and in Section 5.03 of the Indenture), promptly and diligently rebuild, replace, repair or restore the Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Lessee shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, the Bank, the Trustee or any Bondholder, nor shall the rent or other amounts payable by the Lessee under this Agreement be abated, postponed or reduced, or

(ii) to the extent and upon the conditions permitted to do so under Section 8.1 hereof and under the Indenture, exercise its option to purchase the Facility and make advance rental payments to redeem the Bonds in whole.

Not later than ninety (90) days after the occurrence of a Loss Event, the Lessee shall advise the Agency, the Trustee and the Bank in writing of the action to be taken by the Lessee under this Section 5.1(b), a failure to so timely notify being deemed an election in favor of subdivision (i) above to be exercised in accordance with the provisions of clause (i) above.

If the Lessee shall elect to or shall otherwise be required to rebuild, replace, repair or restore the Facility as set forth in subdivision (i) above, the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in Section 5.03 of the Indenture to pay or reimburse the Lessee, at the election of the Lessee, either as such work progresses or upon the completion thereof, provided, however, the amounts so disbursed by the Trustee to the Lessee shall not exceed the actual cost of such work. If, on the other hand, the Lessee shall, if permitted under this Agreement and the Indenture, exercise its option in subdivision (ii) above, the Trustee shall draw on the Letter of Credit to effect the redemption in whole of the Bonds under the Indenture and thereafter pay the Net Proceeds from the Renewal Fund to the Bank toward reimbursement of amounts thereby due to the Bank under the Reimbursement Agreement.

(c) All such rebuilding, replacements, repairs or restorations shall:

(i) automatically be deemed a part of the Facility and owned by the Agency and be subject to this Agreement and the lien and security interest of the Bank Mortgage and the PILOT Mortgage,

(ii) be in accordance with plans and specifications and cost estimates approved in writing by the Bank and the Agency, which Agency approval shall not be unreasonably withheld, delayed or conditioned,

(iii) not change the nature of the Facility as a qualified "project" as defined in and as contemplated by the Act,

(iv) [RESERVED],

(v) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable legal requirements and be promptly and fully paid for by the Lessee in accordance with the terms of the applicable contract(s) therefor, and

(vi) if the estimated cost of such rebuilding, replacement, repair or restoration be in excess of \$500,000, be effected under the supervision of an Independent Engineer.

(d) Pending the disbursement or transfer thereof, the Net Proceeds in the Renewal Fund shall be applied and may be invested as provided in the Indenture.

(e) The Agency, the Trustee, the Bank and the Lessee shall cooperate and consult with each other in all matters pertaining to the settlement, compromising, arbitration or adjustment of

any claim or demand on account of any Loss Event, and, if the cost of the repair or restoration is reasonably estimated to exceed \$100,000, the settlement, compromising, arbitration or adjustment of any such claim or demand shall be subject to the approval of the Lessee, the Bank and the Trustee (such approvals not to be unreasonably withheld, delayed or conditioned).

(f) If all or substantially all of the Facility shall be taken or condemned, or if the taking or condemnation renders the Facility unsuitable for use by the Lessee as contemplated hereby, the Lessee shall exercise its option to purchase the Facility pursuant to Section 8.1 hereof, the Trustee shall draw on the Letter of Credit to effect the redemption in whole of the Bonds under the Indenture, and to the extent necessary, the Lessee shall pay to the Trustee an amount which, when added to any Priority Amounts then in the Bond Fund and available for that purpose, shall be sufficient to retire and redeem the Bonds in whole at the earliest possible date (including, without limitation, principal and interest to the maturity or redemption date and redemption premium, if any), and to pay the expenses of redemption, the fees and expenses of the Agency, the Bond Registrar, the Tender Agent, the Remarketing Agent, the Trustee, the Bank and the Paying Agents, together with all other amounts due under the Indenture and under this Agreement, and such amount shall be applied, together with such other Priority Amounts in such Bond Fund, if applicable, to such redemption or retirement of the Bonds on said redemption or maturity date. Upon such redemption or retirement of the Bonds, the amount of the Net Proceeds recovered shall be promptly paid over by the Trustee to the Bank.

(g) The Lessee shall be entitled to any insurance proceeds or condemnation award, compensation or damages attributable to Lessee's Property.

(h) The Lessee hereby waives the provisions of Section 227 of the New York Real Property Law or any law of like import now or hereafter in effect.

(i) To the knowledge of the Lessee, no condemnation or eminent domain proceeding has been commenced or threatened against any part of the Facility Realty or the Lessee's or Agency's interests therein.

(j) All replacements, repairs, rebuilding or restoration made pursuant to this Section 5.1, whether or not requiring the expenditure of the Lessee's own money, shall automatically become part of the Facility Realty as if the same were specifically described herein and shall be subject to this Agreement.

ARTICLE VI

PARTICULAR COVENANTS

Section 6.1 Dissolution or Merger of Lessee; Restrictions on Lessee. (a) The Lessee covenants and agrees that at all times during the term of this Agreement, it will (i) maintain its existence as a limited liability company as in effect on the date hereof, (ii) continue to be subject to service of process in the State and either be organized under the laws of the State or under the laws

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of any other state of the United States and duly qualified to do business as a foreign limited liability company in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets, (iv) not sell, transfer, pledge or otherwise encumber all or substantially all of the assets which constitute the Facility or any leasehold or other interest therein (except for Permitted Encumbrances), (v) not consolidate with or merge into another limited liability company or permit one or more limited liability companies to consolidate with or merge into it, and (vi) not change the ownership structure, control, or operation of the Lessee in all of the foregoing without the Agency's and the Bank's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

At all times during the term of this Agreement, Alan Mindel and Mary Mindel shall own one hundred percent (100%) of the ownership interests of the Lessee, unless such interests are transferred or assigned in accordance with Section 9.3.

(b) The Lessee hereby represents and warrants to the Agency that the members and officers of the Lessee are as set forth on the Company General Certificate made by the Lessee of even date herewith, a copy of which has been or will be provided to the Agency.

Section 6.2 Indemnity. (a) The Lessee shall at all times protect and hold the Agency, the Trustee, the Bank, the Bond Registrar and the Paying Agent (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, costs, expenses and liabilities for losses, damage, injury and liability of every kind and nature and however, caused, and taxes (of any kind and by whomsoever imposed), other than, with respect to any such Indemnified Party, arising solely from the gross negligence or willful misconduct of such Indemnified Party, arising during the term of this Agreement upon, about or in connection with the Project or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Project and the marketing, remarketing, issuance and sale of the Agency's Bonds for such purpose, (ii) the acquisition of the Project or any part thereof or the effecting of any work done in or about the Project or any part thereof, (iii) any defects (whether latent or patent) in the Project or any part thereof, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership or leasing of the Project or any portion thereof, or (v) this Agreement, the Indenture or any other Project Document, Security Document or other document or instrument delivered in connection herewith or therewith or the enforcement of any of the terms or provisions hereof or thereof or the transactions contemplated hereby or thereby. No Indemnified Party shall be liable for any damage or injury to the person or property of the Lessee or any Affiliates thereof or their respective directors, officers, employees, agents or servants or persons under the control or supervision of such person or any other Person who may be about the Project due to any act or negligence of any Person other than, with respect to any such Indemnified Party, due solely to the gross negligence or willful misconduct of such Indemnified Party.

(b) The Lessee releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable for, and agree to indemnify and hold each Indemnified Party

harmless against, any expense, loss, damage, injury or liability incurred because of any lawsuit commenced as a result of action taken by any Indemnified Party with respect to any of the matters set forth in Section 6.2(a) hereof or at the direction of the Lessee or any Affiliate thereof. An Indemnified Party shall promptly notify the Lessee in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Lessee pursuant to this Section 6.2 and such notice shall be given in sufficient time to allow the Lessee to defend or participate in such claim or action. The failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Lessee under this Section 6.2 if, (x) the Indemnified Party shall not have had knowledge or notice of such claim or action, (y) the Lessee or any Affiliates of the Lessee shall have had knowledge or notice of such claim or action, or (z) the Lessee's ability to defend such claim or action shall not thereby be materially impaired.

(c) The indemnifications and protections set forth in this Section 6.2 shall be extended, with respect to each Indemnified Party, to its members, directors, officers, employees, agents and servants and persons under such Indemnified Party's control or supervision.

(d) To effectuate the purposes of this Section 6.2, the Lessee will provide for and insure, in the public liability policies required in Section 4.5 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Section 6.2. Anything to the contrary in this Agreement notwithstanding, the covenants of the Lessee contained in this Section 6.2 shall remain in full force and effect after the termination of this Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or a cause of action may be brought and (ii) payment in full or the satisfactions of such claim or cause of action and of all expenses and charges incurred by the Indemnified Party relating to the enforcement of the provisions herein specified.

(e) For the purposes of this Section 6.2, neither the Lessee nor any Affiliates thereof shall be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

Section 6.3 Compensation and Expenses of Trustee, Bond Registrar, Tender Agent, Remarketing Agent, Paying Agents and Agency. The Lessee shall, to the extent not paid out of the proceeds of the Bonds as financing expenses, pay the following annual or periodic fees, charges and expenses and other amounts (i) the initial and annual reasonable fees of the Trustee for the ordinary services of the Trustee rendered and its ordinary expenses incurred under the Indenture, including its fees and expenses as Bond Registrar and in connection with the preparation of new bonds upon exchanges or transfers or making any investments in accordance with the Indenture, including reasonable fees of its counsel, (ii) the reasonable fees and charges of the Trustee and any Paying Agents on the Bonds for acting as paying agents as provided in the Indenture, including reasonable fees of its counsel, (iii) the reasonable fees, charges and expenses of the Trustee for extraordinary services rendered by it under the Indenture, including reasonable counsel fees, (iv) the fees, costs and expenses of the Tender Agent and the Remarketing Agent, and (v) the annual fee of

the Bank as provided in the Reimbursement Agreement and the fees, costs and expenses (including legal, accounting and other administrative expenses) of the Agency together with any reasonable fees and disbursements incurred by the Agency's bond counsel and general counsel in connection with (i) the Project, the Facility or this Agreement, including fees and expenses incurred by Agency after the occurrence and during the continuance of an Event of Default as provided in Section 7.7 of this Agreement, (ii) the negotiation, execution and administration of this Agreement, the Indenture and other Security Documents and Project Documents; and (iii) any waiver, modification or amendment to this Agreement, the Indenture or any Security Document and Project Document that may be requested by the Lessee or any party thereto, or any action by the Agency requested by the Lessee thereunder.

The Lessee further agrees to pay to the Agency prior to or concurrently with the execution and delivery of this Agreement an administrative fee of \$18,000, a closing compliance fee of \$2,500.00, and an annual servicing fee of \$1,000.00 payable initially on the Lease Commencement Date and on every January 1 thereafter, adjusted pursuant to the Application, until the termination of this Agreement.

Section 6.4 Retention of Interest in Project Property. The Agency shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of the Facility or any part thereof or interest therein during the term of this Agreement, except as set forth in Sections 4.1, 4.2, 5.1, 7.2 and 8.2 hereof, without the prior written consent of the Lessee and the Trustee, and any purported disposition without such consent shall be void.

The Agency will, however, at the written request of the Lessee, so long as there exists no Event of Default hereunder, and with the prior written consent of the Bank, grant such rights of way or easements over, across, or under, the Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the leasehold estate of this Agreement, as shall be necessary or convenient for the maintenance and upkeep of the Facility. The Agency agrees, at the sole cost and expense of the Lessee, to execute and deliver any and all instruments necessary or appropriate to confirm and grant any such right of way or easement or any such permit or license and to release the same from the leasehold estate of this Agreement.

No conveyance or release effected under the provisions of this Section 6.4 shall entitle the Lessee to any abatement or diminution of the rents payable under Sections 3.3 or 3.7 hereof or the other payments required to be made by the Lessee under this Agreement.

Section 6.5 Financial Statements; Annual Certificates. (a) The Lessee shall furnish to the Agency, the Bank and the Trustee, as soon as available and in any event within one hundred twenty (120) days after the close of each fiscal year of the Lessee, a copy of the Lessee's audited financial statements for such fiscal year, prepared in accordance with generally accepted accounting principles, certified by independent certified public accountants, and a copy of the Federal income tax return of the Lessee.

(b) The Lessee shall deliver to the Agency, the Bank and the Trustee with each delivery required by Section 6.5(a) hereof, a certificate of an Authorized Representative of the Lessee (A) as to whether or not, as of the close of such preceding fiscal year of Lessee, and at all times during such fiscal year, the Lessee was in compliance with all the provisions which relate to the Lessee in this Agreement and the Project Documents and the Security Documents to which the Lessee is a party, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default hereunder, and any action proposed to be taken by the Lessee with respect thereto, (B) that the insurance the Lessee maintains complies with the provisions of Section 4.5 of this Agreement, that such insurance has been in full force and effect at all times during the preceding fiscal year of Lessee, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and are in full force and effect, and (C) such other information as the Agency, the Bank or the Trustee shall reasonably request. In addition, upon twenty (20) days' prior written request by the Agency, the Bank or the Trustee, the Lessee will execute and deliver to the Agency, the Bank and the Trustee a certificate of an Authorized Representative of the Lessee either stating that to his knowledge no such default or breach exists hereunder or specifying each such default or breach of which he has knowledge and the steps being taken, if any, to cure said default.

(c) The Lessee shall promptly notify the Agency, the Bank and the Trustee of the occurrence and continuance of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under this Agreement or any Project Document or Security Document of which it has knowledge. Any notice required to be given pursuant to this subsection shall be signed by an Authorized Representative of the Lessee and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Lessee shall state this fact in the notice.

Section 6.6 Discharge of Liens. (a) If any lien, encumbrance or charge is filed or asserted, or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Facility or any part thereof or the interest therein of the Agency, the Lessee, the Bank or the Trustee or against any of the rentals or other amounts payable under this Agreement or the interest of the Lessee under this Agreement or under any other Security Document or Project Document, other than Liens for Impositions (as defined in Section 4.4) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.6(b) hereof, the Lessee forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give notice thereof to the Agency, the Bank and the Trustee and take all action (including the payment of money and/or the securing of a bond) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full thereof within sixty (60) days of the filing thereof and to remove or nullify the basis therefor. Nothing contained in this Agreement shall be construed as constituting the express or implied consent to or permission of the Agency for the

performance of any labor or services or the furnishing of any materials that would give rise to any Lien against the Agency's interest in the Facility or the rentals or other amounts payable under this Agreement or any other Project Document or Security Document.

(b) The Lessee may at its sole expense contest (after prior written notice to the Agency, the Bank and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if (1) such proceeding shall suspend the execution or enforcement of such Lien against the Facility or any portion thereof or interest therein or in this Agreement or against Agency, the Lessee, the Bank or the Trustee or against any of the rentals or other amounts payable under this Agreement or any other Project Document or Security Document, (2) neither the Facility nor any portion thereof or interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Lessee, the Agency, the Bank nor the Trustee would be in any danger of any civil or criminal liability for failure to comply therewith, and (4) the Lessee shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Agency, Trustee or the Bank to protect the security intended to be offered by the Indenture, the Bank Mortgage and the PILOT Mortgage.

Section 6.7 Agency's Authority; Covenant of Quiet Enjoyment. The Agency covenants and agrees that it has full right and lawful authority to enter into this Agreement for the full term thereof, and that, subject to the terms and provisions of the Bank Mortgage, the PILOT Mortgage, Indenture and other Permitted Encumbrances, so long as the Lessee shall pay the rent and all other sums payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements therein contained obligatory upon it and an Event of Default shall not exist hereunder, the Agency shall take no action to disturb the peaceful, quiet and undisputed possession of the Facility.

Section 6.8 No Warranty of Condition or Suitability. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE PROJECT FOR THE PURPOSES OR NEEDS OF THE LESSEE OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY PROJECT COSTS. THE LESSEE ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE PROPERTY NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE LESSEE IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR ITS PURPOSES AND THE PURPOSES OF THE LESSEE. THE LESSEE SHALL ASSERT NO CLAIM AGAINST THE AGENCY ON THE BASIS THAT THE PROJECT IS NOT SUITABLE OR FIT FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE LESSEE OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR

INDIRECTLY, BY THE PROJECT OR FOR USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE OF ANY THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

Section 6.9 Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in the Bond Fund, the Lease Payments Fund, the Project Fund or the Renewal Fund upon the expiration or sooner or later termination of the term of this Agreement as provided in this Agreement, after payment in full of the Bonds (in accordance with Section 10.01 of the Indenture), the fees, charges and expenses of the Trustee, the Tender Agent, the Remarketing Agent, the Bond Registrar, the Paying Agents and the Agency in accordance with the Indenture and after all rents and all other amounts payable hereunder, shall have been paid in full, and all amounts required to be paid to the Bank under the Reimbursement Agreement shall have been so paid, shall belong to and be paid to the Lessee by the Trustee as overpayment of rents.

Section 6.10 Issuance of Additional Bonds. The Agency and the Lessee recognize that, under the provisions of and subject to the conditions set forth in the Indenture, the Agency is authorized, with the consent of the Bank, to enter into a Supplemental Indenture and issue one or more series of Additional Bonds on a parity with the Series 2006A Bonds for the purpose of (i) providing funds in excess of the Net Proceeds of insurance or eminent domain to repair, relocate, replace, rebuild or restore the Facility Realty in the event of damage, destruction or taking by eminent domain, (ii) providing additional funds in the event moneys in the Project Fund are not sufficient to pay Project Costs, (iii) providing extensions, additions or improvements to the Facility Realty, the purpose of which shall be to constitute a "project" within the meaning of the Act, or (iv) refunding Outstanding Bonds. If the Lessee is not in an Event of Default hereunder, the Agency will consider the issuance of Additional Bonds in a principal amount as is specified in a written request in accordance with the applicable provisions set forth in the Indenture. If Additional Bonds are to be issued pursuant to the Indenture, the Agency and the Lessee shall enter into an amendment to this Agreement, providing, among other things, for the payment by the Lessee of such additional rentals as are necessary in order to amortize in full the principal of and interest such Additional Bonds and any other costs in connection therewith. The Agency may condition the issuance of such Additional Bonds upon (y) the payment of an Agency Fee in accordance with then-current Agency policies and practices, and (z) an increase in the payments to be made under the PILOT Agreement in accordance with then-current Agency policies and practices.

Any such completion, repair, relocation, replacement, rebuilding, restoration, additions, extensions or improvements shall become a part of the Facility Realty and shall be included under this Agreement to the same extent as if originally included hereunder.

Section 6.11 Employment Information: Equal Employment Opportunities. (a) The Lessee shall ensure that all employees working at, and all applicants for employment at, the Project are afforded equal employment opportunities without discrimination. Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300), or any successor statute thereto, in which the Project is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Lessee agrees, where practicable, to first consider persons eligible to participate in the Federal Job Training Partnership Act (P.L. No. 97-300) programs (or successors thereto) and shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(b) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Lessee agrees to file with the Agency, prior to the effective date of this Agreement, an employment plan, in form and substance satisfactory to the Agency.

(c) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Lessee agrees to file with the Agency, on an annual basis not later than January 1 of each year during the term of this Agreement, reports regarding the number of people employed at the Facility and certain other matters, the initial said annual employment report to be in substantially the form annexed hereto as the Form of Annual Employment Report in the Appendices hereto.

(d) Intentionally omitted.

Section 6.12 [RESERVED]

Section 6.13 Redemption Under Certain Circumstances; Special Covenants. (a) Upon the determination by the Agency that the Lessee is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, in violation of applicable material law or not as a qualified "project" in accordance with the Act and the failure of the Lessee within thirty (30) days (or such longer period as may be established pursuant to the proviso to this sentence) of the receipt by the Lessee of written notice of such noncompliance from the Agency to cure such noncompliance (a copy of which notice shall be sent to the Bank and the Trustee), the Lessee covenants and agrees that it shall, on the immediately succeeding Interest Payment Date following the termination of such thirty (30) day (or longer) period, pay to the Trustee advance rentals in immediately available funds in an amount sufficient to redeem the Bonds Outstanding in whole at the Redemption Price of 100% of the aggregate principal amount of the Outstanding Bonds together with interest accrued thereon to such Interest Payment Date, provided, however, that if such noncompliance cannot be cured within such period of thirty (30) days with diligence (and is capable of being cured) and the Lessee promptly commences the curing of such non-compliance and
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thereafter prosecutes the curing thereof with diligence and to the Agency's reasonable satisfaction, such period of time within which the Lessee may cure such failure shall be extended for such additional period of time as may be necessary to cure the same with diligence and the Agency shall notify the Trustee and the Bondholders of any such extension.

(b) Upon the circumstances set forth in Sections 2.05(c), (d), (e), (f) (g) and (h) of the Indenture, the Lessee shall pay or cause the prepayment of its lease rental obligation upon the circumstances and in the manner set forth in the Indenture.

Section 6.14 Further Assurances. The Lessee covenants and agrees that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, at the sole cost and expense of the Lessee, as the Agency, the Bank or the Trustee reasonably deems necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency or the Trustee hereunder or under the Indenture, under any other Security Documents and any other Project Document or under the Bank Mortgage and the PILOT Mortgage.

Section 6.15 Intentionally omitted.

Section 6.16 Recording and Filing. This Agreement as originally executed or a memorandum thereof shall be recorded, or caused to be recorded, by the Lessee subsequent to the recordation of the PILOT Mortgage, the Bank Mortgage and the Indenture, in the appropriate office of the Clerk of the County, or in such other office as may at the time be provided by law as the proper place for the recordation thereof. The security interest of the Agency granted to the Trustee under the Indenture in this Agreement and the rentals payable hereunder and thereunder shall be perfected by the filing of financing statements by the Lessee which fully comply with the New York State Uniform Commercial Code - Secured Transactions in the office of the Secretary of State of the State, in the City of Albany, New York and in the office of the County Clerk of the County. The Lessee shall file or cause to be filed all necessary continuation statements (and additional financing statements) within the time prescribed by the New York State Uniform Commercial Code - Secured Transactions in order to continue (or attach and perfect the security interest created by the Indenture in this Agreement and the rentals payable hereunder and thereunder, to the end that the rights of the Agency, the Holders of the Bonds, the Bank and the Trustee in this Agreement and the rentals payable hereunder shall be fully preserved as against creditors or purchasers for value from the Agency or the Lessee.

Section 6.17 Right to Cure Agency Defaults. The Agency hereby grants the Lessee full authority for and on account of the Agency to perform upon reasonable prior notice to the Agency any covenant or obligation the non-performance of which is alleged to constitute a default hereunder in the name and stead of the Agency, with full power of substitution, provided that the Lessee shall have no obligation to perform same, except as set forth herein.

ARTICLE VII
EVENTS OF DEFAULT; REMEDIES

Section 7.1 Events of Default. Any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) Failure of the Lessee to pay any rental (i) that has become due and payable by the terms of Sections 3.3 (excluding Section 3.3(g)) or 3.7 hereof which results in an Event of Default under the Indenture, or (ii) that has become due to the Agency pursuant to Section 3.3(g) or Section 6.3 hereof, which continues for fifteen (15) days following demand therefor by the Agency;

(b) Failure of the Lessee to pay any amount (except the obligation to pay rent under Section 3.3 and 3.7 of this Agreement or amounts due to the Agency pursuant to Section 3.3(g) and Section 6.3 of this Agreement) that come due and payable hereunder, or to observe and perform any covenant, condition or agreement on its part to be performed under Sections 1.6, 4.2, 4.3, 4.4, 4.5, 6.2, 6.3, 7.6, 8.5 or 9.3 hereof, and continuance of such failure for a period of thirty (30) days after receipt by the Lessee of notice specifying the nature of such default from the Agency, the Bank or the Trustee or the Holders of more than twenty-five per centum (25%) in aggregate principal amount of the Bonds Outstanding;

(c) Failure of the Lessee to observe and perform any covenant, condition or agreement hereunder on its part to be performed (except as set forth in Section 7.1(a), (b) or (f)) and (1) continuance of such failure for a period of thirty (30) days after receipt by the Lessee of written notice specifying the nature of such default from the Agency, the Bank or the Trustee or the Holders of more than twenty-five per centum (25%) in aggregate principal amount of the Bonds Outstanding, or (2) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Lessee fails to proceed with reasonable diligence after receipt of said notice to cure the same or fail to continue with reasonable diligence their efforts to make the same;

(d) If Lessee shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its liability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(e) A proceeding or case shall be commenced, without the application or consent of Lessee, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver,

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liquidator, custodian or the like of such Lessee or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period sixty (60) days; or the Lessee shall fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such Bankruptcy Code; or any order for relief against the Lessee shall be entered in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of the Lessee as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(f) Any representation or warranty made (i) by or on behalf of the Lessee in the Application, commitment letter and related materials submitted to the Agency on the initial purchases(s) of the Series 2006A Bonds for approval of the Project or its financing, or (ii) by the Lessee herein, or (iii) in any Letter of Representation and Indemnity Agreement delivered to the Agency, the Trustee, the Bank and the placement agent for or the original purchaser(s) of the Series 2006A Bonds or (iv) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall prove to be false, misleading or incorrect in any material respect as of the date made; or

(g) An Event of Default by lessee under the PILOT Agreement, the Indenture or any other Project Document or Security Document shall occur and be continuing.

(h) If Alan Mindel and Mary Mindel cease to own one hundred percent (100%) of the ownership interests of the Lessee, except as set forth in Section 9.3.

Section 7.2 Remedies on Default. Whenever any Event of Default referred to in Section 7.1 hereof shall have occurred and is continuing, the Agency, or the Trustee where so provided, may take any one or more of the following remedial steps:

(a) The Trustee, (y) as and to the extent provided in Article VIII of the Indenture, may cause all principal installments of rent payable under Section 3.3 hereof for the remainder of the term of this Agreement to be immediately due and payable, whereupon the same, together with the accrued interest thereon, shall become immediately due and payable; provided, however, that upon the occurrence of an Event of Default under Section 7.1(d) or (e) hereof, all principal installments of rent payable under Section 3.3 hereof for the remainder of the term of this Agreement, together with the accrued interest thereon, shall immediately become due and payable without any declaration, notice or other action of the Agency, the Bank, the Trustee, the Holders of the Bonds or any other Person being a condition to such acceleration; or (z) subject to the last paragraph of this Section 7.2, may take whatever action at law or in equity as may appear necessary or desirable to collect the rent then due and thereafter to become due, or enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement;

(b) The Agency or the Trustee may terminate this Agreement, in which case this Agreement and all of the right, title and interest herein granted or vested in the Lessee shall cease and terminate (except for the Lessee's rights under Section 8.1 hereof) unless prior to such termination all accrued and unpaid rent (exclusive of any such rent accrued solely by virtue of the acceleration of the due date of the Bonds as provided in Section 8.01 of the Indenture) and other amounts payable hereunder, shall have been paid and all such defaults shall have been fully cured. No such termination of this Agreement shall relieve the Lessee of such liabilities and obligations as survive any such termination;

(c) Subject to the last paragraph of this Section 7.2, the Agency, the Bank or the Trustee may take whatever action at law or in equity as may appear necessary or desirable to collect the rent then due and thereafter to become due and other amounts payable hereunder, or to enforce performance or observance of any obligations, agreements or covenants of the Lessee under this Agreement;

(d) Subject to the last paragraph of this Section 7.2, the Trustee may take any action permitted under the Indenture with respect to an Event of Default thereunder; and

(e) Upon the occurrence of an Event of Default with respect to any of the Agency's Reserved Rights, the Agency, without the consent of the Trustee, any Bondholder or any other Person, may proceed to enforce the Agency's Reserved Rights by (i) terminating this Agreement (with the effect (1) as set forth in Section 7.2(b) hereof and without relieving the Lessee of such of its liabilities and obligations under this Agreement as survive such termination, and (2) that the term of this Agreement shall be deemed to have expired on such date of termination as if such date were the original expiration date of this Agreement), and/or (ii) bringing an action for damages, injunction or specific performance (subject to the provisions of the last paragraph of this Section 7.2), and/or (iii) conveying all of the Agency's right, title and interest in the Project to the Lessee in accordance with Section 8.2 hereof (which conveyance the Lessee hereby irrevocably agrees to accept), and/or (iv) requiring the Lessee to redeem the Bonds in whole, and/or (v) (subject to the provisions of the last paragraph of this Section 7.2) taking whatever action at law or in equity as may appear necessary or desirable to collect payment or amounts due under this Agreement or to enforce the performance or observance of any obligations, covenants or agreements of the Lessee under this Agreement.

In the event that the Lessee fails to make any rental payment required in Section 3.3 hereof, the installment so in default shall continue as an obligation of the Lessee until the amount in default shall have been fully paid.

Section 7.3 Remedies Cumulative. The rights and remedies of the Agency or the Trustee or the Bank under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency or the Trustee or the Bank allowed by law with respect to any default under this Agreement. Failure by the Agency or the Trustee or the Bank to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or

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remedies upon default by the Lessee hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandatory injunction, specific performance or other appropriate legal remedy a strict compliance by the Lessee with all of the covenants and conditions hereof, or if the rights to exercise any such rights or remedies, if such default by the Lessee be continued or repeated.

Section 7.4 No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and/or the Trustee and/or the Bank and the Lessee or any delay or omission on the part of the Agency and/or the Trustee and/or the Bank in exercising any rights hereunder, under the Indenture or under any other Project Document or Security Document shall operate as a waiver.

Section 7.5 Effect on Discontinuance of Proceedings. In case any proceeding taken by the Trustee or the Agency or the Bank under the Indenture, this Agreement or any other Project Document or Security Document on account of any Event of Default hereunder or under the Indenture or any other Project Document or Security Document shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Agency or the Bank, as the case may be, then, after giving effect to any such adverse ruling, and in every such case, the Agency, the Trustee, the Bank and the Holders of the Bonds shall be restored, respectively, to their former positions and rights hereunder and thereunder, and all rights, remedies, powers and duties of the Agency, the Trustee and the Bank shall continue as in effect prior to the commencement of such proceedings.

Section 7.6 Agreement to Pay Attorneys' Fees and Expenses. In the event the Agency, the Trustee or the Bank should employ attorneys or incur other expenses in connection with the collection of rentals or other amounts payable hereunder or the enforcement of performance or observance of any obligation or agreement on the part of the Lessee herein contained or contained in any other Security Document or Project Document, the Lessee agrees that it will on demand therefor pay to the Agency, the Trustee, or the Bank the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred.

ARTICLE VIII

OPTIONS

Section 8.1 Options. (a) The Lessee has the option to make advance rental payments with the consent of the Bank to effect the retirement of the Series 2006A Bonds in whole or the redemption in whole or in part of the Series 2006A Bonds, all in accordance with the terms of the Indenture and the Reimbursement Agreement. The Lessee shall exercise its option to make such advance rental payments by delivering a written notice of an Authorized Representative of the Lessee to the Trustee in accordance with the Indenture, with a copy to the Agency and the Bank, setting

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forth (i) the amount of the advance rental payment, (ii) the principal amount of Series 2006A Bonds Outstanding requested to be redeemed with such advance rental payment (which principal amount shall be in such minimum amount or integral multiple of such amount as shall be permitted in the Indenture), and (iii) the date on which such principal amount of Series 2006A Bonds are to be redeemed. Such advance rental payment shall be paid to the Trustee in legal tender (and may be effected through making such advance rental payment to the Bank followed by a draw by the Trustee on the Letter of Credit as set forth below) on or before the redemption date and shall be an amount which, when added to the Priority Amounts on deposit in the Redemption Account and Interest Account, as required, of the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Series 2006A Bonds to be redeemed, together with interest to accrue to the date of redemption and (to be paid separately) all expenses of the Agency, the Bond Registrar, the Tender Agent, the Remarketing Agent, the Trustee, the Bank and the Paying Agents in connection with such redemption; provided, however, no such redemption of the Series 2006A Bonds shall be effected except from Priority Amounts. The Lessee hereby authorizes and directs the Trustee to draw moneys under the Letter of Credit in an amount sufficient to redeem the principal amount of Series 2006A Bonds requested to be redeemed, together with interest accrued and to accrue thereon to the date of redemption, and to deposit such sums in the Redemption Account and the Interest Account, as required, of the Bond Fund. In the event the Series 2006A Bonds are to be redeemed in whole or otherwise retired, the Lessee shall further pay on or before such redemption date, in legal tender, to the Agency, the Trustee, the Bank, the Tender Agent, the Remarketing Agent, the Bond Registrar and the Paying Agents, as the case may be, all fees and expenses owed such party or any other party entitled thereto under this Agreement or the Indenture together with (i) all other amounts due and payable under this Agreement and the other Security Documents and Project Documents, and (ii) any amounts required to be paid to the Bank under the Reimbursement Agreement.

(b) The Lessee shall have the option to purchase the Facility commencing on that date upon which the Series 2006A Bonds and Bonds of any other Series then Outstanding may first optionally be redeemed in whole and on any date thereafter permitted therefor as provided in the Indenture.

(c) The Lessee shall also have the option to purchase the Facility on any date during the term of this Agreement within ninety (90) days of the occurrence of any of the following events:

(1) The Facility shall have been damaged or destroyed to such extent that as evidenced by an opinion of an Independent Engineer filed with the Agency, the Bank and the Trustee (A) the Facility cannot be reasonably restored within a period of six months from the date of such damage or destruction to the condition thereof immediately preceding such damage or destruction, (B) the Lessee is thereby prevented or likely to be prevented from carrying on its normal operation of the Facility for a period of six months from the date of such damage or destruction, or (C) the restoration cost of the Facility would exceed the total amount of all insurance

proceeds, including any deductible amount, in respect of such damage or destruction;
or

(2) Title to, or the temporary use of, all or substantially all of the Facility shall have been taken or condemned by a competent authority which taking or condemnation results, or is likely to result, in the Lessee being thereby prevented or likely to be prevented from carrying on its normal operation of the Facility for a period of six months from the date of such taking or condemnation, as evidenced by an opinion of an Independent Engineer filed with the Agency, the Bank and the Trustee; or

(3) As a result of changes in the Constitution of the United States of America or of the State or of legislative or executive action of the State or any political subdivision thereof or of the United States of America or by final decree or judgment of any court after the contest thereof by the Lessee, this Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed herein or unreasonable burdens or excessive liabilities are imposed upon the Lessee by reason of its operation of the Facility.

(d) The Lessee, in purchasing the Facility pursuant to Section 8.1 (c) hereof, shall file with the Agency, the Bank and the Trustee the opinion prescribed by Section 8.1 (c)(1) or (2) hereof together with a certificate of an Authorized Representative of the Lessee stating that, as a result of the occurrence of the event giving rise to the exercise of such option to purchase, the Lessee has discontinued, or at the earliest practicable date will discontinue, the operation of the Facility for its intended purposes, and in the case of Section 8.1(b) or 8.1(c) hereof, the Lessee shall pay or cause to be paid (through making an advance rental payment to the Bank followed by a draw by the Trustee under the Letter of Credit as provided below) to the Trustee as the purchase price, in legal tender, advance rental payments (if payment in full of the principal of or the Redemption Price, if any, as the case may be, of, and interest on, all the Series 2006A Bonds and Bonds of any other Series then Outstanding, and the interest thereon at maturity or upon earlier redemption has not yet been made) equal to the sum of the following:

(1) an amount which, when added to the Priority Amounts on deposit in the Bond Fund and available therefor, will be sufficient to pay, retire and redeem the Series 2006A Bonds and Bonds of any other Series then Outstanding in accordance with the provisions of the Indenture (including the provisions of Section 10.1 thereof), including, without limitation, the principal of or the Redemption Price (as the case may be) of, together with interest to maturity or redemption date (as the case may be) on, the Series 2006A Bonds and Bonds of any other Series then Outstanding;

(2) the expenses of redemption, the fees and expenses of the Agency, the Trustee, the Bank, the Tender Agent, the Remarketing Agent, the Bond Registrar and

the Paying Agents and all other amounts due and payable under the Reimbursement Agreement, this Agreement, the Indenture and each other Security Document and Project Document; and

(3) one dollar.

The Lessee hereby authorizes and directs the Trustee to draw moneys under the Letter of Credit in an amount sufficient to pay the principal of and interest on the Bonds to maturity or the redemption date, as the case may be and to deposit such sums in the Redemption Account and the Interest Account, as required, of the Bond Fund.

(e) Upon the payment in full of the principal of and interest on the Series 2006A Bonds and Bonds of any other Series then Outstanding (whether at maturity or earlier redemption) or termination of this Agreement, the Lessee may exercise its option to purchase the Facility and shall exercise such option by (1) delivering to the Agency prior written notice of an Authorized Representative of the Lessee on or after the payment in full of the Bonds of the exercise of such option to purchase, which notice shall set forth a requested closing date for the purchase of the Facility which closing date may be the date of payment in full of the Bonds, and (2) paying on such closing date a purchase price equal to the sum of one dollar. On the date of payment in full of the Bonds, the Lessee shall pay the fees and expenses of the Agency, the Trustee, the Bank, the Tender Agent, the Remarketing Agent, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement, the Reimbursement Agreement or the Indenture and each other Security Document and Project Document. Upon the written request of the Lessee, the Agency may approve the extension or waiver of any of the time periods set forth in this paragraph.

(f) Lessee shall not, at any time, assign or transfer its option to purchase the Facility as contained in this Section 8.1 separate and apart from a permitted transfer or assignment of this Agreement pursuant to Section 9.3 hereof without the prior written consent of the Agency, the Bank and the Trustee.

(g) The exercise by the Company of its option to purchase the Facility and/or to terminate this Agreement pursuant to this Section 8.1 shall constitute a "Recapture Event" for purposes of Section 8.5 hereof.

Section 8.2 Conveyance on Exercise of Option to Purchase. At the closing of any purchase of the Agency's interest in the Facility pursuant to Section 8.1 hereof, the Agency will, upon payment of the purchase price, deliver or cause to be delivered to the Lessee, at the sole cost and expense of the Lessee, (a) documents (in form reasonably satisfactory to the Lessee, but without any obligation or liability on the Agency's part) conveying to Lessee by bargain and sale deed without covenant against grantor's acts, title to the real property of the Facility Realty being purchased, as all such property then exists, subject to the following: (1) the nature, quality and extent to which title to said property shall have been vested in and remain in the Agency; (2) any Permitted Encumbrances to which title to said property was subject when conveyed to the Agency; (3) any

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liens, easements, security interests, claims, charges and encumbrances created at the request of the Lessee or to the creation or suffering of which the Lessee consented (including easements reserved by the Agency pursuant to Section 6.4 of this Agreement); (4) any liens, security interests, claims, charges and encumbrances resulting from the failure of the Lessee to perform or observe any of the agreements on its part contained in this Agreement; (5) any liens for taxes or assessments not then delinquent; and (6) the rights, if any, of any condemning authority, and (b) documents releasing and conveying to the Lessee any of the Agency's rights and interests in and to any rights of action (other than the Agency's Reserved Rights), or any insurance proceeds (other than liability insurance proceeds for the benefit of the Agency) or condemnation award, with respect to the Facility. Concurrently with the delivery of such documents, there shall be delivered by the Agency to the Trustee any instructions or other instruments required by Section 10.01 of the Indenture to defease and pay Bonds.

Upon conveyance of the Facility pursuant to this Section 8.2, this Agreement and all obligations of the Lessee hereunder shall be terminated except the obligations of the Lessee under Sections 1.6, 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 6.3, 7.6, 8.5 and 9.17 hereof shall survive such termination.

Section 8.3 Option to Purchase or Invite Tenders of Bonds. The Lessee shall have the option, at any time during the term of this Agreement, to purchase Bonds for its own account, whether by direct negotiation, through a broker or dealer, or by making a tender offer to the Holders thereof. The Bonds so purchased by the Lessee or by any Affiliate shall be delivered to the Trustee for cancellation within fifteen (15) days of the date of purchase.

Section 8.4 Termination of Agreement. After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with Section 10.01 of the Indenture, the Lessee may terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Bank, the Tender Agent, the Remarketing Agent, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the other Security Documents and Project Documents to which the Lessee is a party, and by giving the Agency written notice of such termination, and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Lessee under Sections 1.6, 4.3 (until such time as the Lessee shall again pay taxes as the record owner of the Facility Realty), 6.2, 6.3, 8.5 and 9.17 hereof. In the event that the Lessee, within ten (10) days after full payment of the Bonds having been made in accordance with Section 10.01 of the Indenture, shall not have terminated this Agreement, the Agency shall have the right to terminate this Agreement (subject to the survival of those provisions of this Agreement stated to survive in the last clause of the preceding sentence) and to require the Lessee to make the payments referred to in the preceding sentence.

Section 8.5 Recapture of Agency Benefits. (a) It is understood and agreed by the parties to this Agreement that the Agency is entering into this Agreement in order to provide the Financial Assistance to the Lessee for the Project and to accomplish the purposes of the Act. In

consideration therefor, the Lessee hereby agrees that if there shall occur a Recapture Event (as hereinafter defined), then the Lessee shall pay to the Agency as a return of public benefits conferred by the Agency, an amount as follows:

(i) one hundred per cent (100%) of the Benefits (as defined below) if the Recapture Event occurs on or before the fifth (5th) anniversary of the Closing Date;

(ii) eighty per cent (80%) of the Benefits if the Recapture Event occurs after the fifth (5th) anniversary of the Closing Date but on or before the sixth (6th) anniversary of the Closing Date;

(iii) sixty per cent (60%) of the Benefits if the Recapture Event occurs after the sixth (6th) anniversary of the Closing Date but on or before the seventh (7th) anniversary of the Closing Date;

(iv) forty per cent (40%) of the Benefits if the Recapture Event occurs after the seventh (7th) anniversary of the Closing Date but on or before the eighth (8th) anniversary of the Closing Date;

(v) twenty per cent (20%) of the Benefits if the Recapture Event occurs after the eighth (8th) anniversary of the Closing Date but on or before the ninth (9th) anniversary of the Closing Date;

(vi) ten per cent (10%) of the Benefits if the Recapture Event occurs after the ninth (9th) anniversary of the Closing Date but on or before the tenth (10th) anniversary of the Closing Date; or

(vii) zero per cent (0%) of the Benefits thereafter.

(b) The term "Benefits" shall mean the Agency's calculation of, collectively:

(i) all real estate tax benefits which have accrued to the benefit of the Lessee during such time as the Agency was the owner of the Facility Realty by reason of the Agency's ownership, such tax benefits to be computed by subtracting the payments in lieu of taxes paid under the PILOT Agreement from those payments which the Lessee would have been required to pay during the term of this Agreement had the Lessee been the owner of the Project during such term; and

(ii) all miscellaneous benefits derived by the Lessee from the Agency's participation in the transactions contemplated by this Agreement, including, but not limited to, interest savings, any exemption from real property transfer taxes and any exemption from mortgage recording taxes.

(c) For the purposes of this Section 8.5 the term "Recapture Event" shall mean the occurrence of any of the following events:

- (i) The Lessee shall have liquidated its operations and/or assets;
- (ii) Intentionally omitted;
- (iii) The Lessee shall have transferred all or substantially all of its employees engaged in the maintenance of the Project to a location outside of the County;
- (iv) The mortgagee under any mortgage encumbering the Facility, or any part thereof, including, without limitation, the Bank Mortgage and the PILOT Mortgage, shall commence proceedings or exercise any right to foreclose such mortgage;
- (v) The occurrence of an Event of Default under this Agreement;
- (vi) The Lessee shall have effected a substantial change in the scope and nature of the operations of the Lessee at the Project so that the Facility or any portion thereof is not a qualified "project" under the Act;
- (vii) The Lessee shall have sold, leased, assigned, transferred or otherwise disposed of all or any part of its interest in the Facility in violation of this Agreement; or
- (viii) Intentionally omitted.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (A) a condemnation by governmental authority of all or substantially all of the Project or any interest therein, or (B) the inability at law of the Lessee to rebuild, repair, restore or replace the Project after the occurrence of a casualty to substantially its condition prior to such casualty, which inability shall have arisen in good faith through no fault on the part of the Lessee.

(d) The Lessee covenants and agrees to furnish the Agency with written notification upon any Recapture Event, which notification shall set forth the terms of such Recapture Event.

(e) In the event any payment owing by the Lessee under this Section 8.5 shall not be paid on demand by the Lessee, such payment shall bear interest from the date of such demand at the Default Interest Rate until the Lessee shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

(f) Any provision of this Agreement to the contrary notwithstanding, the provisions of this Section 8.5 shall survive the termination of this Agreement for any reason whatsoever.

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ARTICLE IX

MISCELLANEOUS

Section 9.1 Indenture; Amendment. The Lessee shall be bound and shall comply with all requirements, duties and obligations stated to be binding upon the Lessee in the Indenture and in the Bonds. However, the Lessee shall have and may exercise all the rights, powers and authority stated to be in the Lessee in the Indenture and in the Bonds. The Indenture and the Bonds shall not be modified, altered or amended in any manner which materially adversely affects such rights, powers, authority, requirements, duties and obligations so stated to be in the Lessee or otherwise materially adversely affects the Lessee without the written consent of the Lessee.

Section 9.2 Force Majeure. In case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise expressly provided in this Agreement, if such party shall give notice and full particulars of such force majeure to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than the obligations of the Lessee to make the rental payments or other payments required under the terms hereof, or to comply with Sections 1.6, 4.1, 4.2, 4.3, 4.4, 4.5, 6.1, 6.2, 6.3, 7.6 or 9.3 hereof), so far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall zealously endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure", as employed herein, shall mean acts of God, general labor strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of existing or impending strikes, lockouts or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force majeure shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though such existing or impending strikes, lockouts and other industrial disturbances may not be settled but could have been settled by acceding to the demands of the opposing person or persons.

The Lessee shall promptly notify the Agency, the Bank and the Trustee upon the occurrence of each Force Majeure, describing such Force Majeure and its effects and Lessee's efforts with regard thereto in reasonable detail. The Lessee shall also promptly notify the Agency, the Bank and the Trustee upon the termination of each such Force Majeure. The information set forth in any such notice shall not be binding upon the Agency, the Bank and the Trustee and the Agency, the Bank and the Trustee shall be entitled to dispute the existence of any Force Majeure and any of the contentions contained in any such notice received from the Lessee(s).

Section 9.3 Assignment or Sublease. (a) Except as otherwise expressly permitted herein, Lessee may not at any time assign or transfer this Agreement, nor may Lessee sublet the whole or any part of the Facility, without in each instance the prior written consents of the Agency, the Bank and the Trustee (which consents shall not be unreasonably withheld, conditioned or delayed); and provided, that, (1) the Lessee shall nevertheless remain liable to the Agency for the payment of all rent and for the full performance of all of the terms, covenants and conditions of this Agreement and of any other Security Document or Project Document to which it shall be a party, (2) any assignee or transferee of the Lessee shall have executed and delivered to the Agency, the Bank and the Trustee an instrument, in form for recording, in and by which the assignee or transferee shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement (and of each other Project Document or Security Document to which the Lessee shall be a party) on the part of the Lessee to be kept and performed, shall be jointly and severally liable with the Lessee for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State, (3) in the Opinion of Counsel, such assignment, transfer or sublease shall not cause the obligations of the Lessee for the payment of all rents nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Security Document or Project Document to which such Lessee shall be a party, to cease to be legal, valid and binding on and enforceable against such Lessee, (4) any assignee, transferee or sublessee shall utilize the Project as a qualified "project" within the meaning of the Act, (5) such assignment, transfer or sublease shall not violate any provision of this Agreement, the Indenture or any other Security Document or Project Document, (6) such assignment, transfer or sublease shall in no way diminish or impair the Lessee's obligation to carry (or to cause the assignee, transferee or sublessee to carry) the insurance required under Section 4.5 of this Agreement and the Lessee shall furnish written evidence satisfactory to the Agency and the Trustee that such insurance coverage shall in no manner be limited by reason of such assignment, transfer or sublease, and (7) each such assignment, transfer or sublease contains such other provisions as the Agency, the Bank or the Trustee may reasonably require. The Lessee shall furnish or cause to be furnished to the Agency, the Bank and the Trustee a copy of any such assignment, transfer or sublease in substantially final form at least fifteen (15) days prior to the date of execution thereof.

Notwithstanding anything to the contrary contained herein Alan Mindel and Mary Mindel may, upon reasonable prior notice to the Agency, transfer ownership interests in the Lessee to their immediate family members or to trusts or other entities established for estate planning purposes, provided that in any event, Alan Mindel and Mary Mindel shall continue to control the day-to-day management and operation of the Lessee and the Project.

Any consent by the Agency, the Bank or the Trustee to any act of assignment, transfer or sublease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Lessee, or the successors or assigns of the Lessee, to obtain from the Agency, the Bank and the Trustee consent to any other or subsequent assignment, transfer or sublease or as modifying or limiting the rights of the Agency, the Bank or the Trustee under the foregoing covenant by the Lessee.

If the Facility or any part thereof be sublet or occupied by any Person other than the Lessee, the Agency, in the event of an Event of Default may, and is hereby empowered to, collect rent from the undertenant or occupant during the continuance of any such default. In either of such events, the Agency may apply the net amount received by it to the rent herein provided, and no such collection shall be deemed a waiver of the covenant herein against assignment, transfer or sublease of this Agreement, or constitute the acceptance of the undertenant or occupant as tenant, or a release of the Lessee from the further performance of the covenants herein contained, on the part of the Lessee.

Section 9.4 Subordination. This Agreement, but not the PILOT Agreement, the Agency's rights under Section 8.5 of this Agreement, payment obligations owed to the Agency resulting from the Agency's Reserved Rights under this Agreement and the PILOT Mortgage, shall be subject and subordinate to the lien and the terms and conditions of the Indenture, the Bank Mortgage, the Ancillary Bank Documents and the Reimbursement Agreement, including all amounts advanced thereunder and all renewals, replacements and modifications thereto. The Bank Mortgage, the Ancillary Bank Documents and the Reimbursement Agreement (including all amounts advanced thereunder and all renewals, replacements and modifications thereto) shall be subject and subordinate to the Indenture, the PILOT Agreement, the Agency's rights under Section 8.5 of this Agreement, payment obligations owed to the Agency resulting from the Agency's Reserved Rights under the Agreement and the PILOT Mortgage. This Agreement is subject and subordinate to the lien of the PILOT Agreement and the PILOT Mortgage.

Section 9.5 Benefit of, Enforcement and Binding Effect of this Agreement. This Agreement is executed in part to induce the Bank to issue the Letter of Credit and the purchase by others of the Bonds and for the further securing of the Bonds, and accordingly all covenants and agreements on the part of the Agency and the Lessee as set forth in this Agreement are hereby declared to be for the benefit of the Agency, the Lessee, the Bank, the Trustee and the Holders from time to time of the Bonds (and may be enforced as provided in Article VIII of the Indenture on behalf of the Holders of the Bonds by the Trustee) and for no other Person whatsoever.

Section 9.6 Amendments. This Agreement may be amended only with the consent of the Trustee and the Bank given in accordance with the provisions of the Indenture and only with the written consent of the Lessee and the Agency.

Section 9.7 Notices. Any notice, demand, direction, certificate, Opinion of Counsel, request, instrument or other communication authorized or required by this Agreement to be given to or filed with the Agency, the Lessee, the Bank or the Trustee shall be delivered or sent by hand delivery (receipt acknowledged), or by registered or certified mail, return receipt requested, postage prepaid, or by overnight nationally recognized courier:

(a) if to the Agency, to the Chairman, Nassau County Industrial Development Agency, 1100 Franklin Avenue, Suite 300, Garden City, NY 11530, with a copy to the Executive

Director of the Agency at the same address, and a copy to Phillips Lytle LLP, 1100 Franklin Avenue, 4th floor, Garden City, New York 11530, Attention: Milan K. Tyler, Esq.

(b) if to the Trustee, to Manufacturers and Traders Trust Company, One M&T Plaza, 7th Floor, Buffalo, New York 14203.

(c) if to the Lessee, to Brush Hollow Inn LLC, 30 Cutter Mill Road, Great Neck, NY 11021, Attention: Alan Mindel, with a copy to Crowe Deegan LLP, One School Street, Suite 303, Glen Cove, NY 11542, Attention: Daniel P. Deegan, Esq.

(d) if to the Bank, to Manufacturers and Traders Trust Company, 350 Park Avenue, 6th floor, New York, NY 10022, Attn: Jason Lipiec, with a copy to Harris Beach PLLC, 99 Garnsey Road, Pittsford, NY 14534, Attn: Russell E. Gaenzle, Esq.

The Agency, the Lessee, the Bank and the Trustee may, by like notice, designate any further or different addresses to which subsequent notices, demands, directions, certificates, Opinions of Counsel, requests, instruments or other communications hereunder shall be sent. Any notice, demand, direction, certificate, Opinion of Counsel, request, instrument or other communication hereunder shall, except as may otherwise expressly be provided herein, be deemed to have been delivered or given as of the date received or as of the date delivery is rejected as indicated on the return receipt.

Section 9.8 Prior Agreements Superseded. This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral, between the Agency and the Lessee relating to the subject matter hereof, other than any Project Document or Security Document between the Agency and the Lessee relating to the Facility.

Section 9.9 Severability. If any clause, provision or section of this Agreement be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

Section 9.10 Inspection of Facility. The Lessee will permit the Agency, the Bank and the Trustee, or their duly authorized agents, at all reasonable times during normal business hours upon reasonable notice to enter upon the Facility Realty to examine and inspect the Facility, to inspect the Lessee's books and records, and to inspect and conduct any tests on the Facility, including taking soil samples, inter alia, in order to determine that the Lessee is in compliance with all Applicable Laws and to exercise their rights thereunder, under the Reimbursement Agreement, under the Indenture and under the other Security Documents and Project Documents with respect to the Facility. The Lessee will further permit the Agency, or its duly authorized agent, at all reasonable times during normal business hours upon reasonable notice to enter upon the Facility for the purpose of assuring that the Lessee is operating the Facility, or is causing the Facility to be operated, as a qualified "project" under the Act consistent with the purposes set forth in the recitals to this

Agreement, and not for any purpose of assuring the proper maintenance or repair of the Facility as such latter obligation is and shall remain solely the obligation of the Lessee.

Section 9.11 Effective Date; Counterparts. This Agreement shall become effective upon its delivery. It may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.12 Binding Effect. This Agreement shall be binding upon the Agency and the Lessee and their respective successors and assigns, and inure to the benefit of the Agency, the Trustee, the Holders of the Bonds, the Lessee, the Bank and their respective successors and assigns.

Section 9.13 Net Lease. It is the intention of the parties hereto that this Agreement be a "net lease" and that all of the rent be available for debt service on the Bonds, and this Agreement shall be construed to effect such intent.

Section 9.14 Law Governing. This Agreement shall be governed by, and construed in accordance with, the laws of the State in effect from time to time without regard to principles of conflicts of law.

Section 9.15 Investment of Funds. Any moneys held as part of the Project Fund, the Lease Payments Fund, the Bond Fund or the Renewal Fund or in any special fund provided for in this Agreement or in the Indenture to be invested in the same manner as in any said Fund shall, at the written request of an Authorized Representative of the Lessee, be invested and reinvested by the Trustee as provided in the Indenture. Neither the Agency nor the Trustee nor any of their members, directors, officers, agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss arising therefrom.

Interest and profit derived from such investments shall be credited and applied as provided in the Indenture, and any loss resulting from such investments shall be similarly charged.

Section 9.16 Investment Tax Credit. It is the intention of the parties that, with respect to the Facility and the Project (a) the Lessee shall be entitled to all depreciation deductions with respect to the Facility under Section 167 or 168 of the Internal Revenue Code of 1986, as amended, or any successor statute or the Treasury Regulations applicable thereunder or other law applicable thereto, as well as all other United States federal income tax benefits (whether by way of deduction, credit or otherwise) applicable to the Facility and any comparable state and local income tax benefits (whether now existing or hereinafter enacted or adopted) (provided, however, that the Agency makes no representation that such benefits shall be realized); and (b) without limiting the generality of the foregoing, any investment tax credit or comparable credit which may ever be available shall accrue to the benefit of the Lessee and the Lessee shall, and the Agency upon advice of counsel shall, make any election and take other action in accordance with the internal Revenue Code of 1986, as amended, and the Treasury Regulations applicable thereunder, as may be necessary to entitle the Lessee to have such benefit.

Section 9.17 Waiver of Trial by Jury. THE PARTIES DO HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY ON ANY CAUSE OF ACTION DIRECTLY OR INDIRECTLY INVOLVING THE TERMS, COVENANTS OR CONDITIONS OF THIS AGREEMENT OR THE FACILITY OR ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

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

Section 9.18 Non-Discrimination. (a) At all times during the term of this Agreement, the Lessee shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Lessee shall use its best efforts to ensure that employees and applicants for employment with the Lessee or any other subtenant or occupant of the Facility, or any part thereof, are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(b) The Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of the Lessee with respect to employment at the Facility, state that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex or state that such Lessee is an equal opportunity employer.

(c) The Lessee shall furnish to the Agency all information reasonably required by the Agency for the purposes of verifying compliance with this Agreement.

Section 9.19 No Recourse; Special Obligation. (a) The obligations and agreements of the Agency contained herein and the Bonds and in the other Security Documents and Project Documents to which the Agency is a party 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 Agency, and not of any member, officer, agent (other than the Lessee), servant or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Lessee), servants and employees, past, present and future, of the Agency 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.

(b) The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or the County of Nassau, and neither the State of New York nor the County of Nassau shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the

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revenues of the Agency derived and to be derived from the lease, sublease, sale or other disposition of the Facility (except for revenues derived by the Agency with respect to the Agency's Reserved Rights).

(c) No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (1) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) business days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) business days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten (10) business day period) or failed to respond within such notice period, (2) if the Agency refuses to comply with such request and the Agency'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 Agency an amount or undertaking sufficient to cover such fees and expenses, and (3) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Lessee), servants or employees, past, present or future, shall be subject to potential liability, the party seeking such order or decree shall (a) agree to indemnify, defend (with counsel selected by the Agency) and hold harmless the Agency and its members, officers, agents (other than the Lessee), attorneys, servants and employees, past, present and future, against any liability incurred as a result of its compliance with such demand, and (b) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Lessee), servants and employees, past, present and future, against all liability expected to the incurred as a result of compliance with such request.

Section 9.20 Date of Agreement for Reference Purposes Only. The date of this Agreement shall be for reference purposes only and shall not be construed to imply that this Agreement was executed on the date first above written. This Agreement was executed and delivered on the date of original issuance and delivery of the Series 2006A Bonds.

Section 9.21 [RESERVED].

Section 9.22 Survival Of Obligations. (a) The obligations of the Lessee to make the payments required by Sections 3.3, 4.3, 6.3, 7.6 and 8.5 hereof and to provide the indemnity required by Sections 1.5(p), 1.5(q), 1.6, 2.1(m), 6.2, and 9.19 hereof shall survive the termination of this Agreement, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(b) The obligations of the Lessee to the Agency with respect to the Agency's Reserved Rights shall survive the termination or expiration of this Agreement until the expiration of the period stated in the applicable statute of limitation during which a claim, cause of action or prosecution relating to the Agency's Reserved Rights may be brought and the payment in full or the

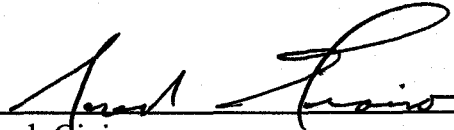
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satisfaction of such claim, cause of action or prosecution and the payment of all reasonable expenses and charges incurred by the Agency, or its officers, members, agents (other than the Lessee), attorneys, servants or employees, past, present or future, related thereto.

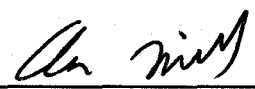
[Signature Pages Follow]

IN WITNESS WHEREOF, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Executive Director and Lessee has caused its name to be subscribed hereto, all being done as of the year and day first above written.

**NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Joseph Gioino
Executive Director

BRUSH HOLLOW INN LLC

By: 
Name: Alan Mindel
Title: Managing Member

STATE OF NEW YORK)

ss.:

COUNTY OF NASSAU)

On the 12th day of June, in the year 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared JOSEPH GIOINO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Margaret Faber
Notary Public

MARGARET FABER
Notary Public, State of New York
No. 01FA5079336
Qualified in Nassau County
Commission Expires June 2, 2007

STATE OF NEW YORK)

ss.:

COUNTY OF NASSAU)

On the 13th day of June, in the year 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared ALAN MINDEL, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Margaret Faber
Notary Public

MARGARET FABER
Notary Public, State of New York
No. 01FA5079336
Qualified in Nassau County
Commission Expires June 2, 2007

APPENDICES

DESCRIPTION OF PROJECT

The Project consists of the following: the acquisition of an interest in an approximately 1.27 acre parcel of land located at 4000 Brush Hollow Road, Westbury, Town of Oyster Bay, County of Nassau, New York (the “Land” and together with the improvements thereon, collectively, the “Facility Realty” or the “Facility”).

DESCRIPTION OF FACILITY REALTY

ALL that certain plot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being near Westbury, in the Town of Oyster Bay, County of Nassau and State of New York, being more particularly bounded and described as follows:

BEGINNING at the extreme easterly end of the arc of a curve connecting the southerly side of Montrose Avenue with the easterly side of Brush Hollow Road;

RUNNING THENCE along the southerly side of Montrose Road the following three (3) courses and distance:

- 1) south 82 degrees 11 minutes 40 seconds east a distance of 102.65 feet;
- 2) easterly along the arc of a curve having a radius of 767.93 feet a distance of 99.859 feet;
- 3) south 89 degrees 38 minutes 42 seconds east a distance of 118.599 feet;

THENCE south 0 degrees 21 minutes 18 seconds west a distance of 157.00 feet;

THENCE north 88 degrees 22 minutes 40 seconds west a distance of 103.807 feet;

THENCE north 82 degrees 11 minutes 40 seconds west a distance of 344.71 feet to the easterly side of Brush Hollow Road;

THENCE northerly along the easterly side of Brush Hollow Road along the arc of a curve having a radius of 1542.00 feet a distance of 143.03 feet to the above referenced arc of a curve connecting the southerly side of Montrose Road and the easterly side of Brush Hollow Road;

THENCE along said arc of a curve bearing to the right having a radius of 40.00 feet a distance of 43.71 feet to the point or place of BEGINNING.

FORM OF ANNUAL
EMPLOYMENT REPORT

EMPLOYMENT PLAN STATUS REPORT

COMPANY NAME: _____

ADDRESS: _____

TYPE OF BUSINESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

<u>Occupation</u>	<u>Number of New Jobs</u>	<u>Number Listed¹</u>	<u>Number Filled</u>	
			<u>Job Service Division Applicants</u>	<u>Job Training Partnership Act eligible persons</u>

^{1/} With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.