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NASSAU COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

AND

SPINNEY HILL HOMES II L.P.

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**LEASE AGREEMENT**

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Dated as of December 1, 2008

\$6,700,000

Nassau County Industrial Development Agency  
Multifamily Housing Revenue Bonds  
(Spinney Hill Homes II L.P. Project), Series 2008

ADDRESS: Pond Hill Road  
TOWN: North Hempstead  
COUNTY: Nassau  
SECTION: 2  
BLOCK: 347  
LOT: Part of Lot 47 (formerly p/o 22)

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## LEASE AGREEMENT

**THIS LEASE AGREEMENT** (this "Agreement"), made and entered into as of 1st day of December, 2008, 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, New York 11530, and **SPINNEY HILL HOMES II L.P.**, a limited partnership organized and existing under the laws of the State of New York (the "Company"), having an address c/o North Hempstead Housing Authority, Pond Hill Road, Great Neck, NY 11020.

### WITNESSETH:

**WHEREAS**, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York (the "Enabling Act"), and Chapter 674 of the 1975 Laws of New York, as amended, constituting Section 922 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of civic, manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to 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**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

**WHEREAS**, the Act further authorizes the Agency to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon; and

**WHEREAS**, the Company and Spinney Hill Homes I L.P., a limited partnership organized and existing under the laws of the State of New York ("Company-1")(each an "Applicant" and, collectively, the "Applicants"), presented an application, as amended, for financial assistance (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Spinney Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 7.2 acre parcel of land located on Pond Hill Road, in the Town of North Hempstead, County of Nassau, New York (the "Spinney Land"), (2) the renovation and redevelopment of the multifamily housing structures located on the Spinney

Land, together with related improvements to the Spinney Land (the "Spinney Building")(the Spinney Building and the Spinney Land, collectively, the "Spinney Facility Realty") and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Spinney Equipment"), all of the foregoing to constitute a housing complex comprised of approximately 102 affordable low and moderate income rental housing units, together with associated parking areas (collectively, the "Spinney Facility"); (B) the financing of all or a portion of the costs of the foregoing by the issuance of tax-exempt and/or taxable revenue bonds of the Agency in one or more series; (C) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (but not including special assessments and ad valorem levies) (together with the bonds, collectively, the "Spinney Financial Assistance"; and (D) the lease (with an obligation to purchase), license or sale of the Spinney Facility to the Applicants or such other entity(s) as may be designated by the Applicants and agreed upon by the Agency; and

**WHEREAS**, the principals of Company-1 formed the Company with an organizational structure and proportion of partnership interests substantially similar to Company-1. Pursuant to the authorization of the Nassau County Planning Commission and the Village of Lake Success, the Spinney Land has been subdivided into two separate parcels (hereinafter referred to as "Parcel-1" and "Land", respectively). 68 of the 102 affordable low and moderate income rental housing units within seven multifamily housing structures, together with associated parking areas are located on the approximately 5.041 acre Parcel-1. 34 of the 102 affordable low and moderate income rental housing units within three multifamily housing structures, together with associated parking areas, are located on the approximately 2.158 acre Land; and

**WHEREAS**, the Applicants have advised the Agency that the Company will only proceed with a portion of the Spinney Project with the Agency's involvement and request only a portion of the Spinney Financial Assistance, as follows: (A) (1) the acquisition of an interest in the Land, (2) the renovation and redevelopment of the multifamily housing structures located on the Land, together with related improvements to the Land (collectively, the "Building")(the Building and the Land, collectively, the "Facility Realty"), and (3) the acquisition and installation therein and thereon of certain furniture, fixtures, machinery and equipment (the "Facility Equipment"), all of the foregoing to constitute a housing complex comprised of approximately 34 affordable low and moderate income rental housing units, together with associated parking areas (collectively, the "Facility"); (B) the financing of all or a portion of the costs of the foregoing by the issuance of tax-exempt and/or taxable revenue bonds of the Agency in one or more series; (C) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes and mortgage recording taxes (together with the bonds, collectively, the "Financial Assistance"; and (D) the lease (with an obligation to purchase), license or sale of the Facility to the Company or such other entity as may be designated by the Company and agreed upon by the Agency (all of the foregoing, collectively the "Project"); and

**WHEREAS**, the Applicants have advised the Agency that they are not interested in obtaining the portion of the Spinney Financial Assistance consisting of exemptions from real property taxes and, therefore, for purposes of the this Agreement and the other Transaction Documents the term “Financial Assistance” shall be deemed to exclude any exemption from real property taxes; and

**WHEREAS**, the Applicants proposed that the Company be the lessee under this Lease and the Agency has approved such proposal; and

**WHEREAS**, pursuant to the authorization contained in the resolution adopted by the members of the Agency on March 14, 2007 (the “Public Hearing Resolution”), the Executive Director of the Agency (A) caused notice of the public hearings of the Agency (collectively, the “Public Hearing”) pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”) and Section 859-a of the Act, to hear all persons interested in the Spinney Project and the Spinney Financial Assistance, to be mailed on June 29, 2008 to the chief executive officer of Nassau County, New York, and of each city, town, village, school district and other affected tax jurisdiction in which the Facility is or is to be located; (B) caused notice of the Public Hearing to be published on June 29, 2008, in *Newsday*, a newspaper of general circulation available to the residents of Nassau County, New York, (C) caused the Public Hearing to be conducted on July 29, 2008 at 10 a.m. local time at 220, Plandome Road, Town of North Hempstead, Nassau County, New York, and (D) caused to be prepared a report of the Public Hearing (the “Report”) which fairly summarized the views presented at said public hearing and distributed same to the members of the Agency and to the County Executive of Nassau County, New York (the “County Executive”); 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 June 29, 2008 to the chief executive officer of Nassau County, New York, and of each other affected tax jurisdiction, and (B) conducted the IDA Meeting on July 29, 2008, 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, being 6 NYCRR Part 617, as amended (the “Regulations,” and collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on March 27, 2008 (the “SEQRA Resolution”), the Agency decided to conduct an uncoordinated review of the Project, determined that the Project is an Unlisted action under SEQRA and, will not have a significant adverse impact on the environment and issued a negative declaration for purposes of SEQRA; and

**WHEREAS**, by resolution adopted by the members of the Agency on July 29, 2008 (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 July 29, 2008 (the "Bond Resolution"), the Agency determined to enter into the "straight lease transaction" (as such quoted term is defined in the Act) contemplated by this Lease and the other Transaction Documents (as hereinafter defined); and

**WHEREAS**, immediately prior to the execution and delivery of this Agreement, the Company, as beneficial owner and Spinney Hill Homes II Housing Development Fund Company, Inc., ("HDFC"), as bare record owner will execute and deliver or cause to be executed and delivered to the Agency (A) a certain company lease agreement of even date herewith (the "Company Lease") from the Company to the Agency, which conveys to the Agency a leasehold interest in and to the Facility Realty, and (B) a bill of sale dated the Commencement Date (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in and to the Facility Equipment; and

**WHEREAS**, Agency financial assistance is necessary to provide employment in, and is beneficial for the economy of, the County of Nassau, New York, and is reasonably necessary to induce the Company to proceed with the Project; and

**WHEREAS**, the Agency, in order to provide funds for a portion of the cost of the Project, will issue and sell its Multifamily Housing Revenue Bonds (Spinney Hill Homes II L.P. Project), Series 2008 in the aggregate principal amount of \$6,700,000 (the "Series 2008 Bonds"), all pursuant to the Act, a resolution of the members of the Agency adopted on July 29, 2008, and an Indenture of Trust of even date herewith by and between the Agency and The Bank of New York Mellon Trust Company, N.A., as trustee (in such capacity, the "Trustee"), securing said Series 2008 Bonds; and

**WHEREAS**, pursuant to a certain Payment in Lieu of Taxes Agreement of even date herewith by and among the County, NHHA, HDFC and the Company, the Company has agreed to make certain payments in lieu of real property taxes with respect to the Land and the improvements thereon; and

**WHEREAS**, concurrently with the execution hereof and in order to further secure the Series 2008 Bonds, (i) the Company has entered into a Guaranty Agreement of even date herewith (the "Guaranty Agreement") with the Trustee guaranteeing, among other things, the payment of the principal or Redemption Price of, and interest on the Series 2008 Bonds, and (ii) the Agency, the Company and HDFC have granted mortgage liens on and security interests in their respective interests in the Facility, to the Trustee; and

**WHEREAS**, the Agency proposes to appoint the Company as agent of the Agency to undertake the acquisition, renovation, installation and equipping of the Facility and to sublease the Facility to the Company, and the Company desires to act as agent of the Agency to undertake the acquisition, renovation, installation and equipping of the Facility and to sublease



the Facility from the Agency, all pursuant to the terms and conditions hereinafter set forth in this Agreement;

**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 the State of New York or of the County of Nassau, New York, and neither the State of New York nor the County of Nassau, New York shall be liable on any obligation so incurred, but any such obligation shall be payable solely out of the lease rentals, revenues and receipts derived from or in connection with the Facility, including moneys received under this Agreement):

## ARTICLE I

### **DEFINITIONS, REPRESENTATIONS AND WARRANTIES**

Section 1.1. **Definitions.** Terms not otherwise defined herein shall have the meanings given to such terms in the Indenture or the Tax Regulatory Agreement hereinbelow defined. The following terms shall have the following meanings in this Agreement:

Affiliate of a Person shall mean a Person who directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, such Person. The term "control" 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 of voting securities, by contract or otherwise, or (ii) the ownership, either directly or indirectly, of at least fifty-one percent (51%) 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 Mortgage shall mean, collectively, the Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement, dated as of December 22, 2008, from the Company, HDFC and the Agency to the Trustee.

Agreement shall mean this Lease Agreement, dated as of December 1, 2008, between the Agency and the Company, and shall include any and all amendments and supplements thereto hereafter made in conformity herewith and with the Indenture.

Applicants shall mean, collectively, the Company and Company-1.

Application shall mean, collectively, the Application for Financial Assistance dated March 6, 2007, as amended, together with all other information submitted by or on behalf of the Company and its Affiliates to the Agency in connection with the Project.

Authorized Project Amount shall mean an amount equal to the costs of the Project which shall in no event exceed \$13,614,902.00.

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, or any officer or employee of the Agency authorized to perform specific acts or to discharge specific duties, and (ii) in the case of the Company, any officer of the General Partner of the Company; 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 or any other Project Document, 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.

Bill of Sale to Agency shall have the meanings given to such term in the Recitals to this Agreement.

Bonds shall mean the Series 2008 Bonds and any Additional Bonds.

Building Loan Agreement shall mean the Building Loan Agreement of even date herewith among the Agency, the Company and the Trustee, as amended or supplemented from time to time.

Code shall mean the Internal Revenue Code of 1986, as amended, including the regulations thereunder.

Commencement Date shall mean the date of original issuance and delivery of the Series 2008 Bonds.

Company shall mean Spinney Hill Homes II L.P., a limited partnership organized and existing under the laws of the State of New York, and its permitted successors and assigns pursuant to Section 6.1 or Section 9.3 hereof (including any surviving, resulting or transferee entity as provided in Section 6.1 hereof).

Company-1 shall have the meaning specified in the Recitals to this Agreement.

Company Lease shall have the meaning specified in the Recitals to this Agreement.

Company's Property shall have the meaning given to such term in Section 4.1(c) hereof.

Completion Guarantee shall mean the Completion Guarantee dated as of the date hereof from the Company in favor of the Agency and the Trustee.

Construction Consultant shall mean High Rise Engineering P.C.

County shall mean the County of Nassau, New York.

Cross-Collateralization Agreement means the Cross-Collateralization Agreement dated as of December 22, 2008, among the Bank, the Company, Company-1, and the Agency, as the same may be modified, amended, renewed or extended from time to time, including, without limitation, any amendment to reflect additional Permitted Encumbrances.

Declaration of Interest and Nominee Agreement shall mean the Declaration of Interest and Nominee Agreement, dated as of December 22, 2008, by and between HDFC and the Company.

Declaration of Reciprocal Easements shall mean the Declaration of Reciprocal Easements for Ingress, Egress, Utilities and Facilities, dated as of December 22, 2008, between the Company, Company-1, Spinney Hill Homes I Housing Development Fund Company, Inc. and HDFC.

Declaration of Restrictive Covenant shall mean the Declaration of Restrictive Covenant, dated as of December 22, 2008, by the Company to Nassau County.

Default Interest Rate shall mean a rate of interest equal to eighteen percent (18%) per annum.

Defeasance Securities shall mean non-redeemable (i) obligations of the State or the United States of America, or (ii) obligations, the principal and interest of which are guaranteed by the State or the United States of America.

Eligible Materials shall mean all construction materials used in the renovation of the Facility Realty and all tangible personal property to constitute the Facility Equipment, in each case acquired by the Company as agent for and on behalf of the Agency pursuant to the Sales Tax Letter in connection with the Project on or before the completion of the Project for incorporation in, or installation or use at, the Facility Realty.

Environmental Compliance Agreement shall mean the Environmental Compliance and Indemnification Agreement, of even date herewith, from the Company, HDFC and NHHA in favor of the Agency.

Event of Default shall have the meaning given to such term in Section 7.1 hereof.

Existing Facility Property shall have the meaning given to such term in Section 4.2(a) hereof.

Facility shall mean, collectively, the Facility Realty and the Facility Equipment.

Facility Equipment shall mean the machinery, equipment, furniture and other tangible personal property acquired and installed as part of the Project pursuant to Section 2.1 hereof and described in the Description of Facility Equipment in the Appendices to this Agreement, together with all repairs, replacements, improvements, substitutions and renewals

thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto; but excluding, however, the Company's Property. Facility Equipment shall, in accordance with the provisions of Sections 4.2 and 5.1 hereof, include all property substituted for or replacing items of Facility Equipment and exclude all items of Facility Equipment so substituted for or replaced.

Facility Realty shall mean the land described in the Description of Facility Realty in the Appendices 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; but excluding, however, any real property or interest therein released pursuant to Section 6.4 hereof.

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

Fiscal Year of the Company shall mean a year of 52 to 53 weeks as elected by the Company under Section 441(f) of the Code, or such other year of similar length as to which the Company shall have given prior written notice thereof to the Agency and the Trustee at least ninety (90) days prior to the commencement thereof.

General Partner or HDFC shall mean Spinney Hill Homes II Housing Development Fund Company, Inc.

Guaranty Agreement shall have the meaning given to such term in the Recitals to this Agreement.

HOME Mortgage shall mean the Recapture Note and Mortgage made by the Company and HDFC to Nassau County in the principal amount of \$500,000.

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

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

Joint Use and Sharing Agreement shall mean the Joint Use and Sharing Agreement, dated as of December 22, 2008, by and between Company-1 and the Company.

Land shall have the meaning given to such term in the Recitals to this Agreement.

Land Use Restriction Agreement shall mean the Land Use Restriction Agreement, dated December 22, 2008, between the Company, HDFC and the Agency.

Legal Requirements shall have the meaning given to such term in Section 4.7 hereof.

Letter of Representation and Indemnity Agreement shall mean the Letter of Representation and Indemnity Agreement dated the Commencement Date from the Company to the Agency, the Trustee and the Initial Bondholder.

Loss Event shall have the meaning given to such term in Section 5.1 hereof.

Maximum Sales Tax Benefit shall mean the maximum aggregate amount of sales and use tax exemption conferred upon the Company pursuant to the Sales Tax Letter and this Agreement, which amount shall in no event exceed \$250,000.

Minimum Employment Requirement shall have the meaning assigned to such term in Section 2.1 of this Lease.

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

NHHA shall mean North Hempstead Housing Authority.

NHHA Mortgage shall mean, collectively, (i) the Subordinate Fee and Leasehold Mortgage made by the Company, HDFC and the Agency to NHHA in the principal amount of \$900,000, and (ii) the Subordinate Fee and Leasehold Mortgage made by the Company, HDFC and the Agency to NHHA in the principal amount of \$780,000.

Permitted Encumbrances shall mean, as of any particular time,

(i) the Declaration of Restrictive Covenant, the Declaration of Interest and Nominee Agreement, the Land Use Restriction Agreement, the Declaration of Reciprocal Easements, the Company Lease, the Agency Mortgage, the Cross-Collateralization Agreement, the Indenture, the HOME Mortgage, the NHHA Mortgage, the Purchase Money Mortgage, the Joint Use and Cost Sharing Agreement and any other Security Document;

(ii) a Mortgage in favor of New York State Housing Trust Fund or in favor of New York State Housing Trust Fund and NHHA;

(iii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not in default;

(iv) utility, access and other easements and rights-of-way restrictions and exceptions that an Authorized Representative of the Company certifies to the Agency, the Trustee will not interfere with or impair the Company's use of the Facility as provided in this Agreement;

(v) such minor defects, irregularities, encumbrances, easements, rights-of-way (including agreements with any railroad the purpose of which is to service a railroad siding) and clouds on title as normally exist with respect to property similar in character to the Facility and as do not, in the Opinion of Counsel, either singly or in the aggregate, materially impair the property affected thereby for the purpose for which it is owned by the Company;

(vi) those exceptions to title to the Facility Realty enumerated in the title insurance policies delivered pursuant to Section 2.4 of this Agreement insuring the Agency's leasehold interest in the Facility Realty under the Company Lease and the lien of the Agency Mortgage, copies of which policies are on file at the principal corporate trust office of the Trustee and the office of the Agency;

(vii) 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 6.7 of this Agreement;

(viii) any federal low-income housing tax credit regulatory agreement; and

(ix) any mortgage, lien, security interest or other encumbrance which exists in favor of the Trustee and to which the Trustee shall consent.

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

PILOT Agreement shall mean the Payment in Lieu of Taxes Agreement, of even date herewith, by and among the County, NHHA, HDFC and the Company.

Plans and Specifications shall mean the plans and specifications prepared for the Project by or on behalf of the Company, as amended from time to time by or on behalf of the Company to reflect any remodeling or relocating of the Project or substitutions, additions, modifications and improvements to the Project made by the Company in compliance with this Agreement, said plans and specifications being duly certified by an Authorized Representative of the Company and filed in the principal corporate trust office of the Trustee and available to the Agency, the Majority Owner and the Construction Consultant.

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 the County, 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 the County, unless such default or breach has been waived in writing by the Agency or the County, 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 have the meaning given to such term in the Recitals to this Agreement.

Project Documents shall mean, collectively, the Security Documents, the Agency Mortgage, the Cross-Collateralization Agreement and the Environmental Compliance Agreement.

Purchase Money Mortgage shall mean the Mortgage dated as of December 22, 2008, from the Company and HDFC to NHHA in the principal amount of \$1,866,667.

Real Estate Taxes shall mean all general levy real estate taxes levied against the Facility by the County, any other municipality and the applicable school district(s), but shall not include water or sewer charges, special assessments, ad valorem charges or any similar charges.

Reserved Rights shall mean, collectively,

- (i) the right of the Agency in 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 Lease Agreement;
- (ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency under this Lease Agreement;
- (iii) the right of the Agency to enforce in its own behalf the obligation of the Company to complete the Project;
- (iv) the right of the Agency to exercise in its own behalf its rights under Section 2.4 of this Lease Agreement with respect to the proceeds of leasehold's title insurance;
- (v) the right of the Agency to enforce or otherwise exercise in its own behalf all agreements of the Company with respect to ensuring that the Facility shall always constitute a qualified "project" as defined in and as contemplated by the Act;
- (vi) the right of the Agency in 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, 2.1, 2.2, 2.4, 2.5, 2.6, 3.1, 3.2, 3.3, 4.1, 4.3, 4.4, 4.5, 4.6, 4.7, 5.1, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.9, 6.11, 6.12, 6.13, 6.18, 6.21, 6.22, 6.23, 7.1, 7.2, 7.2, 7.7, 8.1, 8.2, 8.4, 8.5, 9.3, 9.10, 9.13, 9.15, 9.17, 9.18, 9.19, 9.20 and 9.22 of the this Lease Agreement;
- (vii) the right of the Agency to amend with the Company the provisions of Section 4.3 of this Lease Agreement;

(viii) the right of the Agency to enforce the Environmental Compliance Agreement; and

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

Sales Taxes shall mean Nassau County and New York State sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109 and 1110 of the New York State Tax Law, as each of the same may be amended from time to time (including any successor provisions to such statutory sections).

Sales Tax Letter shall mean the Sales Tax Exemption Letter, dated the Commencement Date, which the Agency has made available to the Company, and shall include all amendments and restatements thereof.

Sales Tax Savings shall mean all exemptions of Sales Taxes realized by the Company pursuant to the Sales Tax Letter by reason of the Agency's interest in the Facility or any part thereof.

Scheduled Completion Date shall have the meaning given to such term in Section 2.2 hereof.

Security Documents shall mean, collectively, this Agreement, the Company Lease, the Indenture, the Guaranty Agreement and the Tax Regulatory Agreement, together with any and all other agreements or instruments delivered or assigned to the Trustee as security for the payment of the principal of, redemption premium, if any, and interest on the Bonds.

Series 2008 Bonds shall mean the \$6,700,000 Multifamily Housing Revenue Bonds (Spinney Hill Homes II L.P. Project), Series 2008, of the Agency, issued, executed, authenticated and delivered under the Indenture.

State shall mean the State of New York.

Subordinate Mortgages shall mean, collectively, the Agency Mortgage, the HOME Mortgage, the NHHA Mortgage and the Purchase Money Mortgage.

Tax Questionnaire shall mean the Bond Counsel Questionnaire, dated the Commencement Date, as completed and submitted by the Company to the Agency and its counsel.

Tax Regulatory Agreement shall mean the Tax Regulatory Agreement, dated the Commencement Date, from the Agency and the Company to the Trustee.

Trustee shall mean The Bank of New York Mellon Trust Company, N.A., in its capacity as Trustee, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.



Section 1.2. **Interpretation.** 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, limited liability companies, corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the texts of the several 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 herein to documents, instruments, contracts or agreements shall be deemed to mean such documents, instruments, contracts or agreements as the same may be amended, modified, supplemented or restated from time to time in accordance with the terms hereof and of the Indenture.

(f) Any certificates, letters or opinions required to be given pursuant to this Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Agreement.

Section 1.3. **Representations and Warranties by the Agency.** The Agency makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(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 by this Agreement and 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) Neither the execution and delivery of this Agreement or the other Project Documents to which the Agency is a party, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the provisions of this Agreement or the other Project Documents to which the Agency is a party will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency or any order, judgment, agreement or instrument to which the Agency is a party or by

which the Agency is bound, nor will constitute a default by the Agency under any of the foregoing.

Section 1.4. **Findings by Agency.** The Agency, based upon the representations and warranties of the Company contained in this Agreement and the information contained in the Application, the Tax Questionnaire and other materials heretofore submitted by or on behalf of the Company to the Agency, hereby finds and determines that the financing of a portion of the costs of the Project by the Agency and the subleasing of the Facility by the Agency to the Company is reasonably necessary to induce the Company to proceed with the Project.

Section 1.5. **Representations and Warranties by the Company.** The Company makes the following representations and warranties:

(a) The Company is a limited partnership duly organized, validly existing and in good standing under the laws of the State of New York, is not in violation of any provision of its certificate of limited partnership or limited partnership 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 this Agreement and each other Project Document to which it is a party and to carry out its obligations hereunder and thereunder.

(b) The execution, delivery and performance of this Agreement and each other Project Document to which the Company is a party and the consummation of the transactions herein and therein contemplated have been duly authorized by all requisite partnership action on the part of the Company, do not require the consent or approval of any court, tribunal or other governmental agency, and will not violate any provision of law, any order of any court or agency of government, or the certificate of limited partnership or limited partnership agreement of the Company, or any indenture, agreement or other instrument to which the Company 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 of 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) Expenses for supervision by the officers or employees of the Company and expenses for work done by such officers or employees in connection with the Project will be included as a Project Cost only to the extent that such persons were specifically employed for such particular purpose, the expenses do not exceed the actual cost thereof and are to be treated on the books of the Company as a capital expenditure in conformity with generally accepted accounting principles applied on a consistent basis.

(d) The assistance of the Agency in the financing of a portion of the costs of the Project is reasonably necessary to induce the Company to proceed with the Project. The subleasing of the Facility by the Agency to the Company and the granting of the Financial Assistance have induced the Company to proceed with the Project in the County. The granting of the Financial Assistance by the Agency with respect to the Facility will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the County

and the State and improve their prosperity and standard of living, and will prevent unemployment and economic deterioration and thereby serve the public purposes of the Act.

(e) The completion of the Project and the subleasing thereof by the Agency to the Company will not result in the removal of an industrial, manufacturing, warehousing or commercial plant or facility of the Company, any Affiliate thereof, or any other proposed occupant or user of the Facility from one area of the State to another area of the State or the abandonment of one or more plants or facilities of the Company, any Affiliate thereof, or any other proposed occupant or user of the Facility located outside of the County but within the State.

(f) The total cost of the Project being funded with the Series 2008 Bonds is at least \$6,700,000, which represents only a portion of the total cost to the Company.

(g) All costs incurred with respect to that part of the Project paid from the proceeds of the sale of the Series 2008 Bonds shall be treated on the books of the Company as capital expenditures in conformity with generally accepted accounting principles applied on a consistent basis.

(h) The property included in the Facility is either property of the character subject to the allowance for depreciation under Section 167 of the Code, or land.

(i) No part of the proceeds of the Series 2008 Bonds will be used to finance inventory.

(j) The Project constitutes a commercial facility, is included within the definition of "project" under the Act and constitutes a "qualified residential rental project" under the Code.

(k) This Agreement and the other Project Documents to which the Company is a party constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms.

(l) The Project has been designed, and the operation of the Project will be, in compliance with all Legal Requirements.

(m) There are no actions, suits, investigations or proceedings of or before any court or governmental authority, pending or, to the best knowledge of the Company, threatened against the Company or any of its property which (i) either in any case or in the aggregate, if adversely determined, would materially, adversely affect the business, operations or condition, financial or otherwise, of the Company, or (ii) question the validity of any of the Project Documents or any action to be taken in connection with the transactions contemplated thereby. All authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Company as of the date hereof in connection with the execution and delivery of this Agreement and each other Project Document to which the Company shall be a party or in connection with the performance of the obligations of the Company hereunder and under each of the Project Documents have been obtained.

(n) The Company is not in default with respect to any order, writ, injunction or decree of any governmental authority, or in violation of any law, statute or regulation, domestic or foreign, to which the Company or any of its property or assets are subject.

(o) The Company shall operate the Facility or cause the Facility to be operated in accordance with this Agreement as a qualified "project" in accordance with and as defined under the Act and as a "qualified residential rental project" in accordance with and as defined under the Code.

(p) There is no existing violation against the Facility filed by any court or administrative agency that may adversely affect the ability of the Company to use or operate the Facility for its intended purposes or for which the Company has not otherwise agreed or made arrangements satisfactory to the Agency and the Trustee to have removed and satisfied of record.

(q) All consents, approvals or authorizations, if any, of any governmental authority required on the part of the Company in connection with the execution and delivery of this Agreement and each other Project Document to which the Company shall be a party, have been duly obtained.

(r) The Company does not intend to engage in any business or enterprise other than (i) the design, acquisition, renovation, installation, equipping, furnishing, operation, maintenance and management of the Facility, (ii) the performance of its obligations under the Project Documents and all other agreements relating to the Facility, and its financing, renovation, maintenance and operation, and (iii) activities in furtherance thereof or ancillary or reasonably related thereto.

(s) No funds of the Agency (including, without limitation, the proceeds of the sale of the Series 2008 Bonds) shall be used in connection with the transactions contemplated by this Agreement and the other Project Documents 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 such 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.

(t) No part of the proceeds of the Bonds (and no sales or use tax exemptions made available under the Sales Tax Letter) will be used to finance a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one third of the total cost of the Project. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under article twenty-eight of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the New York Tax Law; or (ii) sales of a service to such customers.

(u) The Company is not a Prohibited Person, no Affiliate of the Company is a Prohibited Person and no partner of the Company is a Prohibited Person.

(v) Neither this Agreement nor any other Project Document nor any other document, certificate, agreement or instrument furnished by or on behalf of the Company in connection herewith 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.

(w) The funds available to the Company are sufficient to pay all costs in connection with the acquisition, renovation, installation and equipping of the Facility.

(x) The Facility is located entirely within the boundaries of the Town of North Hempstead, Nassau County, New York, is not located in whole or in part within the boundaries of any other town or any incorporated village, and is located only within the Manhasset School District.

(y) There is a serious lack of affordable housing facilities in the County to satisfy the needs of the residents with the County; and the Project will help to alleviate such shortage of affordable housing facilities.

(z) In the absence of facilities such as the Facility, low and moderate income residents of the County may be forced to relocate out of the County to find the services that would be provided by the Facility and facilities such as the Facility will prevent the migration of such persons from the County, and thereby support the local economy.

(aa) The representations made by the Company in the Tax Questionnaire and in the Application are and remain true, accurate and complete as of the Commencement Date.

(bb) The Project will not have a "significant adverse impact" on the environment as defined in Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended, and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, as amended (collectively, "SEQRA"). No material change with respect to any aspect of the Facility has arisen from the date of adoption of the SEQRA Resolution by the members of the Agency on March 27, 2008.

## ARTICLE II

### THE PROJECT

Section 2.1. **The Project.** (a) The Company has conveyed or shall cause to be conveyed to the Agency at the time of the delivery and payment of the Series 2008 Bonds a good and valid leasehold interest in and to the Facility Realty, and good and merchantable title to such items of the Facility Equipment as shall have been acquired prior to the time of such delivery and payment, in each case free and clear of all liens, claims, charges, encumbrances, security interests and servitudes other than Permitted Encumbrances.

The Company and the Agency acknowledge that the Facility and the interest therein conveyed or leased to the Agency from the Company and subleased by the Agency back to the Company are not "property" as defined in Title 5-A of the Public Authorities Law of the

State because such property and the interests therein are security for the Company's obligations to the Agency under this Agreement and the other Project Documents, including, without limitation, (i) the Company's obligation to acquire, construct, renovate, install, equip and maintain the Facility on behalf of the Agency, and (ii) the performance by the Company to the Agency of the Company's other obligations under this Agreement and the other Project Documents.

(b) As promptly as practicable after receipt of the proceeds of sale of the Series 2008 Bonds and out of said proceeds of sale, the Company will proceed to completion of the renovation, installation and equipping of the Facility. The cost of the Project shall be paid from the Project Fund established under the Indenture or as otherwise provided in Section 2.2 hereof. All contractors, materialmen, vendors, suppliers and other companies, firms or persons furnishing labor, services or materials for or in connection with the Project shall be designated by the Company. The Company, as agent of the Agency, shall, notwithstanding any provision of law or interpretation thereof that would otherwise make Section 220 (as hereinafter defined) inapplicable to the Agency's "projects," (i) comply with and cause compliance with the prevailing wage requirements of Section 220 of Article 8 of the New York State Labor Law ("Section 220") and have any other public and/or private funding for construction costs on the Project be subject to the prevailing wage requirements of Section 220, (ii) cause any contractors, subcontractors and other persons involved in the acquisition, renovation, construction, installation and equipping of the Facility to so comply with Section 220, and (iii) implement and maintain an apprenticeship program substantially as contemplated by Nassau County Local Law 9-2002, or any successor statute thereto. Notwithstanding the foregoing, the Company may, in lieu of compliance with the requirements of the preceding sentence, (i) enter into, and perform its obligations under, a project labor agreement with the Building and Construction Trades Council of Nassau and Suffolk Counties, New York, with respect to the entire Project for all construction trades employees utilized on the Project, in form and content satisfactory to, and approved in advance by, the Agency, or (ii) submit to the Agency other evidence that the Company has made satisfactory arrangements to pay fair wages to the construction workers at the Project site, in form and content satisfactory to, and approved in advance by, the Agency. Such project labor agreement or other arrangement will be binding upon the Company, and its agents, successors and assigns, and applicable to any other public and/or private funding for construction costs on the entire Spinney Project. The Company 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 Spinney Project. The Company has submitted to the Agency as other evidence that the Company has made satisfactory arrangements to pay fair wages to the construction workers at the Project site a letter from Jobco Incorporated to Company -1 and a letter from Jobco Incorporated to the Company, each dated December 4, 2008. In accordance with such letters, the Company covenants that the subcontractors at the Spinney Project site shall solely use employees that are members of the various unions that are affiliated with the Building and Construction Trades Council of Nassau and Suffolk Counties.

(c) In order to accomplish the purposes of the Agency, and to assure the effectuation of the Project in conformity with the requirements of the Company, the Company

has undertaken to proceed with the design of the Project, the preparation of the Facility site and the commencement of the Project work, all in accordance with the Plans and Specifications.

(d) The Company shall pay (i) all of the costs and expenses in connection with the preparation of any instruments of conveyance and transfer of a leasehold interest in 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 as set forth in Section 2.1(a) hereof, and (iii) all shipping and delivery charges and other expenses or claims incurred in connection with the Project.

(e) The Company covenants that it will obtain or cause to be obtained all necessary approvals from any and all governmental agencies with respect to the Project, all of which will be done in compliance with all Federal, State and local laws, ordinances and regulations applicable thereto, including, with respect to any item of Facility Equipment, all manufacturers' instructions and warranty requirements, and with the conditions and requirements of all policies of insurance with respect to the Facility and of this Agreement, and will furnish copies of same to the Agency and the Trustee immediately upon request therefor (such request to specify in reasonable detail the particular item of Facility Equipment as shall be the subject of the request for the manufacturers' instructions or warranty requirements). Upon completion of the Project, the Company will promptly obtain or cause to be obtained all required occupancy and operation permits, authorizations and licenses from appropriate governmental authorities, if any be required, authorizing the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency and the Trustee immediately upon receipt thereof.

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

(g) The Company shall take such action and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, with all expenses incurred by the Company or the Agency in connection with the performance of their obligations under this Section to be considered a Project Cost. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with actions and proceedings instituted by the Company to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, and all expenses incurred by the Company or the Agency in connection with the performance of their obligations under this Section after deduction of expenses incurred in such recovery, if recovered prior to the completion date of the Project, shall be deposited into the Project Fund and made available for payment of Project Costs, or if recovered after such completion date, shall be applied for a redemption of Bonds in an equivalent amount (to the nearest \$5,000 integral multiple).

(h) Title to all Facility Equipment presently incorporated or installed in and which are part of the Facility shall vest in the Agency upon execution of the Bill of Sale to Agency. Title to all materials, equipment, machinery, furniture and other property intended to be incorporated or installed as part of the Facility shall vest in the Agency immediately upon payment therefor. The Company shall promptly, upon the acquisition thereof by or on behalf of the Company convey or cause to be conveyed to the Agency, by bill(s) of sale with full warranties of title, a good and merchantable title to any item of Facility Equipment which has not theretofore been conveyed to the Agency pursuant to Section 2.1(a) hereof, free and clear of all liens, claims, charges, security interests and encumbrances other than Permitted Encumbrances, and cause each such item of Facility Equipment to be subjected to this Agreement and the lien and security interest of the Agency Mortgage. The Company shall take all action necessary to so vest title to the Facility Equipment in the Agency and to protect such interest against claims of any third parties.

(i) Prior to the completion of the Project, no substantial modifications, alterations or amendments shall be made to the Plans and Specifications or the Facility or its operations from the description of the Facility and its operations as set forth in this Agreement or in the Tax Regulatory Agreement, without the prior written consent of the Agency, the Trustee and the Majority Owner unless the Company shall have theretofore delivered to the Agency, the Trustee and the Majority Owner an Opinion of Nationally Recognized Bond Counsel to the effect that the modifications, alterations or amendments and the expenditure of proceeds of the Series 2008 Bonds in connection therewith will not cause interest on any of the Series 2008 Bonds to be includable in gross income for federal income tax purposes.

(j) Nassau-County Based Contractors. The Company agrees to (and to cause its subcontractors to) solicit bids from at least one (1) contractor or vendor based in the County for each contract or subcontract with a value over \$50,000 that the Company (or any Affiliate thereof) proposes to enter into with respect to the Spinney Facility for the term of this agreement, including, without limitation, contracts or subcontracts for construction, renovation, demolition, replacement, alteration, management, purchase of goods or services, maintenance and repair. Further, the Company covenants to use commercially reasonable efforts to let such contracts or subcontracts, where practicable, to contractors or vendors based in the County. The Company shall furnish to the Agency all information reasonably requested by the Agency to verify compliance with this paragraph and will cooperate with the Agency in connection with inquiries made by the Agency to verify compliance with this paragraph.

(k) The Company shall create (i) at least one (1) new, full-time equivalent, private sector jobs in the State of New York within one (1) year after the Scheduled Completion Date and maintain such jobs throughout the term of this Agreement, and (ii) at least 125 full-time equivalent, temporary construction jobs during the period from the Commencement Date until the completion of the Project; all of which jobs shall, at all times during the term of this Agreement, be located at the Facility (collectively, the "Minimum Employment Requirement").

(l) W/MBE Contractors.



(i) The Company shall use and shall cause its contractors and subcontractors to use their best efforts to take Affirmative Steps (as hereinafter defined) to assure that qualified women-owned and/or minority-owned business enterprises (“W/MBE’s”) are used for the term of this Agreement, when possible, for each contract that the Company (or any Affiliate thereof) proposes to enter into with respect to the Facility, including, without limitation, contracts for construction (including, without limitation, the initial renovation and installation of the Project), renovation, demolition, replacement, alteration, management, purchase of goods or services, maintenance and repair.

(ii) As used herein “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 contract, if subcontracts are to be let, to take the affirmative steps listed in clauses (A) through (D) of this subparagraph.

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

(m) The Company shall furnish to the Agency all information reasonably requested by the Agency to verify compliance with this Section 2.1 and will cooperate with the Agency in connection with inquiries made by the Agency to verify compliance with this Section 2.1.

Section 2.2. **Completion by the Company.** The Company unconditionally covenants and agrees that it will complete the Project, or cause the Project to be completed, by December 1, 2010 (the “Scheduled Completion Date”), and that such completion will be effected in a first-class workmanlike manner, using high-grade materials, free of defects in materials or workmanship (including latent defects), as applicable, and in accordance with this Agreement and the Indenture, and to pay all sums as may be required in connection therewith. In the event that moneys in the Project Fund are not sufficient to pay the costs necessary to complete the Project in full, the Company shall pay that portion of such costs of the Project as may be in excess of the moneys therefor in said Project Fund and shall not be entitled to any reimbursement therefor from the Agency, the Trustee or the Holders of any of the Bonds, nor shall the Company be entitled to any diminution of the rents payable or other payments to be made under this Agreement or under any other Project Document.

Upon the completion of the Project, the Company shall deliver to the Agency and the Trustee a certificate of an Authorized Representative of the Company stating (i) the date of completion of the Project, (ii) that the Project has been completed substantially in accordance with the Plans and Specifications and in a good and workmanlike manner, and that all labor, services, machinery, equipment, furniture, materials and supplies used therefor have been paid

for, except for any costs not then due and payable or the liability for payment of which is being contested or disputed in good faith by the Company, (iii) that all other facilities necessary in connection with the Project have been completed and all costs and expenses incurred in connection therewith have been paid, (iv) that the Agency has a good and valid title to or a good and valid leasehold interest in all property constituting part of the Facility, all property of the Facility is subject to this Agreement and the Company Lease, and all property of the Facility is subject to the liens and security interests of the Agency Mortgage (except for the Agency's Reserved Rights), (v) that, in accordance with all Legal Requirements, the Facility has been made ready for occupancy, use and operation for its intended purposes, (vi) the amount, if any, required in his opinion for the payment of any remaining part of the costs of the Project and (vii) the amount of any rebate to be paid to the federal government pursuant to the Tax Regulatory Agreement and the Indenture. Notwithstanding the foregoing, such certificate may state (x) that it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of this Section and Section 5.02 of the Indenture, and (z) that no Person other than the Agency, the Majority Owner and the Trustee may benefit therefrom. Such certificate of the Authorized Representative of the Company shall be accompanied by (i) a final unconditional certificate of occupancy or a temporary certificate of occupancy (subject only to conditions satisfactory to the Agency and the Majority Owner), and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the Facility for the purposes contemplated by this Agreement; (ii) proof that all real property taxes or payments in lieu thereof and assessments against the Facility Realty, if any, have been paid; (iii) a certificate of an Authorized Representative of the Company that all costs of the Project have been paid in full, together with releases of mechanics' liens by all contractors and materialmen who supplied work, labor, services, materials or supplies in connection with the Project (or, to the extent that any such costs shall be the subject of a bona fide dispute, evidence to the Agency, the Majority Owner and the Trustee that such costs have been appropriately bonded or that the Company shall have posted a surety or security at least equal to the amount of such costs); and (iv) a final "as-built" survey of the Facility Realty certified to the Agency and the Trustee and an endorsement to the title insurance policies delivered pursuant to Section 2.4 hereof, reading in such survey to the Agency's and the Trustee's policies.

Section 2.3. **Issuance of Series 2008 Bonds.** Contemporaneously with the execution and delivery of this Agreement, the Agency will sell and deliver the Series 2008 Bonds in the aggregate principal amount of \$6,700,000 under and pursuant to a resolution adopted by the Agency on July 29, 2008 authorizing the issuance of the Series 2008 Bonds and under and pursuant to the Indenture. The proceeds of sale of the Series 2008 Bonds shall be deposited in the Project Fund and applied to the payment of Project Costs in accordance with the Indenture. Pending the application of amounts on deposit in the Project Fund to the payment of Project Costs, amounts in the Project Fund may be invested as provided in the Indenture.

Section 2.4. **Title Insurance.** Prior to the delivery of the Series 2008 Bonds to the original purchaser(s) thereof, the Company will obtain (a) an owner's policy of title insurance in an amount not less than \$2,000,000 insuring the Agency's leasehold interest in the Facility Realty against loss as a result of defects in the Agency's leasehold interest in the Facility Realty, (b) mortgagee title insurance policies in an aggregate amount not less than \$6,700,000

insuring the Trustee's interest under the Agency Mortgage as holder of mortgage liens on the Facility Realty, in each case subject only to Permitted Encumbrances, and (d) a current survey of the site of the Facility Realty certified to the Agency, the Trustee and the title companies issuing the title policies. Any proceeds of such owner's policy of title insurance 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 after such application, the amounts in the Renewal Fund shall be transferred to the Redemption Account of the Bond Fund and used for an equivalent redemption of Bonds (to the nearest \$5,000 integral multiple). Any proceeds of such mortgagee title insurance insuring against loss as a result of defects affecting the Trustee's interest as holder of a mortgage lien on the Facility Realty shall be transferred to the Redemption Account of the Bond Fund and used for an equivalent redemption of Bonds (to the nearest \$5,000 integral multiple).

Section 2.5. **Expenses Chargeable to the Company.** The Company shall pay or cause to be paid all expenses or other costs incurred in connection with the Project including, but not limited to:

(a) All 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 Company Lease, the Indenture, the Agency Mortgage and the other Subordinate Mortgages;

(b) Any closing costs or costs relating to issuance of the Bonds other than those in paragraph (a) above;

(c) All lawful claims which might or could if unpaid become a lien or charge on the Facility;

(d) All pre-closing and post-closing taxes, assessments or other governmental or utility charges or impositions relating to the Facility;

(e) The Agency's administrative fee, general counsel fee, closing compliance fee and annual servicing fee;

(f) All reasonable legal fees and expenses incurred by the Agency, the Trustee or the Initial Bondholder in connection with the foregoing items of costs related to the issuance of the Bonds;

(g) Any other costs or expenses incurred by the Agency or any officer, member, agent, attorney, servant or employee thereof, in acquiring, leasing, renovating, equipping, furnishing, installing or otherwise carrying out the Project or in connection with the carrying out of the Agency's duties and obligations under this Agreement or any other Project Document;

(h) The Trustee's annual fee, and all advances, out-of-pocket expenses, fees, costs and other charges reasonably and necessarily incurred by the Trustee under the Indenture, this Agreement or the Tax Regulatory Agreement;

- (i) The annual or other periodic fees of any rebate analyst;
- (j) The annual rating maintenance fee of each Rating Agency, if any; and
- (k) All costs of registering, printing, reprinting, preparing and delivering any replacement bonds required under the Indenture and in connection with the registration, printing, reprinting or transfer of any Bonds.

Section 2.6. **Sales and Use Tax Exemption.** (a) Any exemption from Sales Taxes resulting from or occasioned by the Agency's involvement with the Project shall be limited to purchases of Eligible Materials effected by or for the Company as agent for the Agency pursuant to the Sales Tax Letter, it being the intent of the parties that no operating expenses of the Company and no purchases of building materials, equipment or other personal property (other than Eligible Materials) shall be subject to an exemption from Sales Taxes because of the Agency's involvement with the Project. The Agency makes no representations or warranties that any property is exempt from the payment of New York Sales Taxes.

(b) The Company covenants and agrees that it shall comply with all requirements of the Sales Tax Letter, including, without limitation, those respecting text to be included (through an attached rider or otherwise) in and as part of each contract, agreement, invoice, bill or purchase order hereafter entered into by the Company as agent for the Agency in connection with the Project.

(c) The Agency has made available to the Company the Sales Tax Letter. The Agency, at the sole cost and expense of the Company, shall also execute such other authorizations, letters and documents (and such amendments to the Sales Tax Letter) as may be reasonably necessary to permit the Company to obtain the intended benefits hereunder. Subject to the terms of this Agreement, it is intended that the aggregate scope of the Sales Tax Savings received by the Company pursuant to this Agreement and the Sales Tax Letter shall be limited as follows:

(i) The Sales Tax Letter shall be effective for a term commencing on its date and expiring upon the earliest to occur of (1) February 1, 2011, (2) the completion of the Project as provided in Section 2.2 hereof, (3) the termination of the Sales Tax Letter pursuant to Section 7.2 hereof, or (4) such time as the aggregate amount of sales and use tax exemptions availed of by the Company pursuant to the Sales Tax Letter shall equal the Maximum Sales Tax Benefit.

(ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended after notice to the Company that the Company shall be in default under this Agreement or under any other Project Document until the Company shall pay all amounts due, and perform all of its respective obligations, with respect to any such default.

(iii) The Sales Tax Savings to be provided pursuant to the Sales Tax Letter:

(A) shall not be available for payment of any costs other than Project Costs for Eligible Materials for incorporation into, or installation or location at, the Facility Realty,

(B) shall only be utilized for Eligible Materials which shall be purchased, completed or installed for use only by the Company at the Facility Realty (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Materials to another Person), it being the intention of the Agency and the Company that the Sales Tax Savings shall not be made available with respect to any item of Eligible Materials unless such item is used solely by the Company at the Facility Realty,

(C) shall not be available for any item of (i) rolling stock or watercraft, (ii) tangible personal property having a useful life of less than one year, or (iii) computer software unless the computer software is of a type that is capable of being capitalized in accordance with generally accepted accounting principles as a capital expenditure, for use only at the Facility Realty by the Company,

(D) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 2.6(c)(ii) hereof; provided, however, that in the event the Company shall thereafter cure any defaults under this Agreement, or the Agency shall thereafter waive in writing such suspension, as applicable, the Sales Tax Savings shall again continue from the date of such cure or such waiver,

(E) shall be available only if purchased by the Company as agent for the Agency appointed pursuant to the Sales Tax Letter for use by the Company at the Facility Realty,

(F) shall not be available for any tangible movable personal property (including computer software) or trade fixture for use by any Person other than the Company at the Facility,

(G) shall not be available for any cost of utilities, cleaning services or supplies,

(H) shall not be available for any item the acquisition of which would otherwise be exempt from Sales Taxes absent involvement by the Agency,

(I) shall not be taken under the Sales Tax Letter after the Company shall have paid or incurred costs equal to the Authorized Project Amount for Project Costs for which the Agency has provided financial assistance (as defined in the Act),

(J) shall not be available subsequent to the termination of this Agreement, and

(K) shall be limited to an aggregate amount equal to the Maximum Sales Tax Benefit.

(iv) In the event that the Company shall utilize the sales tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 2.6(c)(iii) hereof, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the Default Interest Rate from the date and with respect to the dollar amount for which each such unauthorized sales tax exemption was availed of by the Company.

(v) The sales tax exemption authorizations provided to the Company under the Sales Tax Letter and this Agreement availed of by the Company shall extend both to those Project Costs the payment for which shall be made or reimbursed from the proceeds of the Series 2008 Bonds as well as to those Project Costs the payment of which is within the Authorized Project Amount but which are not to be paid from the proceeds of the Series 2008 Bonds.

(vi) Upon request by the Agency of, and reasonable notice to, the Company, the Company shall make available at reasonable times to the Agency all such books and records of the Company and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency, as shall be necessary to indicate in reasonable detail those costs to which the Company shall have utilized the Sales Tax Letter and the dates and amounts so utilized.

(vii) The Company shall use its best efforts to obtain covenants to the Agency from each materialman, supplier, vendor or laborer to whom the Sales Tax Letter is presented by the Company to the effect that such materialman, supplier, vendor or laborer shall not utilize the Sales Tax Letter for any purpose other than for the acquisition of Eligible Materials for incorporation into, or installation or use at, the Facility.

(d) The Company shall annually file a statement (Form ST-340 or any successor or additional mandated form) with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company or agents of the Company in connection with the Project and the Facility as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors or such agents, under the authority granted pursuant to this Agreement. The Company shall furnish a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. Should the Company fail to comply with the foregoing requirement, the Company shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Company shall be deemed to have automatically lost its authority as agent of the Agency to purchase Eligible Materials in the

Agency's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to the Agency the Sales Tax Letter issued to the Company by the Agency which is in the Company's possession or in the possession of any agent of the Company. Additionally, if the Company shall fail to comply with the requirements of this subsection (d), the Company shall immediately cease to be the agent of the Agency in connection with the Project. Nothing herein shall be construed as a representation by the Agency that any property acquired as part of the Project is or shall be exempt from Sales Taxes under the laws of the State.

(e) The Company shall, on or before February 1 and August 1 of each year commencing February 1, 2009, and ending on the earlier of the termination of this Agreement and the attaining of the Maximum Sales Tax Benefit (and on the February 1 or August 1 following the earlier of the termination of this Agreement and the attaining of the Maximum Sales Tax Benefit):

(i) deliver to the Agency a certificate of an Authorized Representative of the Company certifying (A) as to each sales or use tax exemption availed of by the Company, the dollar amount of same and the date availed of, all as availed of by the Company in the immediately preceding half calendar year (i.e., January 1 through June 30 for the certificate to be delivered on August 1, and July 1 through December 31 for the certificate to be delivered on February 1, except that the first such period shall commence on the Commencement Date and continue through December 31, 2008), and the specific items of Project Costs to which they shall relate, (B) that all such sales or use tax exemptions so availed of were in compliance with the provisions of the Sales Tax Letter and Section 2.6(c) hereof, (C) that all Project Costs to which sales or use tax exemptions shall have been availed of by the Company through the immediately preceding half calendar year have been (or, concurrently with the delivery of such certificate, will be) paid and/or reimbursed in whole from the proceeds of the Bonds, and (D) as to the cumulative dollar amount of all sales and use tax exemptions availed of by the Company from the date of the Sales Tax Letter through the end of the half calendar year period to which such certificate shall relate, and

(ii) deliver to the Agency, on request, an opinion of an independent certified public accountant to the effect that the independent certified public accountant has reviewed the use by the Company of the Sales Tax Letter for the preceding calendar year, and has reviewed the terms and provisions of the Sales Tax Letter and of this Section 2.6, and has further reviewed the certificates of the Company provided in paragraph (i) above for the preceding calendar year, and such certificates were properly prepared and accurately reflect the matters certified therein.

(f) Pursuant to Section 874(9) of the Act, the Agency shall file with the Department of Taxation and Finance, within thirty (30) days of the date the Company is appointed the agent of the Agency, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), a statement identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a

rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. The Company agrees to timely provide the foregoing information to the Agency and to otherwise cooperate with the Agency in connection with the preparation and filing of the Thirty-Day Sales Tax Report.

(g) The Company covenants and agrees that it shall include the following text in and as a part of each contract, invoice, bill or purchase order entered into by the Company, as agent of the Agency, in connection with the acquisition, renovation, installation and equipping of the Facility:

“This [contract] is being entered into by Spinney Hill Homes II L.P. (the “Agent”), as agent for and on behalf of the Nassau County Industrial Development Agency (the “Agency”) in connection with a certain project of the Agency for the Agent consisting in part of the acquisition, renovation, installation and equipping of a residential rental facility, all for incorporation and installation in certain premises located on Pond Hill Road, Great Neck, Town of North Hempstead, New York and known as Section 2, Block 347, Part of Lot 47 (formerly p/o 22) (the “Premises”). The machinery, equipment and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York or the County of Nassau if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption letter of the Agency; and the Agent hereby represents that this [contract] is in compliance with the terms of the sales tax exemption letter. This [contract] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract], the [vendor/contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

If the Company fails to include, incorporate by reference or otherwise cause the contract, invoice, bill or purchase order to be subject to the above provision, then such contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits that may be conferred by the Agency, the Company shall not claim any sales or use tax benefits or exemptions with respect thereto, and the Company shall return to the Agency any such benefits or exemptions so taken, together with interest thereon at the Default Interest Rate, from the date of such taking.

Section 2.7. **Surety Bonds.** To the extent required by Section 137 of the State Finance Law of the State (the “Finance Law”), prior to executing any contract having a contract price of \$50,000.00 or more with any party for any “improvement” (as such quoted term is defined in the Finance Law) in connection with the Facility or the provision of any goods or



services in connection therewith, and prior to authorizing any party to undertake such improvement or provide such goods or services without a contract, the Company shall deliver to the Agency a copy of the proposed contract along with a payment bond, in compliance with the requirements of Section 137 of the Finance Law and otherwise satisfactory in form and substance to the Agency, guaranteeing prompt payment of moneys due to all Persons furnishing labor or materials for the contractor or subcontractor in the prosecution of his work provided for in the contract. The Agency shall be named as dual obligee on any such bond(s) and shall have no liability or responsibility for the cost of such bond(s). If the Company fails to comply with the requirements of this Section, then the Company shall immediately cease to be the agent for the Agency with respect to the Project, and such failure shall constitute an Event of Default under this Agreement.

### ARTICLE III

#### **DEMISE AND USE OF THE FACILITY; RENTAL AND OTHER AMOUNTS PAYABLE**

Section 3.1. **Demise and Use of the Facility.** (a) Pursuant to the Company Lease, the Company has leased the Facility to the Agency. The Agency hereby subleases to the Company and the Company hereby subleases 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. The Agency hereby delivers to the Company and the Company hereby accepts sole and exclusive possession of the Facility.

(b) The Company shall at all times during the term of this Agreement occupy, use and operate the Facility, or cause the Facility to be occupied, used and operated, as a commercial facility and a "project" in accordance with the provisions of the Act, as a "qualified residential rental project", as such quoted term is defined in Section 142(d) of the Code, consistent with the 1998 N.Y. Laws 230, and for the general purposes specified in the recitals to this Agreement. The Company shall not occupy, use or operate the Facility or allow the Facility or any part thereof to be occupied, used or operated for any unlawful purpose or in violation of any certificate of occupancy affecting the Facility or which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

(c) Any provision of this Agreement to the contrary notwithstanding, the Company 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 Commencement Date and shall expire on January 1, 2041 (midnight, New York City time) or such earlier date as this Agreement may be terminated as hereinafter provided. The Agency hereby delivers to the Company and the Company hereby accepts sole and exclusive possession of the Facility.

Section 3.3. **Rental and Other Amounts Payable; Pledge of Agreement and Rents.** (a) The Company covenants to make rental payments which the Agency and the Company agree shall be paid in immediately available funds by the Company directly to the

Trustee on each Lease Rental Payment Date for deposit in the Bond Fund in an amount equal to the sum of: (i) with respect to interest due and payable on the Series 2008 Bonds, an amount equal to the interest next becoming due and payable on the Series 2008 Bonds on the immediately succeeding Interest Payment Date (all as provided in the amortization schedule prepared pursuant to the Indenture and attached thereto as Exhibit E), (ii) the principal amount of the Bonds then Outstanding which will become due on the immediately succeeding Interest Payment Date (whether at maturity or by redemption or acceleration as provided in the Indenture; all as provided in the amortization schedule prepared pursuant to the Indenture and attached thereto as Exhibit E), and (iii) the principal of and redemption premium, if any, on the Series 2008 Bonds to be redeemed which will become due on the immediately succeeding Redemption Date together with accrued interest to the Redemption Date, all pursuant to the terms of the Indenture. The Company further agrees to pay such additional amounts as set forth in the Indenture with respect to interest on the Series 2008 Bonds in the event of a Determination of Taxability or an Event of Default.

(b) Intentionally omitted.

(c) Intentionally omitted.

(d) 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 or Redemption Price (including redemption premium, if any) of, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Company shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund and such payment shall constitute rental payments under this Section 3.3.

(e) In the event the Company 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 Company until the amount not so paid shall have been fully paid.

(f) The Company 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.

(g) In addition to the rental payments described above, the Company 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 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 Defeasance Securities on deposit in the Bond Fund, 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 Company covenants and agrees to provide to the Trustee for deposit in the Rebate Fund sufficient moneys as are required to meet the Rebate Requirement described in the Tax Regulatory Agreement.

(j) As security for the Bonds, the Agency shall (1) grant liens on and security interests in its leasehold interest in the Facility pursuant to the Agency Mortgage (except for the Agency's Reserved Rights), and (2) pledge and assign to the Trustee pursuant to the Indenture all of the Agency's right, title and interest in this Agreement (except for the Agency's Reserved Rights), including all rental payments hereunder, and in furtherance of said pledge the Agency will unconditionally assign such rental payments to the Trustee for payment in the Bond Fund in accordance with the Indenture. The Company hereby consents to the above-described lien and security interest, and pledge and assignment of this Agreement.

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

(l) The Company covenants and agrees to make any and all payments required pursuant to Sections 6.2 and 6.3 hereof.

Section 3.4. **Nature of Obligations of the Company Hereunder.** The obligation of the Company to pay the rent and all other payments provided for in this Agreement and to perform and observe any and all of the covenants and agreements on its part contained herein 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 or the Holder of any Bond and the obligation of the Company shall arise whether or not the Project has been completed as provided in this Agreement. The Company will not suspend, discontinue or abate any such payment or terminate this Agreement (other than such termination as is provided for hereunder) for any cause whatsoever, and the Company waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender this Agreement or any obligation of the Company under this Agreement or the Facility or any part thereof 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. **Reserved.**

Section 3.6. **Application of Payments.** If at any time the Agency receives, from the Company or otherwise, any amount applicable to this Agreement which is less than all amounts due and payable at such time, the Agency may apply that payment to amounts then due and payable in any manner and in any order determined by the Agency, in the Agency's sole discretion. The Company agrees that neither the Agency's acceptance of a payment from the Company or otherwise in an amount that is less than all amounts then due and payable nor the

Agency's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

Section 3.7. **Reserved.**

#### 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 Company will (i) keep the Facility in good and safe operating order and condition and preserve the same against waste, loss and damage, ordinary wear and tear excepted, (ii) occupy, use and operate or cause to be occupied, used and operated the Facility in the manner for which it was designed and intended and contemplated by this Agreement, (iii) make all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) reasonably necessary to ensure that the security for the Bonds shall not be impaired, and (iv) not abandon the Facility. All replacements, renewals and repairs shall be equal in quality, class and value to the original work and be made and installed in compliance with the requirements 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 Company hereby agrees to assume full responsibility therefor.

(b) The Company, upon the prior written consent of the Trustee (acting at the direction of the Majority Owner), which consent shall not be unreasonably withheld or delayed, and upon reasonable notice to the Agency, shall have the privilege of making such alterations or additions to the Facility or any part thereof from time to time as the Company in its discretion may determine to be desirable for its uses and purposes; provided however that in any event (i) the fair market value of the Facility is not reduced below its value immediately before such alteration or addition and the usefulness, structural integrity or operating efficiency of the Facility is not impaired, (ii) such additions or alterations are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable Legal Requirements, (iii) such additions or alterations are promptly and fully paid for by the Company in accordance with the terms of the applicable contract(s) therefor, and in order that the Facility shall at all times be free of any mortgage, lien, charge, encumbrance, security interest or claim other than Permitted Encumbrances, (iv) in case of structural alterations or additions the estimated cost of which exceeds \$100,000, such additions or alterations (excluding alterations and repairs to the fixtures, appliances and improvements of individual occupant units) are made under the supervision of an Independent Engineer and in accordance with plans, specifications and cost estimates approved by the Agency and the Trustee (acting at the direction of the Majority Owner) and only after the Company shall have furnished to the Agency and the Trustee a labor and materials payment bond, or other security, reasonably satisfactory to the Agency and the Trustee, (v) such additions or alterations do not change the nature of the Facility so that it would not constitute a commercial facility, a qualified "project" as defined in and as contemplated by the Act, and a "qualified

residential rental project” as defined in and as contemplated by the Code, and (vi) the Company shall pay (A) to the Agency an administrative fee calculated with respect to the dollar amount of any such alteration or addition in accordance with the Agency’s then-current policies and practices to the extent a benefit is conferred on the Company solely because of the Agency’s ownership, and (B) absent an approval by the Agency of a real estate tax abatement with respect to such alteration or addition, an increase in the payments to be made under Section 4.8 hereof in an amount equal to the Real Estate Taxes that would be payable by the Company on account of such alteration or addition as if owned by the Company. All alterations of and additions to the Facility shall constitute a part of the Facility, subject to this Agreement, the Company Lease, the Indenture, the Agency Mortgage and the other Subordinate Mortgages, and the Company shall deliver or cause to be delivered to the Agency appropriate documents as may be necessary to convey title to such property to the Agency and to subject such property to this Agreement and the lien and security interest of the Indenture, the Agency Mortgage and the other Subordinate Mortgages, free and clear of all liens, charges, encumbrances, security interests or claims other than Permitted Encumbrances.

(c) The Company shall have the right to install or permit to be installed at the Facility Realty improvements, machinery, equipment and other personal property not constituting part of the Facility (the “Company’s Property”) without subjecting such property to this Agreement and the lien and security interest of the Agency Mortgage or the other Subordinate Mortgages. The Agency shall not be responsible for any loss of or damage to the Company’s Property and none of the Company’s Property shall be subject to any sales tax exemption or abatement solely on account of the Agency’s involvement in the Facility. The Company 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 Company’s Property.

(d) The Company shall 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 Company in the Facility, the Company Lease or this Agreement except for the the Agency Mortgage and other Permitted Encumbrances. The Company 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 Agency Mortgage shall constitute a second and third mortgage lien on the Facility, subject only to Permitted Encumbrances.

Section 4.2. **Removal of Property of the Facility.** (a) The Company shall have the privilege from time to time of removing from the Facility any fixture constituting part of the Facility Realty or any machinery, equipment, furniture or other property constituting part of the Facility Equipment (the “Existing Facility Property”) and thereby acquiring such Existing Facility Property, provided that:

(i) such Existing Facility Property is simultaneously 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 is instead to be sold, scrapped, traded-in or otherwise disposed of in an arms-length bona fide transaction for consideration in excess of \$50,000 (or such greater amount to which the Majority Owner shall consent in writing), the Company shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition, if the Bonds are subject to optional redemption;

provided, however, no such removal as set forth in paragraph (i) or (ii) above shall be effected if (w) such removal would reduce the fair market value of the Facility to below its fair market value immediately prior to such removal, (x) such removal would change the nature of the Facility so it would not constitute a commercial facility, a qualified "project" as defined in and as contemplated by the Act, and a "qualified residential rental project" as defined in and as contemplated by the Code, (y) such removal would impair the usefulness, structural integrity or operating efficiency of the Facility, 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 \$50,000 (or such greater amount to which Majority Owner shall consent in writing) shall be retained by the Company.

(b) The Company shall deliver or cause to be delivered to the Agency 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 Company Lease and the lien and security interest of the Indenture and the Agency Mortgage, and upon written request of the Company, the Agency shall deliver to the Company appropriate documents releasing to the Company the Agency's title to any property removed from the Facility pursuant to Section 4.2(a) hereof. The Company agrees to pay all costs and expenses (including reasonable counsel fees and disbursements) incurred in subjecting to this Agreement and the Company Lease and the lien and security interest of the Indenture and the Agency Mortgage of any property installed or placed on the Facility Realty as part of the Facility pursuant to this Section 4.2.

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

Section 4.3. **Operation of Facility.** The Company shall continue to operate the Facility, or cause it to be operated, at all times during the term of this Agreement, except, as appropriate and for such period as may be necessary, in the case of a Loss Event as provided in Section 5.1 hereof. Such operation shall be solely for the purpose described in Section 3.1 hereof and in accordance with the provisions of the Act. For the purpose of this Agreement, the Company shall be deemed to have ceased to operate the Facility for the purposes described herein if it (a) materially alters the use of the Facility, in the Agency's reasonable judgment, except as permitted hereunder, (b) closes the Facility other than for routine maintenance or (c) reduces the operations of the Facility to such an extent that, in the Agency's reasonable judgment, the public purpose to be derived from the Project in accordance with Section 1.4 hereof has been

substantially impaired. Any of the foregoing notwithstanding, the Company may use the Facility for some purpose other than that described herein with the prior written consents of the Agency and the Trustee (acting at the direction of the Majority Owner) but subject to the provisions of the Tax Regulatory Agreement, which consents may be withheld in the absolute discretion of the Agency or the Trustee, and provided further that such proposed use constitutes a qualified "project" in accordance with the Agency's policy and as defined under the Act.

Section 4.4. **Taxes, Assessments and Charges.** The Company shall pay when the same shall become due all taxes and assessments, general and specific, if any, levied and assessed upon or against the Facility, this Agreement, the Company Lease, any estate or interest of the Agency or the Company in the Facility, or the rentals 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 occupancy, use, operation, maintenance or upkeep of the Facility, all of which are herein called "Impositions". The Agency shall promptly forward to the Company any notice, bill or other statement received by the Agency concerning any Imposition. The Company may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

None of the foregoing prevents the Company from contesting in good faith the validity, existence or applicability of any of the foregoing if (i) the Company shall have first notified the Agency in writing of such contest, (ii) the Company is not in default under any Project Document, (iii) the overall operating efficiency of the Facility for the purposes for which it is intended is not materially impaired, (iv) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (v) such contest shall not result in the Company, the Agency or the Trustee being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, (vi) the Company shall have furnished such security, if any, as may be reasonably requested by the Agency or the Trustee to protect the security intended to be offered by the Security Documents in a manner in which the lien of the Agency Mortgage is not impaired in any way, and (vii) the Company diligently prosecutes such contest to completion.

Section 4.5. **Insurance.** (a) At all times throughout the term of this Agreement, including without limitation during any period of renovation, construction or reconstruction of the Facility, the Company shall maintain insurance, 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 Company, including, without limitation:

- (i) To the extent not covered by the public liability insurance referred to below, Owners & Contractors Protective Liability Insurance for the benefit of the Company, the Agency and the Trustee in a minimum amount of \$10,000,000 aggregate coverage per occurrence for personal injury and property damage;

(ii) Extended coverage casualty insurance, with endorsements containing New York standard mortgagee and lender's loss payable clauses, in an amount not less than the greater of (i) 100% of the actual replacement cost of the Facility, or (ii) the principal amount of the Bonds. At the request of the Agency or the Trustee, the actual replacement cost shall be determined by a qualified insurance appraiser selected by the Company and approved by the Agency and the Trustee (acting at the direction of the Majority Owner), at the Company's expense;

(iii) During any period of construction, renovation, improvement 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 renovation, 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, furniture, 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 Company, the Agency, 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 greater of (A) 100% of the actual replacement value of the Facility as determined by a qualified insurance appraiser or insurer (selected by the Company and approved by the Agency and the Trustee (acting at the direction of the Majority Owner)) not less often than once every year, at the expense of the Company, and (B) the principal amount of the Outstanding Bonds; any such insurance may provide that the insurer is not liable to the extent of the first \$10,000 with the result that the Company 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 \$5,000,000 per occurrence, which insurance (A) will also provide coverage of the Company's obligations of indemnity under Section 6.2 hereof, (B) may be effected under overall blanket or excess coverage policies of the Company or any Affiliate thereof, provided, however, that at least \$2,000,000 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 Company;

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



(vi) Flood insurance, naming the Trustee, as mortgagee, if required;

(vii) Boiler and machine property damage insurance in respect of any steam and pressure boilers and similar apparatus, insuring risks normally insured against under boiler and machinery policies and in amounts and with deductibles customarily obtained for similar enterprises; and

(viii) Such other insurance in such amounts and against such insurable hazards as the Agency or the Trustee (acting at the direction of the Majority Owner) from time to time may reasonably require.

(b) All insurance required by this Section 4.5 shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and having a Best rating satisfactory to the Agency.

(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 insurance) the Trustee and the Agency as additional insureds as their respective interests may appear;

(ii) provide that all insurance proceeds with respect to loss or damage to the property of the Facility be endorsed and made payable to the Trustee and shall name the Trustee as a mortgagee under the terms of a standard New York mortgagee clause and loss payee under the standard lender's loss payable 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 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 respective interests of the Agency or the Trustee in such policies, the insurance shall not be invalidated by any action or inaction of the Company or any other Person and shall insure the Agency 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 or the Trustee to the extent that such other insurance provides the Agency or the Trustee, 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 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 or the Trustee until at least thirty (30) days after receipt by the Agency and the Trustee, respectively, of written notice by such insurers of such cancellation, lapse, expiration, reduction or change;

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

(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.

(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 and delivery of this Agreement, the Company shall deliver or cause to be delivered to the Agency and the Trustee the following documents evidencing compliance with the specific coverage requirements of this Section 4.5: (i) on or prior to the execution and delivery of this Agreement, (A) an insurance agent's certificate of coverage, and (B) certificate of liability insurance (Acord form 25-S), evidence of property insurance (Acord form 27 or 28), and certificates or other evidence of other required insurance, and (ii) as soon as practicable thereafter, duplicate copies of insurance policies and/or binders. At least seven (7) Business Days prior to the expiration of any such policy, the Company shall furnish the Agency and the Trustee with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

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

(g) In the event of construction, reconstruction, improvement or renovation of any part of the Facility, the Company shall require its contractors and subcontractors, if any, to name the Agency as an additional insured on liability policies carried by such contractors or subcontractors with respect to their operations at the Facility or with respect to the Project.

(h) THE AGENCY AND THE TRUSTEE DO 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 INTEREST OF THE COMPANY.

Section 4.6. **Advances by Agency or Trustee.** In the event the Company fails to make any payment or perform or observe any obligation required of it under this Agreement, the Agency or the Trustee, after first providing not less than ten (10) days prior notice to the Company of any such failure on its part, may (but shall not be obligated to), and without waiver of any of the rights of the Agency or the Trustee under this Agreement, the Indenture or any other Project Documents, make such payment or otherwise cure any failure by the Company to perform and observe its other obligations hereunder. All amounts so advanced therefor by the Agency or the Trustee shall become an additional obligation of the Company to the Agency or the Trustee, as applicable, which amounts, together with interest thereon at the rate of (a) eighteen percent (18%) per annum, or (b) the "prime rate" of the bank selected by the Agency from time to time plus three percent (3%) per annum, whichever is greater, from the date advanced, the Company will pay upon demand therefor by the Agency or the Trustee, as the case may be. Any remedy herein vested in the Agency or the Trustee for the collection of the rental payments or other amounts due hereunder shall also be available to the Agency or the Trustee for the collection of all such amounts so advanced.

Section 4.7. **Compliance with Law.** The Company agrees that it will, throughout the term of this Agreement and at its sole cost and expense, promptly observe and comply with all Federal, State and local statutes, codes, laws, acts, ordinances, orders, judgments, decrees, rules, regulations and authorizations, whether foreseen or unforeseen, ordinary or extraordinary, which shall now or at any time hereafter be binding upon or applicable to the Company, any occupant, user or operator of the Facility or any portion thereof (including without limitation those relating to zoning, land use, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, accessibility, health, safety, equal opportunity, minimum wages and employment practices) (the "Legal Requirements"), will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including, without limitation, zoning variances, special exception and non-conforming uses), privileges, franchises and concessions, and will cause all notices required by Legal Requirements to be given. The Company will not, without the prior written consent of the Agency and the Trustee (acting at the direction of the Majority Owner), initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Facility or any part thereof. The Company will also comply with all Legal Requirements that pertain to the maintenance and disposition of tenant security deposits. The Company will at all times maintain records sufficient to demonstrate compliance with the provisions of this Section. The Company will take appropriate measures to prevent, and will not engage in or knowingly permit, any illegal activities at the Facility that could endanger tenants or visitors, result in damage to the Facility, result in forfeiture of the Facility, or otherwise materially impair the lien created by the Agency Mortgage. The Company shall indemnify and hold harmless the Indemnified Parties (as defined in Section 6.2 hereof) from and against all loss, cost, liability and expense (a) in any manner arising out of or related to any violation of or failure to comply with any Legal Requirement or (b) imposed upon the Company or any of the Indemnified Parties by any Legal Requirement; in case any action or proceedings is brought against any of the Indemnified Parties in respect to any Legal Requirement, the Company shall upon notice from any of the Indemnified Parties defend such action or proceeding by counsel reasonably satisfactory to the Indemnified Party.

The Company may contest in good faith the validity, existence or applicability of any of the foregoing if (i) such contest shall not result in the Facility or any part thereof or interest therein being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Company, the Agency or the Trustee being in any danger of any civil or any criminal liability other than normal accrual of interest, for failure to comply therewith, and (iii) the Company shall have furnished such security, if any, as may be reasonably requested by the Agency or the Trustee (acting at the direction of the Majority Owner) to protect the security intended to be offered by the Security Documents and the other Project Documents.

Section 4.8. **Payment in Lieu of Real Estate Taxes.** It is recognized that under the provisions of the Act the Agency is required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction, control or supervision or upon its activities. While the Facility is being used in accordance with this Agreement, the provisions of this Section with respect to payments in lieu of real estate taxes shall be applicable. The Company and the Agency agree that the Company shall be required to make payments in lieu of real estate taxes in the amounts, at the times and to the taxing jurisdictions and upon the conditions set forth in the PILOT Agreement.

The Company shall continue to operate the Facility, or cause it to be operated, at all times during the term of this Agreement, except, as appropriate and for such period as may be necessary, in the case of a Loss Event as provided in Section 5.1 hereof. Such operation shall be solely for the purpose described in Section 3.1 hereof and in accordance with the provision of the Act. If the Company ceases to operate the Facility for such purposes for any reason other than by reason of a Loss Event as provided in Section 5.1 hereof, the Company shall, commencing with the tax fiscal year next following such cessation of or change in operations, make payments in lieu of taxes on the Facility Realty to all applicable taxing authorities in such amounts as would be payable as Real Estate Taxes levied on the Facility Realty if the Facility Realty were owned by the Company, subject to the terms of the PILOT Agreement. Such payments shall be in addition to any other rights or remedies of the Agency under this Agreement. For the purpose of this Agreement, the Company shall be deemed to have ceased to operate the Facility for the purposes described herein if it (a) materially alters the use of the Facility, in the Agency's reasonable judgment, except as permitted hereunder, (b) closes the Facility other than for routine maintenance, or (c) reduces the operations of the Facility to such an extent that, in the Agency's reasonable judgment, the public purpose to be derived from the Project in accordance with Section 1.4 hereof has been substantially impaired. Any of the foregoing notwithstanding, the Company may use the Facility for some purpose other than that described herein with the prior written consents of the Agency and the Trustee (acting at the direction of the Majority Owner) but subject to the provisions of the Tax Regulatory Agreement, which consents may be withheld in the absolute discretion of the Agency and the Trustee, and provided further that such proposed use constitutes a qualified "project" in accordance with the Agency's policy and as defined under the Act and a "qualified residential rental project" as defined in the Code.

The obligations of the Company under this Section 4.8 shall survive the termination or expiration of this Agreement for any reason whatsoever.

## ARTICLE V

### **DAMAGE, DESTRUCTION AND CONDEMNATION**

Section 5.1. **Damage, Destruction and Condemnation.** (a) In the event that at any time during the term of this Agreement the whole or 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 agreement between the Agency and those authorized to exercise such right (with the consent of the Company), or if the temporary use of the Facility shall be so taken by condemnation or agreement (a "Loss Event"):

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

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

(ii) the Company will promptly give written notice of such Loss Event to the Agency and the Trustee, generally describing the nature and extent thereof.

(c) Upon the occurrence of a Loss Event, the Net Proceeds derived therefrom shall be paid to the Trustee and deposited in the Renewal Fund (*provided, however*, if the Net Proceeds shall be less than \$200,000, such Net Proceeds shall be paid directly to the Company, and the Company shall remain obligated to rebuild, replace, repair or restore the Facility as provided in clause (i) below) and the Company shall, with the consent of the Trustee (acting at the direction of the Majority Owner), either:

(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 Company shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Agency, the Trustee or any Bondholder, nor shall the rent or other amounts payable by the Company under this Agreement be abated, postponed or reduced, or

(ii) if, to the extent and upon the conditions permitted to do so under Section 8.1 hereof and under the Indenture, exercise its option to terminate this Agreement and the Company Lease and make advance rental payments to redeem the Bonds in whole and terminate the Agency's interest in the Facility.

Not later than ninety (90) days after the occurrence of a Loss Event, the Company shall advise the Agency, the Directing Party and the Trustee in writing of the action to be taken by the Company 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 subdivision (i) above.

If the Company 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 Company, at the election of the Company, either as such work progresses or upon the completion thereof, provided, however, the amounts so disbursed by the Trustee to the Company shall not exceed the actual cost of such work. If, on the other hand, the Company shall, if permitted under this Agreement and the Indenture, exercise its option in subdivision (ii) above, the Trustee shall transfer the Net Proceeds from the Renewal Fund to the Redemption Account of the Bond Fund to be applied to the redemption of the Bonds in accordance with the Indenture.

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

(i) automatically be deemed a part of the Facility and owned or leased, as the case may be, by the Agency and be subject to this Agreement, the Company Lease and the Indenture and the lien and security interest of the Agency Mortgage (except for the Agency's Reserved Rights),

(ii) be in accordance with plans and specifications and cost estimates approved in writing by the Trustee (acting at the direction of the Majority Owner),

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

(iv) be preceded by the furnishing by the Company to the Agency and the Trustee (acting at the direction of the Majority Owner) of a labor and materials payment bond, or other security, reasonably satisfactory to the Agency and the Trustee (acting at the direction of the Majority Owner),

(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 Company 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 \$100,000, be effected under the supervision of an Independent Engineer.

(e) 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.

(f) The Agency, the Trustee and the Company 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 the settlement,

compromising, arbitration or adjustment of any such claim or demand shall be subject to the approval of the Company and the Trustee (acting at the direction of the Majority Owner), such approvals not to be unreasonably withheld.

(g) 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 Company as contemplated hereby, the Company shall exercise its option to terminate this Agreement pursuant to Section 8.1 hereof, and the amount of the Net Proceeds so recovered shall be transferred from the Renewal Fund and deposited in the Redemption Account of the Bond Fund, and the Company shall thereupon pay to the Trustee for deposit in the Redemption Account of the Bond Fund an amount which, when added to any 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 Trustee and the Paying Agents, together with all other amounts due under the Indenture, the Tax Regulatory Agreement and under this Agreement, and such amount shall be applied, together with such other available moneys in such Bond Fund, if applicable, to such redemption or retirement of the Bonds on said redemption or maturity date.

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

(i) The Company 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.

(j) To the knowledge of the Company, no Condemnation or eminent domain proceeding has been commenced or threatened against any part of the Facility.

## ARTICLE VI

### SPECIAL COVENANTS

Section 6.1. **Restrictions on the Company.** The Series 2008 Bonds will be payable by the Agency as to principal, interest and redemption premium, if any, solely out of the revenue derived from the subleasing of the Facility, including all revenues and rental income derived from or in connection with the Facility and moneys received under this Agreement, and the parties hereto understand that the purchasers of the Bonds will make their purchase in reliance in part upon the credit and financial condition of the Company. The Company agrees that at all times during the term of this Agreement it will (i) maintain its legal existence as a limited partnership, (ii) continue to be a limited partnership subject to service of process in the State and either organized under the laws of the State, or, upon prior written notice to the Agency and the Trustee, organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not sell, transfer, pledge or otherwise encumber all or substantially all of the assets which constitute the Facility (except for Permitted Encumbrances and except in accordance with the provisions of Section 9.3 hereof), (iv) not liquidate, wind-up

or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Agreement, (v) not consolidate with or merge into another legal entity or permit one or more other legal entities to consolidate with or merge into it, (vi) not transfer, assign or pledge all or any portion of its interest in and under this Agreement, other than the sale or transfer of low-income housing tax credits which may be created or obtained in connection with the Project, (vii) not change its name, and (viii) except as set forth in Section 8.3, not purchase any of the Bonds. The Company further represents, covenants and agrees that it is and throughout the term of this Agreement will (y) continue to be duly qualified to do business in the State, and that any legal entity succeeding to the rights of the Company under this Agreement shall be and continue to be duly qualified to do business in the State, and (z) not constitute a Prohibited Person.

Section 6.2. **Hold Harmless Provisions.** (a) The Company shall at all times indemnify, defend (with counsel selected by the Agency) and hold the Agency, the Trustee, the Bond Registrar and the Paying Agent and their respective members, officers, directors, employees and agents (other than the Company) (collectively, the "Indemnified Parties") harmless of, from and against any and all claims (whether in tort, contract or otherwise), demands, 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 Indemnified Party, losses arising from the gross negligence or willful misconduct of such Indemnified Party (collectively, the "Claims"), arising upon or about the Facility or resulting from, arising out of, or in any way connected with (i) the financing of the costs of the Facility and the marketing, issuance and sale of the Bonds for such purpose, (ii) the planning, design, acquisition, site preparation, construction, renovation, equipping, furnishing, installation or completion of the Project or any part thereof or the effecting of any work done in or about the Facility, (iii) any defects (whether latent or patent) in the Facility, (iv) the maintenance, repair, replacement, restoration, rebuilding, upkeep, use, occupancy, ownership, leasing, subletting or operation of the Facility or any portion thereof, (v) this Agreement, the Company Lease Agreement, the Indenture or any other Project 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, (vi) any imposition arising from, burden imposed by, violation of, or failure to comply with any Legal Requirement, (vii) any damage or injury to the person or property of (A) the Company or (B) any other Person or their respective officers, directors, officials, partners, members, employees, attorneys, agents or representatives, or persons under the control or supervision of the Company, or (C) any other Person who may be in or about the premises of the Facility, or (viii) any Claim commenced against an Indemnified Party, or other action or proceeding taken by an Indemnified Party, in any case with respect to any of the matters set forth in subdivisions (i) through (viii) of this Section 6.2(a). Such indemnification set forth above shall be binding upon the Company for any and all Claims set forth herein and shall survive the termination of this Agreement. No Indemnified Party shall be liable for any damage or injury to the person or property of the Company or its directors, officers, employees, agents or servants or persons under the control or supervision of the Company or any other Person who may be about the Facility, due to any act or negligence of any Person other than for the gross negligence or willful misconduct of such Indemnified Party.



(b) The Company releases each Indemnified Party from, and agrees that no Indemnified Party shall be liable for and agrees 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 such Indemnified Party with respect to any of the matters set forth in subdivision (i) through (viii) of Section 6.2(a) hereof or at the direction of the Company with respect to any of such matters above referred to. An Indemnified Party shall promptly notify the Company in writing of any claim or action brought against such Indemnified Party in which indemnity may be sought against the Company pursuant to this Section 6.2; such notice shall be given in sufficient time to allow the Company to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section 6.2.

(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 its control or supervision.

(d) To effectuate the purposes of this Section 6.2, the Company 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 Company contained in this Section 6.2 shall remain in full force and effect after the expiration or earlier or later 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) For the purposes of this Section 6.2, the Company shall not be deemed an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

(f) The provisions of this Section 6.2 shall be in addition to any and all other obligations and liabilities the Company may have to any Indemnified Party in any other agreement or at common law, and shall survive the termination of this Agreement.

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

Agency. The Company shall further pay the fees, costs and expenses of the Agency together with any fees and disbursements incurred by the Agency's bond counsel and general counsel in connection with (i) the Project 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 and execution of this Agreement, the Indenture and any other of the Project Documents, and (iii) any waiver, modification or amendment to this Agreement, the Indenture or any other Project Document that may be requested by the Company or any party thereto, and consented to by the Company, or any action by the Agency requested by the Company thereunder.

The Company further agrees to pay to the Agency an annual administrative servicing fee of \$1,000.00 payable on every January 1 until the termination or expiration of this Agreement.

In addition, the Company shall pay to the New York State Department of Taxation and Finance the bond issuance charge as required pursuant to Section 2976 of the Public Authorities Law, unless such bond issuance charge is waived.

Section 6.4. **Retention of Interest in Facility; Grant of Easements; Release of Certain Land**. Neither the Agency nor the Company shall sell, assign, encumber or mortgage (other than Permitted Encumbrances), convey or otherwise dispose of their respective interests in the Facility or any part thereof or interest therein during the term of this Agreement, except as set forth below and in Sections 4.2, 5.1 and 7.2 hereof, without the prior written consent of the Trustee (acting at the direction of the Majority Owner) and any purported disposition without such consent shall be void.

The Agency will, however, so long as there exists no Event of Default hereunder, and with the prior written consent of the Trustee (acting at the direction of the Majority Owner), 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, the Company Lease, and the liens of the Indenture and the Agency Mortgage, as shall be necessary or convenient for the operation or use of the Facility, provided that such leases, rights-of-way, easements, permits or licenses shall not adversely affect the use or operation of the Facility, and provided, further, that any consideration received by the Company from the granting of said leases, rights of way, easements, permits or licenses shall be paid to the Trustee and deposited in the Redemption Account of the Bond Fund. The Agency agrees, at the sole cost and expense of the Company, to execute and deliver and to cause and direct the Trustee 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, the Company Lease, and the liens of the Indenture and the Agency Mortgage.

Notwithstanding any other provision of this Agreement, so long as there exists no Event of Default hereunder, with the prior written consent of the Trustee (acting at the direction of the Majority Owner), the Company may from time to time request the release of and removal from this Agreement, the Company Lease, and the leasehold estate created hereby of any

unimproved part of the Facility Realty (on which none of the improvements, including the buildings, structures, improvements, related facilities, major appurtenances, fixtures or other property comprising the Facility are situated) provided that such release and removal will not adversely affect the use or operation of the Facility. Upon any such request by the Company, the Agency shall, at the sole cost and expense of the Company, execute and deliver and cause and direct the Trustee to execute and deliver any and all instruments necessary or appropriate to so release and remove such portion of the Facility Realty from the leasehold estate of this Agreement and the Company Lease, subject to the following: (a) any liens, easements, encumbrances and reservations to which title to said property was subject at the time of recording of this Agreement; (b) any liens, easements and encumbrances created at the request of the Company or to the creation or suffering of which the Company consented; (c) any liens and encumbrances or reservations resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agreement; (d) Permitted Encumbrances (other than the liens of this Agreement, the Company Lease, the Indenture and the Agency Mortgage); and (e) any liens for taxes or assessments not then delinquent; provided, that, no such release shall be effected unless:

(1) there shall be delivered to the Trustee a certificate of an Independent Engineer, dated not more than sixty (60) days prior to the date of the release, stating that, in the opinion of the person signing such certificate, the portion of the Facility Realty and the release so proposed to be made is not needed for the operation of the Facility, will not adversely affect the use or operation of the Facility and will not impair the means of ingress thereto and egress therefrom; and

(2) there shall be deposited with the Trustee an amount of cash for deposit in the Redemption Account of the Bond Fund, equal to the greatest of (A) the original cost of such portion of the Facility Realty so released, such cost to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within Nassau County, New York, (B) the fair market value of such portion, such value to be determined by the appraisal of an independent real estate brokerage firm of recognized standing within Nassau County, New York, and (C) if such portion is released in connection with the sale of such portion, the amount received by the Company upon such sale.

No conveyance or release effected under the provisions of this Section 6.4 shall entitle the Company to any abatement or diminution of the rents payable under Sections 3.3 or 3.5 hereof or the other payments required to be made by the Company under this Agreement.

Section 6.5. **The Company's Covenant as to Tax Exemption.** (a) The Company covenants with the Agency, with the Trustee and with each of the Holders of the Bonds, that it will comply with all of the terms, provisions and conditions set forth in the Tax Regulatory Agreement and the Land use Restriction Agreement, including, without limitation, the making of any payments and filings required thereunder.

Without limiting the foregoing and notwithstanding anything to the contrary in this Agreement, the Company will not take, or permit to be taken on its behalf, any action which

would cause interest on the Bonds to be included in gross income for federal income tax purposes and will take such action as may be necessary to continue such exclusion from gross income, including the following:

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

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

(iii) the Company will pay to the United States any amount required to be paid by the Agency or the Company pursuant to Section 148(f) of the Code, at the times, in the amounts and at the places required in order to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes.

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

(b) The representations, warranties, covenants and statements of expectation of the Company set forth in each of the Tax Regulatory Agreement and the Land Use Restriction Agreement are by this reference incorporated in this Agreement as though fully set forth herein.

(c) If any Bondholder receives from the Internal Revenue Service a notice of assessment and demand for payment with respect to interest on any Bond, an appeal may be taken by the Bondholder at the option of either the Bondholder or the Company. If such appeal is taken at the option of the Company (exercised in accordance with the procedures set forth in the definition of "Determination of Taxability" in Appendix A attached to the Indenture), all expenses of the appeal including counsel fees and expenses shall be paid by the Company, and the Company shall control the procedures and terms relating to such appeal, and the Bondholder and the Company shall cooperate and consult with each other in all matters pertaining to any such appeal which the Company has elected to take, except that no Bondholder shall be required to disclose or furnish any non-publicly disclosed information, including, without limitation, financial information and tax returns. Before the taking of any appeal which the Company has elected to take, however, the Bondholder shall have the right to require the Company to pay the tax assessed and conduct the appeal as a contest for reimbursement.

(d) Not later than thirty (30) days following a Determination of Taxability, the Company shall pay or cause to be paid to the Trustee an amount sufficient to retire and redeem all Bonds then Outstanding, to the extent required under and in accordance with Section 2.03(e) of the Indenture.

(e) The obligation of the Company to make the payments provided for in this Section shall be absolute and unconditional, and the failure of the Agency, the Trustee or any other Person to execute or deliver or cause to be delivered any documents or to take any action required under this Agreement or otherwise shall not relieve the Company of its obligation under this Section.

Section 6.6. **Financial Statements; No-Default Certificates.** (a) The Company agrees to furnish to the Agency and the Trustee, (i) as soon as available and in any event within one hundred twenty (120) days after the close of each fiscal year of the Company, a copy of its annual consolidating and consolidated financial statements, including balance sheets as at the end of such year, and the related statements of income, balances, earnings, retained earnings, cash flow and changes in financial position for such fiscal year, prepared in accordance with generally accepted accounting principles and practices, together with an opinion of an independent certified public accountant or firm of independent certified public accountants, in each case satisfactory to the Trustee (acting at the direction of the Majority Owner), and (ii) as soon as available and in any event within forty-five (45) days after the close of each operating quarter of each fiscal year of the Company, a copy of its unaudited consolidating and consolidated financial statements as at the end of such quarter, and the related statements of income, balances, earnings, retained earnings, cash flow and changes in financial position for such period, prepared in accordance with generally accepted accounting principles and practices, certified by the chief financial officer of the Company.

(b) The Company shall deliver to the Agency and the Trustee with each delivery of annual financial statements pursuant to Section 6.6(a)(i) hereof, (i) a certificate of an Authorized Representative of the Company as to whether or not, as of the close of such preceding Fiscal Year of the Company, and at all times during such Fiscal Year, the Company was in compliance with all the provisions which relate to the Company in this Agreement and in any other Project Document to which it shall be a party, and as to whether or not a Determination of Taxability has occurred, and if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default or Determination of Taxability, 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 Company with respect thereto, and (ii) a certificate of an Authorized Representative of the Company that the insurance it 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 the Company, and that duplicate copies of all policies or certificates thereof have been filed with the Agency and the Trustee and are in full force and effect. In addition, upon twenty (20) days' prior request by the Agency or the Trustee, the Company will execute, acknowledge and deliver to the Agency and the Trustee a certificate of an Authorized Representative of the Company either stating that to his knowledge no default or breach exists hereunder or specifying each such default or breach of which he has knowledge.

(c) The Company shall immediately notify the Agency and the Trustee of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Project 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 Company 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 Company shall state this fact on the notice.

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

(e) The Company further agrees that it will give prompt written notice to the Agency and the Trustee if insurance proceeds or condemnation awards are received with respect to the Mortgaged Property.

Section 6.7. **Discharge of Liens.** (a) The Company hereby agrees not to create or suffer to be created any lien, encumbrance or charge on any properties of the Agency (other than the Facility) or on any funds of the Agency applicable to or deriving from the Facility.

(b) 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 Company or the Trustee or against any of the rentals or other amounts payable under this Agreement or the interest of the Company under this Agreement or the Company Lease other than Liens for Impositions (as defined in Section 4.4 hereof) not yet payable, Permitted Encumbrances, or Liens being contested as permitted by Section 6.7(b) hereof, the Company forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Agency (acting at the direction of the Majority Owner) 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 and to remove or nullify the basis therefor within thirty (30) days after imposition of any such Lien. 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.

(c) Provided that the Lien has been discharged of record as required above, the Company may at its sole expense contest (after prior written notice to the Agency 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 part thereof or interest therein, or in this Agreement or the Company Lease of the Agency, the Company or the Trustee or against any of the rentals or other amounts payable under this Agreement, (2) neither the Facility nor any interest therein would be in any danger of being sold, forfeited or lost, (3) neither the Company, the Agency nor the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (4) the Company shall have furnished such security, if any, as may be required in such proceedings or

as may be reasonably requested by the Trustee to protect the security intended to be offered by the Indenture, the Agency Mortgage and the other Project Documents.

Section 6.8. **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 hereof, and that, subject to the terms and provisions of the Agency Mortgage and the Indenture and Permitted Encumbrances, so long as the Company shall pay the rent and all other sums payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements herein 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 by the Company, and the Agency (at the sole cost and expense of the Company) shall from time to time take all necessary action to that end, subject to Permitted Encumbrances.

Section 6.9. **No Warranty of Condition or Suitability; Acceptance "As Is".** 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 FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE FACILITY EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED. THE COMPANY SHALL ACCEPT THE FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING.

Section 6.10. **Amounts Remaining in Funds.** It is agreed by the parties hereto that any amounts remaining in the Earnings Fund, the Rebate Fund, the Bond 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 (i) the Bonds (in accordance with Section 10.01 of the Indenture), (ii) the fees, charges and expenses of the Trustee, the Bond Registrar, the Paying Agent and the Agency in accordance with the Indenture, (iii) all rents and all other amounts payable hereunder, (iv) all amounts required to be rebated to the Federal government pursuant to the Tax Regulatory Agreement or the Indenture, and (v) all amounts

required to be paid under any Project Document, shall have been so paid, shall belong to and be paid to the Company by the Trustee as overpayment of rents.

Section 6.11. **Issuance of Additional Bonds.** The Agency and the Company recognize that under the provisions of and subject to the conditions set forth in the Indenture, the Agency is authorized to enter into a Supplemental Indenture and issue one or more Series of Additional Bonds on a parity with the Series 2008 Bonds for the purpose of (i) completing the Project, (ii) providing funds in excess of the Net Proceeds to repair, relocate, replace, rebuild or restore the Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to the Facility, or (iv) refunding Outstanding Bonds. If the Company is not in default hereunder, the Agency will consider a written request for the issuance of Additional Bonds in a principal amount as is specified in such 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 Company shall enter into an amendment to this Agreement, providing, among other things, for the payment by the Company of such additional rentals as are necessary in order to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith. If such Additional Bonds are issued for the purposes set forth in clause (iii) of this Section 6.11, 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 Section 4.8 hereof 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 and shall be included under this Agreement to the same extent as if originally included hereunder.

Section 6.12. **Non-Discrimination; Employment Information, Opportunities and Guidelines.** (a) The Company shall ensure and cause its Affiliates to ensure that all employees and applicants for employment at the Facility are afforded equal employment opportunity without discrimination.

(b) At all times during the renovation, maintenance and operation of the Facility, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, age, gender, sexual orientation or national origin. The Company shall use reasonable efforts to ensure that employees and applicants for employment with the Company, or any Affiliate thereof or any subtenant of the Facility, or any part thereof, or any contractor or subcontractor with respect to the Facility, are treated without regard to their race, color, creed, age, gender, sexual orientation, 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 or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(c) The Company shall, in all solicitations or advertisements for employees placed by or on behalf of the Company, state that all qualified applicants will be considered for



employment without regard to race, color, creed, age, gender, sexual orientation or national origin.

(d) The Company shall furnish to the Agency all information reasonably required by the Agency pursuant to this Section 6.12 and will cooperate with the Agency for the purposes of investigation to ascertain compliance with this Section 6.12.

(e) The Agency and the Company shall, from time to time, mutually agree upon goals for the employment, training, or employment and training of members of minority groups in connection with performing work with respect to the Facility; provided however, if the Agency and the Company are unable to reach such mutual agreement, the Agency and the Company shall cooperate to ensure compliance with this Section 6.12.

(f) Except as is otherwise provided by collective bargaining contracts or agreements to which the Company is a party, the Company shall cause new employment opportunities created as a result of the Project to be listed with the New York State Department of Labor, Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. 97-300), or any successor statute thereto, in which the Project is located. Except as is otherwise provided by collective bargaining contracts or agreements to which the Company is a party, the Company covenants and agrees, where practicable, to first consider persons eligible to participate in programs under the Federal Job Training Partnership Act (P.L. No. 97-300), or any successor statute thereto, who shall be referred to administrative entities or service delivery areas created pursuant to such laws or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

(g) The Company hereby authorizes any private or governmental entity, including, but not limited to, the New York State Department of Labor ("DOL"), to release to the Agency or its successors and assigns (collectively, the "Information Recipients"), any and all employment information under its control and pertinent to the Company, or any Affiliate thereof and their respective employees at the Facility. In addition, upon the Agency's request, the Company shall provide to the Agency any employment information in the Company's possession which is pertinent to the Company or any Affiliate thereof and their respective employees at the Facility. Information released or provided to Information Recipients by DOL, or by any other governmental entity, or by any private entity, or by the Company itself, or any information previously released as provided by all or any of the foregoing parties (collectively, "Employment Information") may be disclosed by the Information Recipients in connection with the administration of the programs of the Agency, or its successors and assigns, and/or the County, and/or as may be necessary to comply with all Legal Requirements; and, without limiting the foregoing, the Employment Information may be included in (y) reports required of the Agency, and (z) any reports required by Legal Requirements. This authorization shall remain in effect throughout the term of this Agreement.

(h) Annually, by January 1 of each year, commencing on January 1, 2008, until the termination or expiration of this Agreement, the Company shall submit to the Agency an employment report relating to the period commencing January 1 of the previous year and

ending December 31 of the year of the obligation of the filing of such report, substantially in the form of Appendix A hereto, certified as to accuracy by an Authorized Representative of the Company, and shall attach thereto a copy of the Company's final payroll report evidencing the total number of employees at the Facility employed by the Company or any Affiliate thereof during such reporting period. The Agency shall have the right, at the Company's expense, to audit, confirm and/or require additional information with regard thereto and the Company agrees to cooperate with the Agency in connection therewith.

Section 6.13. **Redemption Under Certain Circumstances; Special Covenants.**

(a) If the members of the Agency determine that the Company is operating the Facility or any portion thereof, or is allowing the Facility or any portion thereof to be operated, in violation of applicable law or not as a qualified "project" in accordance with the Act and the Company fails to cure such noncompliance within sixty (60) days (or such longer period as may be established pursuant to the proviso to this sentence) of the receipt by the Company of written notice of such noncompliance from the Agency and a demand to cure such noncompliance (a copy of which notice shall be sent to the Trustee), the Company covenants and agrees that it shall, on the immediately succeeding Interest Payment Date following the termination of such sixty (60) 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 sixty (60) days with diligence (and is capable of being cured) and the Company promptly commences the curing of such non-compliance and thereafter prosecutes the curing thereof with diligence and to the Agency's reasonable satisfaction, such period of time within which the Company 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 of any such extension.

(b) If the Company fails to obtain or maintain the public liability insurance required under Section 4.5 hereof, and the Company fails to cure such noncompliance within fifteen (15) days of the receipt by the Company of written notice of such noncompliance from the Agency and a demand to cure such noncompliance (a copy of which notice shall be sent to the Trustee), the Company covenants and agrees that it shall, on the immediately succeeding Interest Payment Date following the termination of such fifteen (15) day 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 one hundred percent (100%) of the aggregate principal amount of the Outstanding Bonds together with interest accrued thereon to such Interest Payment Date.

(c) The Agency shall give prior written notice to the Company and the Trustee of the meeting at which the members of the Agency are to consider any such resolution(s), which notice shall be no less than three (3) Business Days prior to a meeting called to consider matters set forth in subsections (a) or (b) of this Section.

(d) Upon the circumstances set forth in Section 2.03(b), (c), (d), (e) and (f) of the Indenture, the Company shall pay or cause the prepayment of its lease rental obligation upon the circumstances and in the manner set forth in the Indenture.

The Company shall, prior to directing the redemption of any Bonds in accordance with this Section 6.13(c), consult with Nationally Recognized Bond Counsel for advice as to a manner of selection of Bonds for redemption that will not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes.

(e) (i) If, prior to completion of the renovation and equipping of a component of the Project, the Company receives any gift or grant required by the terms thereof to be used to pay any item which is a cost of such component of the Project, the Company shall apply such gift or grant to completion of the renovation and equipping of such component of the Project. In the event that the amount of such gift or grant is in excess of the amount necessary to complete such component of the Project, and if proceeds of Bonds have been expended on such component of the Project, the Company shall deliver to the Trustee, for deposit in a special subaccount of the Redemption Account, an amount equal to such excess only to the extent to which proceeds of Bonds were expended for such component. The Trustee shall apply such moneys, at the written direction of an Authorized Representative of the Company, to the redemption of an equal principal amount of Bonds.

(ii) If, after completion of the renovation and equipping of a component of the Project, the Company receives any gift or grant which prior to such completion it reasonably expected to receive and which is required by the terms thereof to be used to pay any item which is a cost of such component of the Project, and if proceeds of the Bonds have been expended on such component of the Project, the Company shall, to the extent not inconsistent with the terms of such gift or grant, deliver to the Trustee, for deposit in a special subaccount of the Redemption Account, an amount of money equal to such gift or grant, but only to the extent to which proceeds of Bonds were expended for such component. The Trustee shall apply such moneys, at the written direction of an Authorized Representative of the Company, to the redemption of an equal principal amount of Bonds.

Section 6.14. **Further Assurances.** The Company will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Company, as the Agency or the Trustee deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of this Agreement and any rights of the Agency or the Trustee hereunder, under the Indenture or under the Agency Mortgage.

Section 6.15. **Current Facility Equipment Description.** The Company covenants and agrees that throughout the term of this Agreement, including upon any replacement, repair, restoration or reconstruction of the Facility pursuant to Section 5.1 hereof, it will cause the Description of Facility Equipment attached as part of the Appendices to this Agreement, the Agency Mortgage and the Indenture to be an accurate and complete description of all current items of Facility Equipment and sufficient, in the judgment of the Trustee, for the

creation and perfection of a security interest in each such item of property under the New York State Uniform Commercial Code-Secured Transactions, as the same may be in effect from time to time. To this end, the Company covenants and agrees (i) that no requisition shall be submitted to the Trustee for moneys from the Project Fund for the acquisition or installation of any item of machinery or equipment, (ii) that no item of Facility Equipment shall be substituted or replaced by a new item of machinery or equipment pursuant to Section 4.2(a) or 5.1 hereof, and (iii) that no item of machinery or equipment (other than the Company's Property) shall be delivered and installed at the Facility Realty as part of the Facility, unless in each case such item of machinery or equipment shall be accurately and sufficiently described in the Description of Facility Equipment in the Appendices attached as part of this Agreement, the Agency Mortgage and the Indenture, and the Company shall from time to time prepare supplements to such Appendices in compliance with the foregoing. Such supplements shall be executed and delivered by the appropriate parties and duly recorded, and additional financing statements with respect thereto shall be duly filed, by the Company.

Section 6.16. **Recording and Filing.** This Agreement as originally executed or a memorandum thereof shall be recorded by the Company prior to the recordation of the the Agency 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 Agency and the Trustee are authorized, to file one or more Uniform Commercial Code financing statements (and continuations thereof) disclosing any security interest in the Facility, this Agreement, and the sums due under this Agreement, without the signature of the Company or signed by the Agency or the Trustee as attorney-in-fact for the Company. The Company agrees to furnish the Agency and the Trustee with the Opinion of Counsel addressed to the Agency and the Trustee referred to in Section 7.08 of the Indenture and shall perform all other acts (including the payment of all costs) necessary in order to enable the Agency to comply with Section 7.08 of the Indenture.

Section 6.17. **Right to Cure Agency Defaults.** The Agency hereby grants the Company full authority for account of the Agency to perform any covenant or obligation the non-performance of which is alleged to constitute a default in any notice received by the Company, in the name and stead of the Agency, with full power of substitution.

Section 6.18. **Furnishing of Information.** The Company shall promptly furnish to the Agency and the Trustee such information, in such form and supported by such certifications as the Agency or the Trustee shall reasonably request, relating to the Company and the Facility, and the past, present and future employment by the Company at the Facility.

Section 6.19. **[Reserved].**

Section 6.20. **[Reserved].**

Section 6.21. **Covenants as to Maintenance of Property, Etc.** The Company hereby covenants:

(a) at all times to cause its business to be carried on and conducted and its property to be maintained, preserved and kept in good repair, working order and condition,

ordinary wear and tear excepted, and all needful and proper repairs, renewals and replacements thereof to be made;

(b) to do all things reasonably necessary to conduct its affairs and carry on its business and operations in such manner as to comply in all material respects with any and all applicable laws of the United States and the several states thereof and to duly observe and conform in all material respects to all valid orders, regulations or requirements of any governmental authority relative to the conduct of its business and the ownership of its property;

(c) promptly to pay all lawful taxes, governmental charges and assessments at any time levied or assessed upon or against it or its property;

(d) promptly to pay or otherwise satisfy and discharge all of its obligations and indebtedness and all demands and claims against it as and when the same become due and payable;

(e) to keep its property insured in accordance with proper industry standards;

(f) at all times to comply in all material respects with all terms, covenants and provisions of any liens at such time existing upon its property or any part thereof or securing any of its indebtedness;

(g) to procure and maintain all necessary licenses and rights, permits and other governmental approvals, all to the extent that the failure to do so would have a material adverse effect on the financial condition of the Company or the ability of the Company to perform its obligations under this Agreement and each other Project Document to which the Company is a party;

(h) in connection with the operation, maintenance, repair and replacement of the Company's property, to comply in all material respects with all applicable Federal, state and local ordinances, laws, rules, regulations and orders;

(i) to cause its property and facilities to be in compliance in all respects with all applicable Federal, state and local zoning, subdivision, building, land use, accessibility, environmental and similar laws and ordinances; and

(j) to comply with all reporting requirements of the Agency.

Section 6.22. **Compliance with Reporting Requirements.** The Company shall comply with any applicable provision of law affecting the Project with respect to reporting requirements including providing information required by the Agency to fulfill its reporting requirements and to require all sublessees with respect to the Facility to fulfill reporting requirements applicable to sublessees. The Company will file duplicate copies of all reports required to be filed with New York State or its agencies under the Act with the Agency no later than the date they are filed with New York State or its agencies.

Section 6.23. **Right of Access to the Facility.** The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times to enter upon and to examine and inspect the Facility, subject to applicable laws. The Company further agrees that the Agency shall have such rights of access to the Facility as may be reasonably necessary to cause the proper maintenance of the Facility in the event of failure by the Company to perform its obligations hereunder.

In addition, the Agency and the Trustee and the respective duly authorized agents of each shall have the right, upon prior written notice, during normal business hours, to enter the Facility and any location containing records relating to any of the Company, the Mortgaged Property, this Agreement and the Project Documents, to inspect, audit and make copies of the Company's records or accounts pertaining to the Company, the Mortgaged Property, this Agreement, the Project Documents, and the Company's compliance with the Project Documents, and to require the Company, at the Company's sole expense, to furnish such documents to the Agency and the Trustee, as the Agency or the Trustee from time to time deems necessary in order to determine that the Company is in compliance with the Project Documents and to make copies of any records that the Agency or the Trustee, or their respective duly authorized agents, may reasonably require. The Company will make available to the Agency and the Trustee such other information concerning the Company, the Facility, this Agreement and the Project Documents as any of them may reasonably request.

## ARTICLE VII

### **EVENTS OF DEFAULT; REMEDIES**

#### Section 7.1. **Events of Default.**

(a) The following shall be "Events of Default" under this Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(i) Failure of the Company to pay any rental (A) that has become due to the Agency pursuant to Section 3.3(g) hereof, and the continuation of such failure for a period of fifteen (15) days after the due date of such payment; or (B) that has become due and payable by the terms of Sections 3.3 (excluding Section 3.3(g) hereof) or 3.5 hereof which results in an Event of Default under the Indenture;

(ii) Failure of the Company to maintain the insurance coverage required by Section 4.5 hereof; or failure of the Company to continuously operate, or cause the Facility to be operated, in accordance with Section 4.3 hereof;

(iii) Failure of the Company to pay any amount (except the obligation to pay rent under Sections 3.3 and 3.5 hereof) that has become due and payable or to observe and perform any other covenant, condition or agreement on its part to be performed under Sections 4.4, 4.5 or 4.8 hereof, and continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice specifying such

default from the Agency, the Trustee or the Holders of more than twenty-five per centum (25%) in aggregate principal amount of the Bonds Outstanding;

(iv) Failure of the Company 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)(i), (a)(ii), (a)(iii) or (a)(vii) hereof) and (A) continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default from the Agency, the Trustee or the Holders of more than twenty-five per centum (25%) in aggregate principal amount of the Bonds Outstanding, or (B) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, the Company fails to proceed with reasonable diligence after receipt of said notice to cure the same or fails to continue with reasonable diligence its efforts to cure the same, provided, however, in no event shall the Company have more than forty-five (45) additional days to cure the same;

(v) The Company shall (A) 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 assets, (B) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (C) make a general assignment for the benefit of its creditors, (D) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (E) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (F) 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, (G) take any action for the purpose of effecting any of the foregoing, (viii) be adjudicated a bankrupt or insolvent by any court, or (H) fail to lift, within sixty (60) days of entry thereof, any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder;

(vi) A proceeding or case shall be commenced, without the application or consent of the Company, in any court of competent jurisdiction, seeking (A) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (B) the appointment of a trustee, receiver, liquidator, custodian or the like of the Company or of all or any substantial part of its assets, or (C) 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 against the Company shall be entered and continue unstayed and in effect, for a period of ninety (90) days; the terms "dissolution" or "liquidation" of the Company as used above shall not be construed to prohibit any action otherwise permitted by Section 6.1 hereof;

(vii) Any material representation or warranty made by or on behalf of the Applicants or any Affiliate thereof (A) in the Application, commitment letter and related materials submitted to the Agency or the initial purchaser(s) of the Series 2008 Bonds for approval of the Project or its financing, or (B) herein or in any of the other Project Documents or (C) in the Letter of Representation and Indemnity Agreement, or

(C) in the Tax Regulatory Agreement, or (E) in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made;

(viii) Failure by any party to the Environmental Compliance Agreement to timely satisfy any of such party's obligations thereunder, and (A) continuation of such failure for a period of thirty (30) days after receipt by such party of written notice specifying the nature of such default from the Agency, the Trustee or the Holders of more than twenty-five per centum (25%) in aggregate principal amount of the Bonds Outstanding, or (B) if by reason of the nature of such default the same can be remedied, but not within the said thirty (30) days, such party fails to proceed with reasonable diligence to cure the same or fails to continue with reasonable diligence its efforts to cure the same, provided, however, in no event shall such party have more than forty-five (45) additional days to cure the same;

(ix) The Company shall conceal, remove or permit to be concealed or removed any part of its property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a lien upon any of its property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof;

(x) Intentionally omitted;

(xi) The imposition of a Lien on the Facility, or any part thereof, other than a Permitted Encumbrance, subject to the Company's right to cure pursuant to Section 6.7(b) of this Agreement;

(xii) The removal of the Facility, or any portion thereof, outside Nassau County, New York, without the prior written consent of the Agency, other than in connection with a removal permitted under Section 6.4 of this Agreement;

(xiii) Any loss of or impairment to the Agency's interests in and to the Facility;

(xiv) The Company or any partner of the Company shall become a Prohibited Person;

(xv) Any assignment of this Agreement, in whole or in part, or any subletting of the Facility, or any portion thereof, in violation of the terms of this Agreement;

(xvi) If any interest in the Company shall be sold, assigned, transferred, conveyed, mortgaged, pledged, hypothecated or alienated, or if any partner of the Company enters into an agreement or contract to do so, without the prior written consent



of the Agency, which consent may be withheld in the Agency's reasonable discretion; provided, however, that the Agency's consent shall not be required for any transfer of the Company's limited partners' interests in the Company to an affiliate of such limited partner; or

(xvii) An "Event of Default" under the PILOT Agreement, Indenture or under any other Project Document shall occur and continue beyond the expiration of any applicable grace or cure period.

(b) The Agency acknowledges that Hudson SLP LLC (special limited partner of the Company) shall have the right to cure any defaults on behalf of the Company during any grace or cure period otherwise extended to the Company pursuant to this Section 7.1.

Section 7.2. **Remedies on Default.** Whenever any Event of Default shall have occurred and be continuing, the Agency, or the Trustee where so provided, may, take any one or more of the following remedial steps:

(a) The Trustee, 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;

(b) The Agency may re-enter and take possession of the Facility without terminating this Agreement, and sub-sublease the Facility for the account of the Company, holding the Company liable for the difference in the rent and other amounts payable by the sub-sublessee in such sub-subletting, and the rents and other amounts payable by the Company hereunder;

(c) The Agency may terminate this Agreement, and exclude the Company from possession of the Facility, in which case this Agreement and all of the estate, right, title and interest herein granted or vested in the Company shall cease and terminate. No such termination of this Agreement shall relieve the Company of its liability and obligations hereunder and such liability and obligations shall survive any such termination;

(d) The Agency 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, or to enforce performance or observance of any obligations, agreements or covenants of the Company under this Agreement;

(e) The Trustee may take any action permitted under the Indenture with respect to an Event of Default thereunder; and

(f) In addition to any other rights or remedies granted by this Section 7.2 to the Agency, the Agency may enforce any of the Agency's Reserved Rights without the consent of the Trustee or any other Person, by an action for damages, injunction or specific performance, or by exercising a right of re-entry or termination of this Agreement as provided in Section

7.2(b) or (c) above or a right of surrender under Section 7.2(g) below, or by any other appropriate remedies accorded lessors generally by law.

(g) The Agency, upon declaring an Event of Default under the Agency's Reserved Rights and upon five (5) Business Days prior written notice to the Trustee, may terminate its leasehold interest in the Facility, subject to the liens of the Indenture and the Agency Mortgage, and the Company hereby unconditionally agrees to accept such termination as follows:

(i) such conveyance shall be by termination of lease and/or bill of sale and/or other appropriate instrument (with no express or implied warranties by the Agency) and shall not constitute a merger of interests, and

(ii) the Company hereby irrevocably designates the Agency as its attorney-in-fact for the purpose of causing instruments of such termination, together with any other documents in connection therewith, to be recorded, and to take such other and further actions reasonably necessary to complete the termination of the Agency's interest in the Facility.

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

No action taken pursuant to this Section 7.2 (including repossession of the Facility or termination of this Agreement pursuant to this Section 7.2 or by operation of law or otherwise) shall, except as expressly provided herein, relieve the Company from the Company's obligations hereunder, all of which shall survive any such action.

The Agency's re-entry pursuant to Section 7.2(b) above, its termination of this Agreement pursuant to Section 7.2(c) above or by operation of law or otherwise will not be deemed to terminate this Agreement as against the Trustee, each of which shall retain its rights as set forth herein.

Section 7.3. **Reletting of Facility.** If the right of the Company to the occupancy, use and possession of the Facility shall be terminated in any way, the Agency may relet the same or any part thereof for the account and benefit of the Company for such rental terms to such Persons and for such period or periods as may be fixed and determined by the Agency after notice to and approval by the Trustee (acting at the direction of the Majority Owner), but the Agency shall not unreasonably refuse to accept or receive any suitable occupant or tenant offered by the Company; provided that such reletting shall not adversely affect the tax-exempt status of the Bonds. The Agency and the Trustee shall not otherwise be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to the Company, and if a sufficient sum shall not be received from any reletting to satisfy the rental payments hereby agreed to be made by the Company, after paying the expenses of reletting and collection, then the Company hereby agrees to pay and satisfy any such deficiency if, as and when the same exists; provided, however, any excess rentals from any such reletting shall be credited to any rental due or to become due by the Company.

Section 7.4. **Remedies Cumulative.** The rights and remedies of the Agency and the Trustee under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency or the Trustee allowed by law with respect to any default under this Agreement. Failure by the Agency or the Trustee to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Company 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 Company with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by the Company be continued or repeated, or of the right to recover possession of the Facility by reason thereof.

Section 7.5. **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 the Company or any delay or omission on the part of the Agency and/or the Trustee in exercising any rights hereunder or under the Indenture or under any other Security Document shall operate as a waiver. To the extent permitted by applicable law, the Company hereby waives the benefit and advantage of, and covenants not to assert against the Agency or the Trustee, any valuation, inquisition, stay, appraisal, extension or redemption laws now existing or which may hereafter exist which, but for this provision, might be applicable to any sale or reletting made under the judgment, order or decree of any court or under the powers of sale and reletting conferred by this Agreement or otherwise.

Section 7.6. **Effect on Discontinuance of Proceedings.** In case any proceeding taken by the Trustee under the Indenture or this Agreement or under any other Security Document on account of any Event of Default hereunder or under the Indenture shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then, and in every such case, the Agency, the Trustee 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 Trustee shall continue as in effect prior to the commencement of such proceedings.

Section 7.7. **Agreement to Pay Attorneys' Fees and Expenses.** In the event the Agency or the Trustee should employ attorneys or incur other expenses for 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 Company herein contained or contained in any other Security Document, the Company agrees that it will on demand therefor pay to the Agency or the Trustee the fees and disbursements of such attorneys and such other expenses so incurred.

## ARTICLE VIII

### OPTIONS

Section 8.1. **Options.** (a) Subject to Section 2.03 of the Indenture, the Company has the option to make advance rental payments for deposit in the Redemption Account of the Bond Fund to effect the retirement of the Bonds in whole or the redemption in whole or in part of the Bonds, all in accordance with the terms of the Indenture; provided, however, that no partial redemption of the Bonds may be effected through advance rental payments hereunder if there shall exist and be continuing an Event of Default. The Company shall exercise its option to make such advance rental payments by delivering a written notice of an Authorized Representative of the Company to the Trustee in accordance with the Indenture, with a copy to the Agency, at least ten (10) days prior to the date upon which the Trustee is to mail notice of redemption to Bondholders, setting forth (i) the amount of the advance rental payment, (ii) the principal amount of 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 Bonds are to be redeemed. Such advance rental payment shall be paid to the Trustee in legal tender on or before the redemption date and shall be an amount which, when added to the amounts on deposit in the Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Agency, the Bond Registrar, the Trustee and the Paying Agent in connection with such redemption. In the event the Bonds are to be redeemed in whole or otherwise retired, the Company shall further pay on or before such redemption date, in legal tender, to the Agency, the Trustee, the Bond Registrar and the Paying Agent, 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 Project Documents, and (ii) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement.

(b) The Company shall have the option to terminate this Agreement and the Company Lease commencing on that date upon which the Bonds may first optionally be redeemed in whole and on any date thereafter permitted therefor as provided in the Indenture or on the date of defeasance.

(c) The Company shall also have the option to terminate this Agreement and the Company Lease 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 a certificate of an Independent Engineer filed with the Agency and the Trustee (A) the Facility cannot be reasonably restored within a period of one (1) year from the date of such damage or destruction to the condition thereof immediately preceding such damage or destruction, (B) the Company is thereby prevented or likely to be prevented from carrying on its normal operation of the Facility for a period of one (1) year 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 Company being thereby prevented or likely to be prevented from carrying on its normal operation of the Facility for a period of one year from the date of such taking or condemnation, as evidenced by a certificate of an Independent Engineer filed with the Agency 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 Company, 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 Company by reason of the operation of the Facility.

(d) The Company, in effecting the redemption pursuant to Section 8.1(c) hereof, shall file with the Agency and the Trustee the certificate prescribed by Section 8.1(c) (1) or (2) hereof together with a certificate of an Authorized Representative of the Company stating that, as a result of the occurrence of the event giving rise to the option to redeem, the Company 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 Company shall pay or cause to be paid to the Trustee as the purchase price, in legal tender, advance rental payments, for deposit in the Bond Fund (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 Outstanding Bonds, and the interest thereon at maturity or upon earlier redemption has not yet been made) equal to the sum of the following:

(4) an amount which, when added to the amount on deposit in the Bond Fund and available therefor, will be sufficient to pay, retire and redeem the Outstanding Bonds in accordance with the provisions of the Indenture, 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 Outstanding Bonds;

(2) expenses of redemption, the fees and expenses of the Agency, the Trustee, the Bond Registrar and the Paying Agents and all other amounts due and payable under this Agreement and the Indenture;

(3) any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement; and

(4) one dollar.

(e) Upon the payment in full of the principal of and interest on the Outstanding Bonds (whether at maturity or earlier redemption), the Company shall be required to exercise its option to terminate this Agreement and the Company Lease pursuant to subsection (a) above by (1) delivering to the Agency prior written notice of an Authorized Representative of the Company no more than thirty (30) days after the payment in full of the Bonds of the exercise

of such option, which notice shall set forth a requested closing date which shall be not later than sixty (60) days after the payment in full of the Bonds, and (2) paying on such closing date an amount equal to the sum of one dollar, the fees and expenses of the Agency, the Trustee, the Bond Registrar and the Paying Agent and all other amounts due and payable under this Agreement, and the other Project Documents, together with any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement. Upon the written request of the Company, the Agency may approve the extension or waiver of any of the time periods set forth in this paragraph. The Company hereby irrevocably designates the Agency as its attorney-in-fact for the purpose of executing such documents on behalf of the Company as may be necessary to effectuate the termination of this Agreement and the Company Lease.

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

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

Section 8.2. **Termination on Exercise of Option.** At the closing of any termination of the Agency's interest in the Facility pursuant to Section 8.1 hereof, the Agency will, upon payment of the sums above stated, deliver or cause to be delivered to the Company documents terminating this Agreement, the Company Lease and a bill of sale transferring to the Company all right, title and interest of the Agency in and to the Facility Equipment. 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 the Bonds.

Upon such termination pursuant to this Section 8.2, this Agreement and all obligations of the Company hereunder shall be terminated except the obligations of the Company under Sections 4.7, 4.8 (until such time as the Company shall again pay Real Estate Taxes as the record owner of the Facility Realty), 6.2, 6.3, 7.2, 9.17 and 9.18 hereof which shall survive such termination.

Any provision of this Agreement to the contrary notwithstanding, the Company's obligations under the Land Use Restriction Agreement shall survive any termination of the Agency's interest in the Facility.

Section 8.3. **Option to Purchase or Invite Tenders of Bonds.** The Company 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 Company or by any Affiliate, shall be delivered to the Trustee for cancellation within fifteen (15) days of the date of purchase. The Agency shall at all times make available or cause to be made available to the Company its

registration books (maintained at the principal corporate trust office of the Trustee) containing the names and addresses of the Bondholders if known.

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 Company shall terminate this Agreement by paying the fees and expenses of the Agency, the Trustee, the Bond Registrar and the Paying Agent and all other amounts due and payable under this Agreement and the other Project Documents, together with any amounts required to be rebated to the Federal government pursuant to the Indenture or the Tax Regulatory Agreement, and by giving the Agency notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to the survival of the obligations of the Company under Sections 4.7, 4.8 (until such time as the Company shall again pay Real Estate Taxes as the record owner of the Facility Realty), 6.2, 6.3, 7.2, 9.17 and 9.18 hereof.

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 Company for the Project and to accomplish the purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur a Recapture Event (as hereinafter defined), then the Company shall pay to the Agency as a return of public benefits conferred by the Agency, an amount as follows:

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

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

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

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

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

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

(vii) zero percent (0%) of the Benefits thereafter.

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

(i) [Reserved]

(ii) all miscellaneous benefits derived from the Agency's participation in the transactions contemplated by this Agreement, including, but not limited to, interest cost savings, any exemption from real property transfer taxes, any exemption from mortgage recording taxes and any exemption from Sales 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 Company shall have liquidated its operations and/or assets;

(ii) The Company shall have ceased all or substantially all of its operations at the Project (whether by relocation to another facility or otherwise, or whether to another facility either within or outside the County), except where such cessation occurs by reason of casualty or condemnation, and further subject to the provisions of Section 9.2 hereof;

(iii) The Company shall have transferred all or substantially all of its employees engaged in the renovation, construction, maintenance or operation of the Project to a location outside the County;

(iv) The Company shall have failed to pay any amount when owed to the Agency based on a claim under the Agency's Reserved Rights, which failure constitutes an Event of Default under this Agreement;

(v) The Company shall have effected a substantial change in the scope and nature of the operations of the Company at the Facility so that the Facility or any portion thereof is not a qualified "project" under the Act or a "qualified residential rental project" under the Code;

(vi) The Company 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

(vii) The Company fails to maintain the Minimum Employment Requirement when required during the term of this Agreement.

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 Facility or any interest therein, or (B) the inability at law of the Company to rebuild, repair, restore or replace the



Facility 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 Company.

(d) The Company 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.

## ARTICLE IX

### MISCELLANEOUS

Section 9.1. **Indenture; Amendment.** The Company shall have and may exercise all the rights, powers and authority stated to be in the Company in the Indenture and in the Bonds, and the Indenture and the Bonds shall not be modified, altered or amended in any manner which adversely affects such rights, powers and authority so stated to be in the Company or otherwise adversely affects the Company without the written consent of the Company.

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 in writing 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 Company to make the rental payments or other payments required under the terms hereof, or to comply with Sections 4.5 or 6.2 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 endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure", as employed herein, shall mean acts of God, 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.

Section 9.3. **Assignment or Sublease.** The Company shall not at any time assign or transfer this Agreement, in whole or in part, nor shall the Company sublet the whole or any part of the Facility, without the prior written consent of the Agency and the Trustee (acting at the direction of the Majority Owner), which consents may be withheld by the Agency or the

Trustee in their sole and absolute discretion, except for subleases of portions of the Facility in arms' length, bona fide transactions with third parties for use as the residence of such third parties in connection with the operation of the Project as a "qualified residential rental project" under the Code and pursuant to a form of residential lease approved in advance by the Agency, or one containing a series of standard clauses designated by the Agency; provided further, that if the Agency and the Trustee consent to any such assignment, transfer or subletting, (1) the Company 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 to which it shall be a party, (2) any assignee or transferee of the Company in whole of the Facility shall have assumed in writing and have agreed to keep and perform all of the terms of this Agreement on the part of the Company to be kept and performed, shall be jointly and severally liable with the Company for the performance thereof, shall be subject to service of process in the State, and shall be qualified to do business in the State, (3) the Company shall deliver to the Agency an Opinion of Counsel to the effect that such assignment, transfer or sublease shall not legally impair in any respect the obligations of the Company for the payment of all rentals nor for the full performance of all of the terms, covenants and conditions of this Agreement or of any other Security Document to which the Company shall be a party, nor impair or limit in any respect the obligations of any obligor under any other Security Document, (4) any assignee, transferee or sublessee shall utilize the Facility as a qualified "project" within the meaning of the Act and as a "qualified residential rental project" within the meaning of the Code and shall expressly assume in writing all of the Company's obligations under the Land Use Restriction Agreement, (5) such assignment, transfer or sublease shall not violate any provision of this Agreement, the Indenture, the Tax Regulatory Agreement or any other Security Document, (6) such assignment, transfer or sublease shall in no way diminish or impair the Company's obligation to carry the insurance required under Section 4.5 of this Agreement and the Company 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, (7) each such assignment, transfer or sublease contains such other provisions as the Agency or the Trustee may reasonably require, and (8) the Company shall deliver to the Agency an opinion of Nationally Recognized Bond Counsel to the effect that such assignment, transfer or sublease shall not cause the interest on the Bonds to be includable in gross income for Federal income tax purposes. The Company shall furnish or cause to be furnished to the Agency and the Trustee a copy of any such assignment, transfer or sublease in substantially final form at least ten (10) days prior to the date of execution thereof.

Any consent by the Agency 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 Company, or the successors or assigns of the Company, to obtain from the Agency and the Trustee consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of the Agency or the Trustee under the foregoing covenant by the Company.

The foregoing to the contrary notwithstanding, the consent of the Agency and the Trustee shall not be required with respect to leases of portions of the Facility in arms' length, bona fide transactions with third parties for use as the residence of such third parties in

connection with the operation of the Project as a “qualified residential rental project” under the Code.

If the Facility or any part thereof be sublet or occupied by any Person other than the Company, the Agency, in the event of the Company’s default in the payment of rent 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 under-tenant or occupant as tenant, or a release of the Company from the further performance of the covenants herein contained on the part of the Company.

Section 9.4. **Priority of Indenture and Agency Mortgage.** Pursuant to the Agency Mortgage, the Agency will grant mortgage liens on and security interests in the Facility (other than the Agency’s Reserved Rights) to the Trustee, and pursuant to the Indenture, the Agency will pledge and assign the rentals (other than the Agency’s Reserved Rights) and certain other moneys receivable under this Agreement to the Trustee as security for payment of the principal or Redemption Price of, and interest on the Bonds. This Agreement shall be subject and subordinate to the Agency Mortgage and the Indenture and such mortgage lien, security interest, pledge and assignment thereunder.

Section 9.5. **Benefit of and Enforcement by Bondholders.** The Agency and the Company agree that this Agreement is executed in part to induce 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 Company as set forth in this Agreement are hereby declared to be for the benefit of 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 Bondholders by the Trustee.

Section 9.6. **Amendments.** This Agreement may be amended only with the concurring written consent of the Trustee given in accordance with the provisions of the Indenture and only if the Company shall assume in writing the obligations of such amended Agreement.

Section 9.7. **Notices.** All notices, requests, consents, demands and other communications to any party hereunder or any other Person specified herein shall be in writing (including bank wire, telecopy or similar writing) and shall be given to such party or other Person, addressed to it, at its address or telecopy number set forth below or such other address or telecopy number as such party or other Person may hereafter specify for the purpose by notice to the other parties or such other Persons. Each such notice, request, consent or demand or other communication shall be effective (i) if given by telecopy, when such telecopy is transmitted to the telecopy number specified below and the appropriate answer back or confirmation of receipt is received followed by copy sent by first-class United States mail, (ii) if given by mail, three (3) Business Days after such communication is deposited in the mails by certified mail, return receipt requested, postage prepaid, addressed as aforesaid or (iii) if given by any other means, when delivered at the address specified below:

Party	Address
Company	Spinney Hill Homes II L.P. c/o North Hempstead Housing Authority Pond Hill Road Great Neck, NY 11020 Attention: Executive Director Telephone: (516) 627-6433 Telecopier: (516) 627-8476

with a copy to:

Berkman Henoeh Peterson & Peddy, P.C.  
100 Garden City Plaza  
Garden City, NY 11530  
Attention: Miriam Milgrom, Esq.  
Telephone: (516) 780-0259  
Telecopier: (516) 222-6209

with a copy to:

Spinney Hill II Development Associates, LLC  
c/o Whitney Capital Company, L.L.C.  
2001 Marcus Avenue  
Suite N 118  
Lake Success, NY 11042-1035  
Attention: Garry Munson  
Telephone: (516) 352-6100  
Telecopier: (516) 352-2102

with a copy to:

Cannon Heyman & Weiss, LLP  
54 State Street, 5th Floor  
Albany, NY 12207  
Attention: Geoffrey J. Cannon, Esq.  
Telephone: (518) 465-1500 x130  
Telecopier: (518) 465-6678

with a copy to:

Hudson Spinney II LLC  
c/o Hudson SLP LLC  
630 Fifth Avenue, 28<sup>th</sup> Floor  
New York, NY 10111  
Attention: Joseph Macari  
Telephone: (212) 218-4477

Telecopier: (212) 218-4467

Agency

Nassau County Industrial Development Agency  
1100 Franklin Avenue, Suite 300  
Garden City, NY 11530  
Attention: Executive Director  
Telephone: (516) 571-4160  
Telecopier: (516) 571-4161

with a copy to

Troutman Sanders LLP  
405 Lexington Avenue,  
New York, NY 10174  
Attention: Andras Komaromi, Esq.  
Telephone: (212) 704-6099  
Telecopier: (212) 704-5981

Trustee

The Bank of New York Mellon Trust Company, N.A.  
525 William Penn Place, 7th Floor  
Pittsburgh, PA 15259  
Attention: Dianna Paul  
Telephone: (412) 236-3031  
Telecopier: (412) 236-0870

with a copy to

Dinsmore & Shohl  
One Oxford Centre  
301 Grant Street  
Suite 2900  
Attention: Anthony Ditka, Esq.

By notice given under this Agreement, any entity whose address is listed in this Section may designate any different addresses to which subsequent notices, certificates, requests, demands or other communications shall be sent. All approvals required under this Agreement will be given in writing.

Section 9.8. **Prior Agreements Superseded.** This Agreement shall completely and fully supersede all other prior understandings or agreements, both written and oral (other than any Project Documents or other agreements executed concurrently herewith or with respect to the Project), between the Agency and the Company relating to the Facility.

Section 9.9. **Severability.** If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any

other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be held void, voidable, invalid or unenforceable by a court of competent jurisdiction, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Agreement.

Section 9.10. **Inspection of Facility.** The Company will permit the Trustee, or its duly authorized agents, at all reasonable times upon written notice to enter upon the Facility Realty and to examine and inspect the Facility and exercise their rights hereunder, under the Indenture and under the other Security Documents with respect to the Facility. The Company will further permit the Agency, or its duly authorized agents, at all reasonable times to enter upon the Facility but solely for the purpose of assuring that the Company is operating the Facility, or is causing the Facility to be operated, as a qualified “project” under the Act and a “qualified residential rental project” under the Code, consistent with the purposes set forth in the recitals to this Agreement and with the public purposes of the Agency, and to verify employment and other obligations hereunder, 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 Company.

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 inure to the benefit of the Agency, the Trustee, the Bondholders and the Indemnified Parties, and shall be binding upon, the Agency and the Company and their respective permitted 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, as the same may from time to time be in effect, without regard to its principles of conflicts of laws.

Section 9.15. **Investment of Funds.** The Company acknowledges and agrees that any moneys held as part of the Rebate Fund, the Earnings Fund, the Project 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 Company, be invested and reinvested by the Trustee as provided in the Indenture (but subject to the provisions of the Tax Regulatory Agreement). The Company further acknowledges and agrees that 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, fee, tax, or other charge arising therefrom, or from any reinvestment or liquidation of an investment.

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 any investment tax credit, low-income housing tax credit or comparable credit which may ever be available accrue to the benefit of the Company and the Company shall, and the Agency upon advice of counsel may, make any election and take other action in accordance with the Code as may be necessary to entitle the Company 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 and the right of re-entry or re-possession shall survive the termination or expiration of this Agreement.

Section 9.18. **Consent to Jurisdiction; Service of Process.** (a) The Company represents that it is subject to service of process in the State and covenants that it will remain so subject during the term of this Agreement. If for any reason the Company should cease to be so subject to service of process in the State, the Company hereby designates and appoints, with power of revocation, Spinney Hill Homes II Housing Development Fund, Inc., c/o North Hempstead Housing Authority, Pond Hill Road, Great Neck, NY 11020, as its agent for service of process, and, if such agent shall cease to act or otherwise cease to be subject to service of process in the State, the Company hereby irrevocably designates and appoints the Secretary of State of the State as the agent of the Company upon whom may be served all process, pleadings, notices or other papers which may be served upon the Company as a result of any of its obligations under this Agreement or any other Security Document; provided, however, that the serving of such process, pleadings, notices or other papers shall not constitute a condition to any of the Company's obligations hereunder or under any other Security Document.

(b) The Company irrevocably and unconditionally (a) agrees that any suit, action or other legal proceeding arising out of this Agreement or any other Security Document may be brought in the courts of record of the State of New York in Nassau County or the courts of the United States, Eastern District of New York; (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; and (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts. The Company shall accept and acknowledge service of any and all process in any such suit, action or proceeding brought in any such court. The Company agrees and consents that any such service of process upon such agent set forth in subsection (a) above and written notice of such service to the Company shall be taken and held to be valid personal service upon the Company whether or not the Company shall then be doing, or at any time shall have done, business within the State and that any such service of process shall be of the same force and validity as if service were made

upon the Company according to the laws governing the validity and requirements of such service in the State. Such agent shall not have any power or authority to enter into any appearance or to file any pleadings in connection with any suit, action or other legal proceedings against the Company or to conduct the defense of any such suit, action or other legal proceeding except as expressly authorized by the Company.

Section 9.19. **No Recourse under This Agreement or on Bonds Against Individuals.** All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent (other than the Company) of the Agency in his individual capacity, and no recourse shall be had for the payment of the principal or Redemption Price of, or interest on the Bonds or for any claim based thereon or hereunder against any member, director, officer, employee or agent (other than the Company) of the Agency or any natural person executing the Bonds.

Anything contained in any provision of this Agreement, any Security Document or any other agreement or undertaking executed in connection with the transactions of which this Agreement is a part to the contrary notwithstanding, in the event of any proceeding to foreclose the Agency Mortgage or any other mortgage encumbering the Facility or otherwise to enforce the provisions of this Agreement or any such other document, instrument or agreement, neither the Agency, the Trustee, nor any Bondholder nor any beneficiary of the Agency Mortgage nor any other person party to or bound by any such document, instrument or agreement, shall be entitled to take any action to procure any personal money judgment or any deficiency decree against the Company or any partner, officer, employee, related party or agent of the Company in their individual capacity, and no recourse shall be had for the payment of amounts due hereunder against any partner, officer, employee or agent of the Company, it being understood and agreed that recourse hereon shall be limited to assets of the Company that are the security from time to time provided with respect to the Bonds, this Agreement and the other Security Documents; provided, however, that nothing herein contained shall limit or be construed to limit or impair the enforcement against the Facility or any other additional security as may from time to time be given to the Agency or the Trustee as security for the performance of the Bonds, this Agreement or any other Security Document, or the rights and remedies of the Trustee or the beneficiary, its successor and assigns, under this Agreement, the Agency Mortgage, the Bonds or any other Security Document. Notwithstanding the foregoing, the provisions of this paragraph shall be null and void and have no force and effect to the extent of any loss suffered by the Agency, the Trustee, any Bondholder or any beneficiary of the Agency Mortgage as a result of the Company's: (a) commission of any act of fraud, (b) misapplication of any condemnation award or casualty insurance proceeds, (c) failure to apply the revenues of the Facility in the manner and for the purposes provided in this Agreement and the Indenture, whether before or after an Event of Default, (d) violation of any Environmental Laws (as defined in the Environmental Compliance Agreement), (e) action challenging the validity of or obligations of the Company under this Agreement or any other Security Document to which the Company is a party, or (f) failure to observe or perform its covenants and agreements with respect to the Agency's Reserved Rights after any applicable notice and opportunity to cure. Nothing herein shall be deemed to prohibit the naming of the Company in an action to realize upon the remedies



provided herein either at law or in equity, subject to the foregoing limitation against a personal money judgment or deficiency decree against the Company, or to prohibit the naming of any Person in any action to realize upon the remedies provided in any document, instrument or agreement made by any guarantor in favor of the Agency, the Trustee or any Bondholder.

Section 9.20. **Limitation on Liability of the Agency, the State and the County.** The liability of the Agency to the Company under this Agreement and to the Trustee and the Bondholders shall be enforceable only out of, and limited to, the Agency's interest under this Agreement (other than the Agency's Reserved Rights) and the mortgage liens and security interests granted by the Indenture and the Agency Mortgage. There shall be no other recourse against the Agency, its members, directors, officers, agents (other than the Company), servants and employees and persons under the Agency's control or supervision, past, present or future, or against any of the property now or hereafter owned by it or them. Any obligation the Agency may incur for the payment of money in the performance of this Agreement shall not create a debt of the State or of the County, and neither the State nor the County shall be liable on any obligation so incurred. Any such obligation shall be payable solely out of any rents or other proceeds or funds derived from this Agreement. All obligations of the Agency under this Agreement shall be deemed to be the obligation of the Agency, and not of any member, director, officer, servant, employee or agent (other than the Company) of the Agency or person under the Agency's control or supervision, past, present or future, in his individual capacity. No recourse shall be had against any such persons, or against any natural person executing the Bonds, for any claim against the Agency arising under this Agreement, including, without limitation, any claim for the payment of the principal of, redemption premium, if any, or interest on the Bonds.

Section 9.21. **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 December 22, 2008.

Section 9.22. **Promotion.** So long as this Agreement is in effect, the Company will permit the Agency, at the Company's sole cost and expense, to erect and maintain a sign on the Facility Realty and to otherwise publicize the Agency's role in the Project.

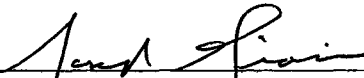
Section 9.23. **Depreciation Deductions and Tax Credits.** The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Facility pursuant to Sections 167 and 168 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Facility which constitutes "Section 38 Property" and low-income housing tax credits pursuant to Section 42 of the Code and to all other state and/or federal income tax deductions and credits which may be available with respect to the Facility. The Company shall have the burdens of the risk of loss and insuring the Facility, the payment of all real estate taxes or payments in lieu thereof. The Company shall have the benefits of operating profits and cash flow arising out of the operation of the Facility, all appreciation in the value of the sub-leasehold interest, sale proceeds and an equitable share of any condemnation proceeds from the Facility, which shall be deposited in the Renewal Fund pursuant to Section 5.1(c) of this Lease, all of the foregoing subject to the requirements of this Agreement and the Indenture. Further, the renovations, installation and equipping of the Facility are not being made

in lieu of rent; the Company bears the costs of acquiring and maintaining its sub-leasehold interest and the renovation; and the Company exercises both physical and day-to-day management of the Facility.

[Remainder of this page intentionally left blank]

**IN WITNESS WHEREOF**, the Agency has caused its corporate name to be hereunto subscribed by its duly authorized Chairman, Vice Chairman, Executive Director, Treasurer or Assistant Treasurer, and the Company has caused its name to be subscribed hereto by a duly Authorized Representative, all being done as of the year and day first above written.

**NASSAU COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By   
Name: Joseph Gioino  
Title: Executive Director

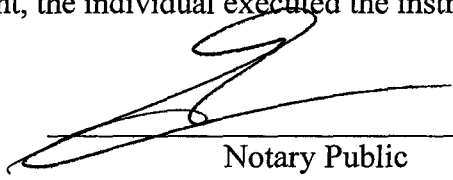
**SPINNEY HILL HOMES II L.P.**

By: SPINNEY HILL HOMES II HOUSING  
DEVELOPMENT FUND COMPANY,  
INC., its General Partner

By   
Name: Bette Segal  
Title: President

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


On the 19 day of December in the year 2008, before me, the undersigned, a Notary Public in and for said County, 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 executed the instrument.

  
\_\_\_\_\_  
Notary Public

EDWARD F. DULL  
Notary Public, State of New York  
No. 02DU6064374  
Qualified in Nassau County  
Commission Expires Sept. 24, 2009

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

On the 14 day of December in the year 2008, before me, the undersigned, a Notary Public in and for said County, personally appeared Bette Segal, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
EDWARD F. DULL  
Notary Public, State of New York  
No. 02DU6064374  
Qualified in Nassau County  
Commission Expires Sept. 24, 2009

## APPENDICES

## DESCRIPTION OF FACILITY REALTY

ALL that piece or parcel of property situate in the Town of North Hempstead, Nassau County, New York shown as Lots 3 to 6 inclusive, and part of Lots 1 and 2 on the Map of Property to be acquired by the Town of North Hempstead Housing Authority situated at Manhasset, Nassau County, New York filed in the Office of the Clerk of Nassau County on May 15, 1950 as Map Number 4954, also shown as Section 2 Block 347 Part of Lot 22 on the Nassau County Land and Tax Map and being more particularly described as follows:

BEGINNING at a point at the intersection of the northerly line of Pond Hill Road and the easterly line of Allen Drive;

THENCE North 04 degrees 16 minutes 30 seconds East along the easterly line of Allen Drive a distance of 201.98 feet to a point;

THENCE South 85 degrees 43 minutes 30 seconds East a distance of 51.52 feet to a point;

THENCE North 03 degrees 20 minutes 55 seconds West a distance of 3.18 feet to a point;

THENCE South 88 degrees 29 minutes 00 seconds East a distance of 268.57 feet to a point;

THENCE South 18 degrees 40 minutes 15 seconds East through Lot 22 a distance of 295.32 feet to the northerly line of Pond Hill Road;

THENCE the following three (3) courses and distances along the northerly line of Pond Hill Road;

1. North 88 degrees 45 minutes 30 seconds West a distance of 237.25 feet;
2. North 51 degrees 15 minutes 42 seconds West a distance of 117.41 feet, and
3. North 85 degrees 43 minutes 30 seconds West a distance of 100.75 feet to the point of BEGINNING.

Said parcel containing 94,001 square feet or 2.158 acres more or less.

Together with benefits of that certain Declaration of Reciprocal Easement dated December 22, 2008, made between Spinney Hill Homes I L.P. and Spinney Hill Homes II L.P., to be recorded simultaneously herewith.

## **DESCRIPTION OF FACILITY EQUIPMENT**

All machinery, equipment and other items of personal property acquired and installed as part of the Project pursuant to Section 2.1 of the Lease Agreement which was contemplated to be of the following types:

FURNITURE, EQUIPMENT AND MACHINERY	\$74,800.00 (2,200 per unit)
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This description of Facility Equipment may be supplemented by the Company delivering to the Trustee and the Agency from time to time a supplementary schedule or schedules further identifying the particular items constituting Facility Equipment.

Capitalized terms used but not defined herein shall have the meanings assigned to them in a certain Indenture of Trust, dated as of December 1, 2008, between the Nassau County Industrial Development Agency and The Bank of New York Mellon Trust Company, N.A., as trustee, as amended.



**APPENDIX A**

**Employment Report**

COMPANY NAME:

ADDRESS:

TYPE OF BUSINESS:

CONTACT PERSON:

TELEPHONE NUMBER:

DATE:

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