

Transcript Document No. 2

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

and

NICOLA ENTERPRISES OF LONG ISLAND CORP.

and

PALLETS R US INC.

LEASE AGREEMENT

Dated as of November 1, 2008

\$9,500,000

Town of Brookhaven Industrial Development Agency
Industrial Development Revenue Bonds, Series 2008
(Nicola Enterprises of Long Island Corp./Pallets R Us Inc. Facility)

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THIS LEASE AGREEMENT, dated as of November 1, 2008 (the "Lease Agreement"), is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation existing under the laws of the State of New York, having its principal office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the "Issuer"), NICOLA ENTERPRISES OF LONG ISLAND CORP., a business corporation duly organized and validly existing under the laws of the State of New York, having an office at 38-42 Wyandanch Avenue, Wyandanch, New York 11798 (the "Company"), and PALLETS R US INC., a business corporation duly organized and validly existing under the laws of the State of New York, having an office at 38-42 Wyandanch Avenue, Wyandanch, New York 11798 (the "Sublessee").

RECITALS

Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York;

The aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State;

The aforesaid act further authorizes each such agency to lease or sell any or all of its facilities at such rentals or such purchase price and on such other terms and conditions as it deems advisable, 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 premium, if any, of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities or to create security interests therein and to assign and pledge the revenues and receipts from the sale of its facilities;

Pursuant to and in accordance with the provisions of the aforesaid act, as amended, and of Chapter 358 of the Laws of 1970 of the State of New York, as it may be amended from time to time (collectively, the "Act"), the Issuer was created and is empowered under the Act to undertake the providing, financing and lease of the Facility defined below;

The Company proposes that the Issuer issue its Industrial Development Revenue Bonds, Series 2008 (Nicola Enterprises of Long Island Corp./Pallets R Us Inc. Facility) (the "Bonds") in the aggregate principal amount of \$9,500,000 to finance an industrial development facility consisting of the acquisition of an approximately 19.21 acre parcel of vacant land located in the Woodside Industrial Park, on the south side of Horseblock Road, east of Miller Avenue in Yaphank, Town of Brookhaven, Suffolk County, New York (more specifically described as S. C. Tax Map District 0200, Section 844.00, Block 03.00 and Lot 008.011 and p/o lot 022.007), and the construction and equipping of an approximately 113,601 square foot building located thereon, including the installation of state-of-the-art conveyors, an air compressor, a dry kiln, manufacturing equipment to nail pallets, sortation lines, a pallet dismantler, saws and office equipment and furnishings, all to be leased by the Issuer to the Company and subleased by the Company to the Sublessee for use by the Sublessee for the manufacturing, remanufacturing, repairing and recycling of all types of wooden pallets and related products and to consolidate the manufacturing, distribution and administrative functions of the Sublessee (the "Facility");

The Issuer proposes to lease the Facility to the Company and the Sublessee, and the Company and the Sublessee desire to rent the Facility from the Issuer, upon the terms and conditions hereinafter set forth in this Lease Agreement;

The Issuer proposes to provide the Facility and to finance the cost thereof by the issuance of the Bonds; and

The Company proposes to sublease the Facility to the Sublessee pursuant to a Sublease Agreement, dated as of November 1, 2008 (the "Sublease Agreement"), between the Company and the Sublessee, and the Sublessee desires to rent the Facility from the Company upon terms and conditions set forth in the Sublease Agreement.

AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

ARTICLE I DEFINITIONS

All capitalized terms used in this Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached as Schedule A to the Bond Purchase Agreement and Building Loan Contract, dated as of November 1, 2008 (the "Bond Purchase Agreement"), by and among the Issuer, the Company, New York Commercial Bank, as Custodian (the "Custodian") and Omega Commercial Mortgage Corp. (the "Bondholder"), which meanings are incorporated herein and made a part hereof by reference.

ARTICLE II REPRESENTATIONS AND COVENANTS

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

- (a) The Issuer is a public benefit corporation duly created and validly existing under the Constitution and laws of the State, including the Act.
- (b) The Issuer will exercise reasonable efforts to preserve and keep in full force and effect its existence as a public benefit corporation.
- (c) The Issuer is authorized under the Constitution and laws of the State to issue the Bonds and to enter into the Issuer Documents and the other documents contemplated thereby and the transactions contemplated hereby and to perform all of its obligations hereunder.

(d) The Issuer has duly authorized the issuance of the Bonds and the execution and delivery of the Issuer Documents and the other documents contemplated thereby under the terms and provisions of the resolution of its governing body or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of the Bonds and the other Issuer Documents against the Issuer, and the Issuer has complied with such public bidding requirements as may be applicable to the Bonds and the other Issuer Documents and the Facility. The Issuer has taken all necessary action and has complied with all provisions of the Act, including but not limited to the making of the findings required by the Act, required to make the Bonds and the other Issuer Documents the valid and binding obligations of the Issuer.

(e) The officer of the Issuer executing the Bonds and the other Issuer Documents and any related documents has been duly authorized to issue the Bonds and to execute and deliver the other Issuer Documents and such related documents under the terms and provisions of a resolution of the Issuer's governing body or by other appropriate official action.

(f) The Bonds and the other Issuer Documents are legal, valid and binding obligations of the Issuer, enforceable in accordance with their respective terms, except to the extent limited by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.

(g) The Issuer has assigned to the Bondholder all of the Issuer's rights in the Facility and this Lease Agreement (except the Issuer's Unassigned Rights) including the assignment of all rights in the security interest granted to the Issuer by the Company.

(h) The Issuer will not pledge, mortgage or assign this Lease Agreement or its duties and obligations hereunder to any person, firm or corporation, except as provided under the terms hereof.

(i) Neither of the issuance of the Bonds or the execution and delivery of the other Issuer Documents nor the consummation of the transactions contemplated hereby or the fulfillment of or compliance with the terms and conditions of the Bonds and the other Issuer Documents violates any law, rule, regulation or order, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Issuer is now a party or by which it is bound, constitutes a default under any of the foregoing or results in the creation or imposition of any prohibited Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Issuer under the terms of any instrument or agreement.

(j) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of the Issuer's knowledge, threatened against or affecting the Issuer and challenging the Issuer's authority to issue the Bonds or to enter into the other Issuer Documents or to take any other action wherein an unfavorable ruling or finding would adversely affect the

enforceability of the Bonds or the other Issuer Documents or any other transaction of the Issuer which is similar hereto, or the exclusion of the interest on the Bonds from gross income for federal income tax purposes under the Code, or would materially and adversely affect any of the transactions contemplated by this Lease Agreement.

(k) The Issuer will submit or cause to be submitted to the Internal Revenue Service a Form 8038 (or other information reporting statement) at the time and in the form required by the Code.

(l) The issuance of the Bonds for the purpose of financing the Facility has been approved by the "applicable elected representative" (as defined in Section 147(f) of the Code) of the Issuer after a public hearing held upon reasonable notice.

(m) The Issuer will comply fully at all times with the Tax Compliance Agreement, and the Issuer will not take any action, or omit to take any action, which, if taken or omitted, respectively, would violate the Tax Compliance Agreement.

(n) The Issuer will take no action that would cause the interest on the Bonds to become includable in gross income for federal income tax purposes under the Code (including, without limitation, intentional acts under Treas. Reg. § 1.148-2(c) or consenting to a deliberate action within the meaning of Treas. Reg. § 1.141-2(d)).

(o) Subject to the provisions of Section 12.10 hereof, the Issuer will cause the Land to be acquired, the Improvements to be constructed and the Equipment to be acquired and installed and will lease the Facility to the Company pursuant to this Lease Agreement, all for the Public Purposes of the State.

(p) To finance a portion of the Costs of the Facility, the Issuer will issue the Bonds in the aggregate principal amount of \$9,500,000. The Bonds will be issued, mature, bear interest, be redeemable and have other terms and provisions as provided for in the Bonds and the Bond Purchase Agreement.

(q) By resolution adopted on March 26, 2007, the Issuer determined that, based upon the review by the Issuer of the materials submitted and the representations made by the Company relating to the Facility, the Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQR Act.

Section 2.2 Representations, Warranties and Covenants of Company. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is business corporation duly organized, validly existing and in good standing under the laws of the State of New York, has the power to enter into this Lease Agreement and by proper corporate action has duly authorized the execution and delivery of the Company Documents. The Company is in good standing and is duly licensed or qualified to transact business in the State and in all jurisdictions where the character of the property

owned or leased or the nature of the business transacted by it makes such licensing or qualification necessary.

(b) The Company has been fully authorized to execute and deliver the Company Documents under the terms and provisions of the consent of its members, or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of the Company Documents, and the Company Documents have been duly authorized, executed and delivered.

(c) The representative of the Company executing the Company Documents and any related documents has been duly authorized to execute and deliver the Company Documents and such related documents.

(d) The Company Documents constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent limited by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.

(e) The execution and delivery of the Company Documents, the consummation of the transactions contemplated hereby and the fulfillment of the terms and conditions hereof do not and will not violate any law, rule, regulation or order, conflict with or result in a breach of any of the terms or conditions of the Certificate of Incorporation of the Company or of any restriction, agreement or instrument to which the Company is now a party or by which it is bound, constitute a default under any of the foregoing or result in the creation or imposition of any Liens, charges or encumbrances of any nature upon any of the property or assets of the Company contrary to the terms of any instrument or agreement.

(f) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of the Company's knowledge, threatened against or affecting the Company and challenging the Company's authority to enter into the Company Documents or to take any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of the Company Documents or any other transaction of the Company which is similar thereto, or the exclusion of the interest on the Bonds from gross income for federal income tax purposes under the Code, or would materially and adversely affect any of the transactions contemplated by this Lease Agreement.

(g) The Facility is properly zoned for its current and anticipated use, and the use of the Facility will not violate any applicable zoning, land use, environmental or similar law or restriction. The Company has or will have, prior to the operation thereof, all licenses and permits to use the Facility. The Company shall defend, indemnify and hold harmless the Issuer for any liability or expenses, including reasonable attorney's fees, resulting from any failure of the Company to comply with the provisions of this subsection.

(h) The Facility is of the type authorized and permitted to be financed with the proceeds of the Bonds pursuant to the Act.

- (i) The Company intends to operate the Facility, or cause the Facility to be operated, as a "project" within the meaning of the Act until the date on which all of the Debt Service Payments have been fully paid or the applicable prepayment price has been fully paid.
- (j) The Company will not take any action that would cause the interest on the Bonds to become includable in the gross income of the recipient for federal income tax purposes under the Code (including, without limitation, intentional acts under Treas. Reg. § 1.148-2(c) or deliberate action within the meaning of Treas. Reg. § 1.141-2(d)), and the Company will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the interest on the Bonds does not become includable in gross income of the recipient for federal income tax purposes under the Code (including, without limitation, the calculation and payment of any rebate required to preserve such exclusion).
- (k) The Company has paid or caused to be paid to the proper authorities when due all federal, state and local taxes required to be withheld by it. The Company has filed all federal, state and local tax returns which are required to be filed, and the Company has paid or caused to be paid to the respective taxing authorities all taxes as shown on said returns or on any assessment received by it to the extent such taxes have become due.
- (l) All financial and other information provided to the Bondholder by or on behalf of the Company in connection with the Company's request for the financing contemplated hereby is true and correct in all material respects, and the Company has not omitted to provide the Bondholder with any information which would be material to the Bondholder, and, as to projections, valuations or pro forma financial statements, the information provided presents a good faith opinion as to such projections, valuations and pro forma condition and results.
- (m) The Company has provided to the Bondholder financing statements sufficient when filed to perfect the security interest created pursuant to this Lease Agreement. When such financing statements are filed in the offices noted therein, the Bondholder, as assignee of the Issuer and holder of the Bonds, will have a valid and perfected security interest in the Facility. None of the Equipment is or will become a fixture on real estate. None of the Facility constitutes a replacement of, substitution for or accessory to any property of the Company subject to a lien of any kind.
- (n) The Company will aid and assist the Issuer in connection with preparing and submitting to the Internal Revenue Service a Form 8038 (or other applicable information reporting statement) at the time and in the form required by the Code.
- (o) The Company will comply fully at all times with the Tax Compliance Agreement, and the Company will not take any action, or omit to take any action, which, if taken or omitted, respectively, would violate the Tax Compliance Agreement, and the representations and warranties in the Tax Compliance Agreement are true and correct.

(p) Expenses for work done by officers or employees of the Company in connection with the Facility will be included as Costs of the Facility, if at all, only to the extent (i) such persons were specifically employed for such particular purpose, (ii) the expenses do not exceed the actual cost thereof, and (iii) such expenses are treated or capable of being treated (whether or not so treated) on the books of the Company as a capital expenditure in conformity with generally accepted accounting principles applied on a consistent basis.

(q) Any costs incurred with respect to that part of the Facility purchased with Bond Proceeds shall be treated or capable of being treated on the books of the Company as capital expenditures in conformity with generally accepted accounting principles applied on a consistent basis.

(r) No part of the Bond Proceeds will be used to finance inventory or rolling stock or will be used for working capital or to finance any other cost not constituting a Cost of the Facility.

(s) No person other than the Company or the Sublessee is in occupancy of any portion of the real property where any portion of the Facility is located.

(t) The Equipment is, and throughout the Lease Term shall be, property of the character subject to the allowance for depreciation under Section 167 of the Code.

(u) The Company, upon the execution of the Pledge and Assignment, dated as of November 1, 2008 (the "Assignment"), from the Issuer to the Bondholder, will perform and agrees to be bound by and obligated with respect to any provision of the Bond Purchase Agreement applicable to the Company.

(v) The Company will not permit any of the Facility or any records pertaining to the Facility to be located in any state or area in which, in the event of such location, a financing statement covering such Facility would be required to be, but has not in fact been, filed in order to perfect the security interest created pursuant to this Lease Agreement.

(w) Unless required by applicable law or unless the Bondholder has otherwise agreed in writing, the Company shall not allow changes in the use for which all or any part of the Facility was intended at the time this Lease Agreement was executed. The Company shall not, without Bondholder's prior written consent, (a) initiate or acquiesce in a change in the zoning classification of the Facility (including any variance under any existing zoning ordinance applicable to the Facility), (b) permit the use of the Facility to become a non-conforming use under applicable zoning ordinances, (c) file any subdivision or parcel map affecting the Facility, or (d) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Facility.

Section 2.3 Books and Records; Financial Statements and Other Information. The Company covenants that it shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and financial affairs of the Company, in accordance with generally accepted accounting

principles, consistently applied. The Issuer and the Bondholder and their duly authorized agents shall have the right at all reasonable times to examine and make copies of the books and records of the Company.

Section 2.4 Covenant with Owners. The Issuer and the Company agree that this Lease Agreement and the Tax Compliance Agreement are executed in part to induce the purchase by others of the Bonds. Accordingly, all covenants and agreements on the part of the Issuer and the Company set forth in this Lease Agreement and the Tax Compliance Agreement are hereby declared to be for the benefit of the Owners from time to time of the Bonds. The Company and the Issuer each agrees, for itself, that neither the Company nor the Issuer shall take any action which would adversely affect the exclusion from gross income of the interest on the Bonds for federal income tax purposes or cause the Bonds to become "arbitrage" bonds within the meanings of Section 148 of the Code.

ARTICLE III FACILITY SITE AND TITLE INSURANCE

Section 3.1 Agreement to Convey to Issuer. The Company has conveyed or has caused to be conveyed to the Issuer (i) good and marketable title to the Land, including any buildings, structures or other improvements thereon, and (ii) lien-free title to the Equipment, in each case except for Permitted Encumbrances and will convey or cause to be conveyed to the Issuer lien-free title to the Equipment and Improvements acquired after the date hereof.

Section 3.2 Title Insurance. The Company has obtained or will obtain fee title insurance for the benefit of the Issuer and mortgage title insurance for the benefit of the Bondholder in each case in an amount equal to the principal amount of the Bonds (i) insuring title to the Facility, and (ii) insuring the Lien of the Mortgage on the Facility, except for Permitted Encumbrances. To the extent not used to clear title to the Facility, or defend against claims against title, the balance of the Net Proceeds of such insurance shall be applied by the Bondholder to redeem the Bonds pursuant to Section 3.05 of the Bond Purchase Agreement.

Section 3.3 Subordination of Lease Agreement. This Lease Agreement and any and all modifications, amendments, renewals and extensions hereof is subject and subordinate to the Mortgage and the Bond Purchase Agreement and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 3.4 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Facility and the interest therein to be conveyed by this Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the financial obligations of the Company. The Facility and the leasehold interests therein secure the Company's obligations (i) to the Bondholder under the Mortgage and (ii) to the Issuer under the PILOT Agreement, the Recapture Agreement, the Environmental Compliance and Indemnification Agreement and this Lease Agreement, including the Company's obligation

to acquire, construct, equip and maintain the Facility on behalf of the Issuer and the Company's obligation to indemnify and hold harmless the Issuer.

ARTICLE IV
ACQUISITION, CONSTRUCTION AND EQUIPPING OF FACILITY;
ISSUANCE OF THE BONDS

Section 4.1 Acquisition, Construction and Equipping of Facility.

- (a) The Company agrees that, on behalf of the Issuer, it will acquire, construct and equip the Facility in accordance with the Plans and Specifications.
- (b) The Company may revise the Plans and Specifications from time to time with the written approval of the Issuer and Bondholder.
- (c) The title to all materials, equipment, machinery and other items of Property incorporated or installed in the Facility shall vest in the Issuer immediately upon the Company's obtaining an interest in or to the materials, equipment, machinery and other items of Property. The Company shall execute, deliver and record or file all instruments necessary or appropriate so as to vest such title in the Issuer and shall take all action necessary or appropriate to protect such title against claims of any third Persons.
- (d) The Issuer hereby appoints the Company its true and lawful agent and the Company hereby accepts such agency appointment (i) to acquire, construct and equip the Facility in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for constructing the Facility and acquiring and installing the Equipment with the same powers and with the same validity as the Issuer could do if acting on its own behalf, this agency appointment expressly excludes the Company from purchasing motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets, (iii) to pay all fees, costs and expenses incurred in the construction of the Facility and the acquisition and installation of the Equipment from funds made available therefor in accordance with this Lease Agreement, (iv) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Issuer under the terms of any contract, order, receipt or writing in connection with construction and completion of the Facility and the acquisition and installation of the Equipment, and (v) to enforce the provisions of any contract, agreement, obligation, bond or other performance security.
- (e) The Issuer shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1.
- (f) The Company and the Sublessee, as agents for the Issuer, shall comply with all provisions of the Labor Law, the Executive Law and the Civil Rights Law of the State applicable to the construction and equipping of the Facility and shall include in all construction contracts all provisions that be required to be inserted therein by such

provisions. The Company and the Sublessee shall comply with the relevant policies of the Issuer with respect to such laws, which are set forth as Exhibit D attached hereto. Except as provided in the preceding two sentences, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

(g) The Company shall remain liable to the Vendor or Vendors with respect to its duties and obligations and shall bear the risk of loss with respect to any item of the Facility covered by any purchase agreement with such Vendor or Vendors, and neither the Issuer nor Bondholder shall assume any such liability or risk of loss.

Section 4.2 Issuance of the Bonds; Disbursement of Bond Proceeds. In order to provide funds for the payment of the Costs of the Facility, together with other payments and incidental expenses in connection therewith, the Issuer agrees that it will issue, sell and cause the Bonds to be delivered on the terms set forth in the Bond Purchase Agreement. Bond Proceeds shall be disbursed in accordance with the provisions of the Bond Purchase Agreement and Section 4.3 hereof.

Section 4.3 Application of Bond Proceeds. Bond Proceeds, upon the written direction of an Authorized Representative of the Company, and on the conditions provided for in the Bond Purchase Agreement, shall be applied to pay only the following costs and items of expense paid by or on behalf of the Issuer on or after March 26, 2007 subject to the provisions of and except as may otherwise be provided under the Tax Compliance Agreement:

- (i) the cost of preparing the Plans and Specifications (including any preliminary study or planning of the Facility or any aspect thereof),
- (ii) all costs of acquiring, constructing and equipping the Facility (including environmental audits and architectural, engineering and supervisory services with respect to the Facility),
- (iii) all fees, taxes, charges and other expenses for recording or filing, as the case may be, the instrument or instruments conveying the Facility to the Issuer, and any other documents that the Issuer or Bondholder may deem desirable in order to protect or perfect the title to the Facility and any security interest contemplated by the Bond Purchase Agreement,
- (iv) all legal, accounting and any other fees, costs and expenses incurred in connection with the preparation, printing, reproduction, authorization, issuance, execution, sale and distribution of the Bonds and Bond Documents and all other documents in connection herewith or therewith, with the acquisition of title to the Facility and with any other transaction contemplated by this Lease Agreement or the Bond Purchase Agreement,
- (v) any administrative fee and fee for services of the Issuer, and

- (vi) reimbursement to the Company for any of the above-enumerated costs and expenses and refinancing of existing debt incurred to finance any of the above-mentioned costs and expenses.

Section 4.4 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Issuer, the Custodian and the Bondholder a Completion Certificate in the form attached hereto as Exhibit C. The Company agrees to complete the acquisition, construction and equipping of the Facility on or before December 31, 2009. Such certificate shall further certify as to the determination of the Rebate Amount as provided in the Tax Compliance Agreement and the Bond Purchase Agreement and shall direct the Bondholder to make any transfer to, or make payments of amounts for deposit in, the Rebate Fund.

Section 4.5 Completion by Company.

(a) At any time, in the sole opinion of the Bondholder, the funds in the Project Fund are insufficient to pay all costs of acquiring, constructing and equipping the Facility in accordance with the Plans and Specifications, the Company agrees to pay, for the benefit of the Issuer and Bondholder all such sums as may be in excess of the Net Proceeds of the Bonds. The Bondholder recognizes that the Company will disburse such additional sums, in a timely fashion, directly to the applicable Vendors. Title to all portions of the Facility acquired, constructed or installed or at the Company's cost or expense shall immediately upon such acquisition, construction or installation vest in the Issuer and shall be leased by the Issuer to the Company pursuant to the terms hereof. The Company shall execute, deliver and record or file such instruments as the Issuer or Bondholder may request in order to perfect or protect the Issuer's title to, or the Lien of the Mortgage on, such portions of the Facility.

(b) The Company shall not be entitled to any reimbursement for such excess cost or expense from the Issuer or Bondholder, nor shall it be entitled to any diminution or abatement of any other amounts payable by the Company under this Lease Agreement.

Section 4.6 Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Facility, or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company, at its sole expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Issuer, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Issuer and with the consent of the Issuer, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety or other Person which the Company deems reasonably necessary, and in such event the Issuer, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Issuer in any such action or proceeding. The Net Proceeds of any

recovery from a contractor, subcontractor, materialman or other Person shall be deposited in the Project Fund and applied as provided in the Bond Purchase Agreement.

ARTICLE V
DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of Facility. The Issuer hereby leases the Facility, consisting of the Land, as more particularly described on Exhibit A attached hereto, together with all Improvements located or to be located thereon, and the Equipment as more particularly described in Exhibit B attached hereto, to the Company, and the Company hereby agrees to lease the Facility from the Issuer upon the terms and conditions of this Lease Agreement.

Section 5.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Issuer shall deliver to the Company sole and exclusive possession of the Facility (subject to Sections 3.3, 8.3, 8.14 and 10.2 hereof), and the Lease Term (as defined hereinafter) shall commence on the Closing Date, and the Company shall accept possession of the Facility on the Closing Date.

(b) Except as provided in Section 10.2 hereof, Lease Payments for the purchase price of the Facility shall be made in installments as provided in Section 5.3 hereof and shall continue until November 1, 2028, or on such earlier date as may be permitted by Section 5.3(e)(i) and Section 11.1 hereof; provided, however, that, except as provided in Section 10.2 hereof, in no event shall this Lease Agreement be terminated until the Bonds shall have been paid in full or provision for such full payment shall have been made.

(c) Except as provided in Sections 3.3, 8.3, 8.14 and 10.2 hereof, the Issuer shall neither take nor suffer or permit any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

Section 5.3 Lease Payments and Other Amounts Payable. The Company shall pay as Lease Payments under this Lease Agreement the following amounts:

(a) The principal amount of the Bonds and the financing provided hereunder outstanding from time to time shall bear interest (computed on the basis of actual days elapsed in a 360-day year) at the rate indicated in the Bonds. Interest accruing on the principal balance of the Bonds and such financing outstanding from time to time shall be payable as provided in the Bonds and upon earlier demand in accordance with the terms hereof or prepayment in accordance with the terms of the Bonds and Section 5.3(e) hereof. Upon the occurrence of a Determination of Taxability, the Company shall, with respect to future interest payments, begin making Debt Service Payments calculated at the Taxable Rate, as provided for in the Bonds.

(b) The Company shall pay to the Bondholder, as assignee of the Issuer, Debt Service Payments in the amounts and on the dates set forth in the Bonds. The Issuer irrevocably constitutes and appoints the Bondholder and any present or future officer or agent of the Bondholder as its lawful attorney, with full power of substitution and resubstitution, and in the name of the Issuer or otherwise, to collect the Debt Service Payments and any other payments due hereunder and under the Bonds and to sue in any court for such Debt Service Payments or other payments, to exercise all rights hereunder with respect to the Facility and to withdraw or settle any claims, suits or proceedings pertaining to or arising out of this Lease Agreement upon any terms. Such Debt Service Payments and other payments shall be made by the Company directly to the Bondholder, as the Issuer's assignee and holder of the Bonds, and shall be credited against the Issuer's payment obligations under the Bonds. All amounts required to be paid by the Company hereunder shall be paid in lawful money of the United States of America in immediately available funds. No recourse shall be had by the Bondholder or the Company for any claim based on the Issuer Documents against any director, officer, employee or agent of the Issuer alleging personal liability on the part of such person.

(c) Whenever any payment to be made hereunder or under the Bonds shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest or the fees hereunder, as the case may be.

(d) The obligations of the Company to make the Debt Service Payments required under this Section 5.3 and to make other payments hereunder and to perform and observe the covenants and agreements contained herein shall be absolute and unconditional in all events, without abatement, diminution, deduction, setoff or defense for any reason, including (without limitation) any failure of the Facility to be acquired, constructed, or installed, any defects, malfunctions, breakdowns or infirmities in the Facility or any accident, condemnation, destruction or unforeseen circumstances. Notwithstanding any dispute between the Company and any of the Issuer, Bondholder, any Vendor or any other Person, the Company shall make all Debt Service Payments when due and shall not withhold any Debt Service Payments pending final resolution of such dispute, nor shall the Company assert any right of set-off or counterclaim against its obligation to make such payments required under this Lease Agreement.

(e) (i) The Company may, in its discretion, prepay the Bonds and all other amounts owing to the Bondholder under the Bonds and any of the Company Documents in whole or in part as and to the extent the Bonds may be prepaid as provided herein and as agreed upon by the Company and the Bondholder in the Bond Purchase Agreement.

(ii) The Company shall prepay the Bonds and the financing provided hereunder in whole or in part as and to the extent required pursuant to Section 7.1 or Section 7.2 hereof.

(iii) The Company shall prepay the Bonds and the financing provided hereunder in full immediately upon demand of the Bondholder after the occurrence of an Event of Default.

(iv) The amounts due hereunder and under the Bonds shall be paid in part with funds remaining in the Project Fund as provided in Section 4.03.B of the Bond Purchase Agreement.

(v) Upon any prepayment in part of the Bonds and the financing provided hereunder, the prepayment shall be applied first to interest accrued thereon and next to principal in the inverse order of maturity.

(f) In addition to the other payments of Lease Payments pursuant to this Section 5.3, throughout the Lease Term, the Company shall pay to the Issuer as additional rent, within ten (10) days of the receipt of demand therefor, an amount equal to the sum of the expenses of the Issuer and the members thereof incurred (i) by reason of the Issuer's leasing, ownership, financing or sale of the Facility, or (ii) in connection with the carrying out of the Issuer's duties and obligations under the Issuer Documents, the payment of which is not otherwise provided for under this Lease Agreement. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Issuer.

Section 5.4 Security. The obligations of the Company to make the Debt Service Payments required by this Article V and to make other payments hereunder and to perform or observe the covenants and agreements contained herein shall be secured by certain documents executed and delivered in connection herewith. Nothing herein shall limit the liability of the Company under the Environmental Compliance and Indemnification Agreement.

Section 5.5 Rights and Obligations of the Company upon Prepayment of Bonds. In the event the Bonds and all other amounts owing to the Bondholder shall have been paid in full prior to the termination date specified in Section 5.2(b) hereof or provision for such payment shall have been made in accordance with the Bond Purchase Agreement, (i) all references in this Lease Agreement to the Bonds, the Mortgage, the Guaranty, the Assignment and the Bond Purchase Agreement shall be ineffective, and (ii) the Company shall be entitled, at its option, to the exclusive use, occupancy and enjoyment of the Facility from the date of such payment until the scheduled expiration of the Lease Term, without the payment of any Lease Payments constituting Debt Service Payments under Section 5.3(b) hereof, but otherwise on all of the terms and conditions hereof, except that the Company shall not be required to carry any insurance for the benefit of the Bondholder, or the Company may, at its option, require the Issuer to convey its interest in the Facility to the Company pursuant to the terms of Section 11.3 hereof. In the event of any such payment or the making of any such provision, the Issuer, at the sole cost of the Company, shall obtain and record or file appropriate discharges or releases of the Mortgage, the Assignment and any other security interest relating to the Facility or this Lease Agreement.

Section 5.6 Security Interest. This Lease Agreement is intended to constitute a security agreement within the meaning of the Uniform Commercial Code. The Company acknowledges that this Lease Agreement is intended as security for payment of the principal of and redemption premium, if any, and interest on the Bonds. In addition, to secure payment of all Lease Payments and other sums owing by the Company hereunder and to secure the payment and performance of all debts, liabilities and obligations of the Company under all of the Bond Documents, the Company hereby grants a security interest to the Issuer in (i) the Facility, (ii) all general intangibles and other property relating thereto, (iii) all accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed or used in connection with any of the foregoing property, (iv) all warehouse receipts, bills of lading and other documents of title now or hereafter covering any of the foregoing property, (v) all securities, funds, moneys, deposits and other property at any time held in or subject to the Project Fund, (vi) all accessions thereto, (vii) all substitutions for any of the foregoing property, and (viii) products and proceeds of any of the foregoing property. The Company hereby assigns to the Bondholder all its right, title and interest in the Lease Agreement. The security interest referred to in this Section has been assigned by the Issuer to the Bondholder pursuant to the Assignment.

Section 5.7 Financing Statements. The Company hereby irrevocably appoints both the Issuer and the Bondholder, or either of them, as the Company's lawful attorneys-in-fact and agents, to prepare and submit any UCC Financing Statements or UCC Amendments or Assignments on the Company's behalf in order to protect the Issuer's and the Bondholder's security interests in payments made pursuant to this Lease Agreement and any assignment thereof and in any Property demised under this Lease Agreement, and on the Company's behalf to file such financing statements signed by the Issuer and the Bondholder, or either of them, in any appropriate public office. The Issuer hereby irrevocably appoints the Bondholder as the Issuer's lawful attorney-in-fact and agent, to prepare and submit any UCC Financing Statements or UCC Amendments or Assignments on the Issuer's behalf in order to protect the Bondholder's security interest in payments made pursuant to this Lease Agreement and in any Property demised under this Lease Agreement and on the Issuer's behalf to file such financing statements prepared by the Bondholder in any appropriate public office.

ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Facility by the Company. (a) The Company agrees that during the Lease Term it will (i) keep the Facility in a reasonably safe condition; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iii) operate the Facility in a sound and economic manner; and (iv) indemnify and hold the Issuer and the Bondholder harmless from any liability or expenses from the failure by the Company to comply with (i), (ii) or (iii) above. The Issuer or the Bondholder shall not be under any obligation to renew, repair or replace any inadequate, worn out, unsuitable or unnecessary portions of the Facility.

(b) With the written consent of the Issuer and the Bondholder, which shall not be unreasonable withheld, the Company from time to time during the Lease Term may make any structural additions, modifications or improvements to the Facility or any part thereof which it may deem desirable provided such actions do not adversely affect the structural integrity of the Facility. In addition, the Company may make minor modifications which do not affect the structural integrity of the Facility without the consent of the Issuer or the Bondholder. All such structural additions, modifications or improvements so made by the Company shall become a part of the Facility. The Company agrees to deliver to the Issuer all documents which may be necessary or appropriate to convey to the Issuer title to, or other satisfactory interest in, such Property and to perfect or protect the Lien of the Mortgage.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 8.9 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility, provided that the acquisition and installation of such property is not financed from the Project Fund. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur (i) if any Event of Default has occurred; or (ii) if any such removal shall adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided further, that if any damage is occasioned to the Facility by such removal, the Company agrees promptly to repair such damage at its own expense.

Section 6.3 Payment of Taxes and Other Claims. The Company will pay or discharge, when due, (a) all taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties belonging to it (including, without limitation, the Facility) or upon or against the creation, perfection or continuance of the security interest created pursuant to this Lease Agreement, prior to the date on which penalties attach thereto, (b) all federal, state and local taxes required to be withheld by it, and (c) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a Lien or charge upon any properties of the Company; provided, that the Company shall not be required to pay any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings. The Company will pay, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Facility, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Facility. The Company shall pay any mortgage recording tax that is ever due or assessed.

Section 6.4 Insurance Required. At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such

amounts as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, but in no event less than \$3,000,000. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" for the full replacement value of the improvements and shall contain a provision granting the insured permission to complete and/or occupy.

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

(c) Insurance protecting the Issuer, the Company and the Bondholder against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 8.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage); and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Issuer, the Company and the Bondholder against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

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

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

(ii) Comprehensive general liability providing coverage for:

Premises and Operations
Products and Completed Operations

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

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

- (iii) Comprehensive business auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).
- (iv) Excess "umbrella" liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000.

(e) A policy or policies of flood insurance in an amount not less than \$1,000,000 or the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Issuer and the Bondholder that no portion of the Facility is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

(f) All insurance required by this Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 6.4 shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Section 6.4 shall provide for payment of the losses to the Company, the Issuer or the Bondholder as their respective interests may appear and shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Issuer. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Issuer and the Bondholder as additional insureds. All policies evidencing the insurance required by Sections 6.4(d)(ii) (iii) and (iv) shall name the Issuer, the Company and the Bondholder as additional named insureds. The policies under Section 6.4(a) shall contain appropriate waivers of subrogation.

(g) The policies (or certificates or binders) of insurance required by Sections 6.4(a), (c) and (e) hereof shall be deposited with the Issuer and the Bondholder on or before the Closing Date. A copy of the policy (or certificate or binder) of insurance required by Sections 6.4(d)(ii), (iii) and (iv) hereof shall be delivered to the Issuer and the Bondholder on or before the Closing Date. The Company shall deliver to the Issuer and the Bondholder before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.4(f) hereof. Prior to the expiration of each such policy or policies, the Company shall furnish to the Issuer, the Bondholder and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies are no longer required by this Lease Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Lease Agreement as the Issuer or the Bondholder may from time to time reasonably require.

Section 6.5 Performance by Bondholder. If the Company at any time fails to perform or observe any of the covenants or agreements contained in this Lease Agreement, and if such failure shall continue for a period of ten (10) business days after the Bondholder gives the Company written notice thereof (or in the case of the agreements contained in Sections 6.1 and 6.4 hereof, immediately upon the occurrence of such failure, without notice or lapse of time), the Bondholder may, but need not, perform or observe such covenant on behalf and in the name, place and stead of the Company (or, at the Bondholder's option, in the Bondholder's name and on behalf of the Issuer) and may, but need not, take any and all other actions which the Bondholder may reasonably deem necessary to cure or correct such failure (including, without limitation, the payment of taxes, the satisfaction of security interests, liens or encumbrances, the performance of obligations owed to account debtors or other obligors, the procurement and maintenance of insurance, the execution of assignments, security agreements and financing statements, and the endorsement of instruments); and the Company shall thereupon pay to the Bondholder on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the Bondholder in connection with or as a result of the performance or observance of such agreements or the taking of such action by the Bondholder, together with interest thereon from the date expended or incurred at the lesser of Prime Rate plus five percent (5%) per annum or the highest rate permitted by law. To facilitate the performance or observance by the Bondholder of such covenants of the Company, the Company hereby irrevocably appoints the Bondholder, or the delegate of the Bondholder, acting alone, as the attorney in fact of the Company with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file in the name and on behalf of the Company any and all instruments, documents, assignments, security agreements, financing statements, applications for insurance and other agreements and writings required to be obtained, executed, delivered or endorsed by the Company under this Lease Agreement.

ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Facility.

(a) If the Facility or any part or component shall be damaged or destroyed (in whole or in part) at any time during the Lease Term:

- (i) the Issuer shall have no obligation to replace, repair, rebuild, restore or relocate the Facility; and
- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated); and
- (iii) the Company shall promptly give written notice thereof to the Issuer; and
- (iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Company and the Company must hold the Net Proceeds in trust for the purposes set forth in (v) below; and
- (v) except as otherwise provided in Section 11.1 and subsection (e) hereof, the Company shall have the option to pro rata redeem a principal amount of Bonds equal to such Net Proceeds or to promptly replace, repair, rebuild or restore the Facility or the damaged part or component thereof; and
- (vi) the Issuer shall have the right to terminate this Lease Agreement pursuant to Section 10.2 hereof if the Company does not promptly redeem Bonds or replace, repair, rebuild, restore or relocate the Facility or the damaged part or component thereof as described in (v) above.

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

- (i) the Facility shall be in substantially the same condition and value as an operating entity as existed prior to such damage or destruction;
- (ii) the Facility shall continue to constitute a "project" as such term is defined in the Act, and the exclusion of the interest on the Bonds from gross income for Federal income tax purposes shall not, in the opinion of Bond Counsel, be adversely affected;

- (iii) the Facility will be subject to no Liens other than Permitted Encumbrances; and
- (iv) any other conditions the Bondholder may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts, and shall automatically become a part of the Facility as if the same were specifically described herein. Any balance of such Net Proceeds remaining after payment of all costs of replacement, repair, rebuilding, restoration or relocation shall be retained by the Company.

(d) The Company shall have the right to settle and adjust all claims under any policies of insurance required by Section 6.4(a) hereof on behalf of the Issuer and on its own behalf up to an aggregate amount of \$50,000. Any such claims in excess of \$50,000 shall require the consent of the Bondholder, which consent shall not be unreasonably withheld.

(e) If the Company shall exercise its option to terminate this Lease Agreement pursuant to Section 11.1 hereof, the Net Proceeds derived from such insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof and any balance remaining thereafter shall be retained by the Company. If an Event of Default hereunder shall have occurred and the Issuer shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof and any balance remaining thereafter shall be retained by the Company.

(f) If the Facility has been substantially damaged or destroyed and is not replaced, repaired, rebuilt, restored or relocated, the Facility will be reconveyed to the Company.

(g) The Company shall provide an accounting to the Issuer and the Bondholder of the Net Proceeds of any insurance within sixty (60) days of the redemption of the Bonds or the completion of the replacement, repair, rebuilding, restoration or relocation of the Facility pursuant to the terms of this Section.

Section 7.2 Condemnation.

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

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

- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated or Substitute Facilities acquired); and
- (iii) the Company shall promptly give written notice thereof to the Issuer; and
- (iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid to the Company and the Company must hold the Net Proceeds in trust for the purposes set forth in (v) below; and
- (v) except as otherwise provided in Section 11.1 and subsection (e) hereof, the Company shall have the option to pro rata redeem a principal amount of Bonds equal to such Net Proceeds or to promptly replace, repair, rebuild or restore the Facility or to acquire Substitute Facilities; and
- (vi) the Issuer shall have the right to terminate this Lease Agreement pursuant to Section 10.2 hereof if the Company does not promptly redeem Bonds or replace, repair, rebuild, restore or relocate the Facility or any part or component thereof, or acquire Substitute Facilities as described in (v) above.

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

- (i) the Facility or Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to such damage or destruction;
- (ii) the Facility or Substitute Facilities shall continue to constitute a "project" as such term is defined in the Act, and the exclusion of the interest on the Bonds from gross income for Federal income tax purposes shall not, in the opinion of Bond Counsel, be adversely affected;
- (iii) the Facility or Substitute Facilities will be subject to no Liens other than Permitted Encumbrances; and
- (iv) any other conditions the Bondholder may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility, or acquire Substitute Facilities shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts, and shall automatically become a part of the Facility as if the same were specifically

described herein. Any balance of the Net Proceeds from such condemnation remaining after payment of all costs of replacement, repair, rebuilding, restoration or relocation of the Facility or acquisition of Substitute Facilities shall be retained by the Company.

(d) Except upon the occurrence of an Event of Default, the Company shall have the right to settle and adjust all claims under any Condemnation proceedings on behalf of the Issuer and on its own behalf.

(e) If the Company shall exercise its option to terminate this Lease Agreement pursuant to Section 11.1 hereof, the Net Proceeds from such Condemnation shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof and any balance remaining thereafter shall be retained by the Company. If an Event of Default hereunder shall have occurred and the Issuer shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 hereof and any balance remaining thereafter shall be retained by the Company.

(f) If the Facility has been substantially condemned and, is not replaced, repaired, rebuilt, replaced or relocated or if Substitute Facilities are not acquired, constructed and equipped, the Facility will be reconveyed to the Company.

(g) The Company shall provide an accounting to the Issuer and the Bondholder of the Net Proceeds of any Condemnation within sixty (60) days of the redemption of the Bonds or the completion of the replacement, repair, rebuilding, restoration or relocation of the Facility or the acquisition of Substitute Facilities pursuant to the terms of this Section.

Section 7.3 Condemnation of Company-Owned Property. The Company shall be entitled to the proceeds of any Condemnation award or portion thereof made for damage to or taking of any Property which, at the time of such damage or taking, is not part of the Facility.

Section 7.4 Waiver of Real Property Law Section 227. The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any law of like import now or hereafter in effect.

ARTICLE VIII SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability by Issuer. THE ISSUER AND THE BONDHOLDER MAKE NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF OR TITLE TO, THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS. IN NO EVENT SHALL THE BONDHOLDER OR THE ISSUER BE LIABLE FOR ANY LOSS OR DAMAGE IN CONNECTION WITH OR ARISING OUT OF THE LEASE AGREEMENT, THE FACILITY OR THE EXISTENCE, FURNISHING, FUNCTIONING OR THE COMPANY'S USE OF ANY ITEMS, PRODUCTS OR SERVICES PROVIDED FOR IN THIS LEASE AGREEMENT.

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Issuer and the Bondholder shall not be liable for and agrees to defend, indemnify, release and hold the Issuer and the Bondholder harmless from and against any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Facility or the Land, (ii) liability arising from or expense incurred in connection with the Issuer's financing, acquisition, construction, equipping, leasing and subleasing of the Facility, or (iii) any liability arising from the Issuer and the Bondholder under the Bond Documents, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 4.1(d) of this Lease Agreement and all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Issuer and the Bondholder are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Issuer or the Bondholder or any of their respective members, directors, trustees, officers, agents or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Issuer or the Bondholder, or any of their respective members, directors, trustees, officers, agents or employees, and irrespective of the breach of a statutory obligation (other than a breach caused by any of their respective gross negligence or intentional or willful wrongdoing) or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law.

(b) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Issuer, the Bondholder or their respective members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Issuer or the Bondholder or their respective members, directors, officers, agents or employees by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

(d) The Bondholder shall be a third party beneficiary of the Company's obligations under this Section 8.2.

Section 8.3 Books and Records; Inspection and Examination. The Company will keep accurate books of record and account for itself pertaining to the Facility and pertaining to the Company's business and financial condition and such other matters as the Bondholder may from time to time request in which true and complete entries will be made in accordance with generally accepted accounting principles consistently applied and, upon request of the Bondholder, will permit any officer, employee, attorney or accountant for the Bondholder to audit, review, make extracts from, or copy any and all corporate and financial books, records and properties of the Company at all times during ordinary business hours, and to discuss the affairs of the Company with any of its directors, officers, employees or agents. The Company will permit the Bondholder, or its employees, accountants, attorneys or agents, to examine and copy any or all of its records and to examine and inspect the Facility at any time during the Company's business hours.

Section 8.4 Company to Maintain its Existence; Other Covenants. The Company agrees that so long as the Bonds remain Outstanding it will maintain its existence as a business corporation subject to service of process within the State and, without the written consent of the Issuer and the Bondholder (which consent shall not be unreasonably conditioned, withheld or its consideration unreasonably delayed), will not dissolve, liquidate, or otherwise dispose substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it.

Section 8.5 Qualification in State, Notice and Service of Process.

(a) Throughout the Lease Term, the Company will remain qualified to do business and the Company will remain subject to service of process in the State. In the event of any litigation in connection with the Company Documents, the Issuer Documents, the Bond Purchase Agreement, the Guaranty or the Bonds or any transactions contemplated hereby or thereby, the Company waives all rights to a trial by jury and agrees not to assert any counterclaim (except compulsory counterclaim) of any nature against the Issuer or the Bondholder in such litigation. Any action or suit in connection with the Company Documents, the Issuer Documents, the Bond Purchase Agreement, the Guaranty or the Bonds, or any transactions contemplated hereby or thereby, may be brought in a court of record in the State of New York sitting in Suffolk County, New York or in the United States District Court for the Eastern District of New York, the Company hereby consenting to the nonexclusive jurisdiction of each thereof.

(b) The Company agrees that service of process may be made on the Company by mailing a copy of the summons to the Company by certified or registered mail at the address set forth in Section 12.1 hereof or at such other address within the State as may be designated by the Company pursuant to Section 12.1 of this Lease Agreement. In addition, the Company hereby designates and appoints, without power of revocation, 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 that may be served upon the Company as a result of any of its obligations under this Lease Agreement. Any notice, process, pleadings or other papers served upon the Secretary of State shall, at the same time, be sent by certified or registered

mail to the Company at such address as is specified in or pursuant to Section 12.1 of this Lease Agreement .

Section 8.6 Agreement to File Annual Statements and Provide Information. The Company shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) and (9) of the New York State General Municipal Law. The Company shall submit a copy of such annual statement to the Issuer at the time of filing with the Department of Taxation and Finance. The Company further agrees whenever requested by the Issuer to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Issuer to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005, as amended from time to time, or any of the Issuer Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Issuer.

Section 8.7 Compliance with Orders, Ordinances, Etc.

(a) The Company, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee or occupant of the Facility to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof or to the acquisition, construction and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Facility or any part thereof, and of companies or associations insuring the premises.

(b) The Company shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of Hazardous Substances in, on or under the Facility or any adjacent property, or incorporated in any Improvements, at the Company's expense. In the event that the Bondholder at any time has a reasonable belief that the Facility is not free of all Hazardous Substances or that the Company has violated any applicable Environmental Laws with respect to the Facility, then immediately, upon request by the Bondholder, the Company shall obtain and furnish to the Bondholder, at the Company's sole cost and expense, an environmental audit and inspection of the Facility from an expert satisfactory to the Bondholder. In the event that the Company fails to immediately obtain such audit or inspection, the Bondholder or its agents may perform or obtain such audit or inspection at the Company's sole cost and expense. The Bondholder may, but is not obligated to, enter upon the Facility and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest in the Facility; and whether or not the Company has actual knowledge of the existence of hazardous waste or materials on the

Facility or any adjacent property as of the date hereof, the Company shall reimburse the Bondholder as provided herein for the full amount of all costs and expenses incurred by the Bondholder prior to the Bondholder acquiring title to the Facility, in connection with such compliance activities. Neither this provision nor any provision herein or in related documents shall operate to put the Bondholder in the position of an owner of the Facility prior to any acquisition of the Facility by the Bondholder. The rights granted to Bondholder herein or in related documents are granted solely for the protection of Bondholder's lien and security interest covering the Facility and do not grant to Bondholder the right to control the Company's actions, decisions or policies regarding Hazardous Substances.

(c) The Company shall keep or cause the Facility to be kept free of Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations. Without limiting the foregoing, the Company shall not cause or permit the Facility to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Substances, except in compliance with all applicable federal, state and local laws or regulations, nor shall the Company cause or permit, as a result of any intentional or unintentional act or omission on the part of the Company or any contractor, subcontractor, tenant or subtenant, a release of Hazardous Substances onto the Facility or onto any other property. The Company shall comply with and ensure compliance by all contractors, subcontractors, tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with and ensure that all contractors, subcontractors, tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Company shall (i) conduct and complete all investigations, studies, sampling, testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Substances, on, from, or affecting the Facility (A) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies, (B) to the satisfaction of the Issuer, and (C) in accordance with the orders and directives of all federal, state, and local governmental authorities; and (ii) defend, indemnify, and hold harmless the Issuer, its employees, agents, officers, and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to (A) the presence, disposal, release, or threatened release of any Hazardous Substances which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise, (B) any bodily injury, personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substances, (C) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substances, and/or (D) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of the Issuer, which are based upon or in any way related to such Hazardous Substances, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. The provisions of this Section 8.7 shall be in addition to any and all other obligations and liabilities the Company may have to the Bondholder and the Issuer at common law, and shall survive the transactions contemplated herein and under the Environmental Compliance and Indemnification Agreement.

(d) Notwithstanding the provisions of subsections (a), (b) and (c) hereof, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a), (b) and (c) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Issuer or the Bondholder shall notify the Company that by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be satisfactory to the Bondholder and to the Issuer. If at any time the then existing use or occupancy of the Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Company shall use its best efforts to not cause or permit such use or occupancy to be discontinued without the prior written consent of the Issuer and the Bondholder.

(e) Notwithstanding the provisions of this Section 8.7, if, because of a breach or violation of the provisions of subsections (a), (b) or (c) hereof (without giving effect to subsection (d) hereof), either the Issuer, the Bondholder, or any of their respective members, directors, officers, agents, or employees shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Issuer or the Bondholder, the Company shall immediately provide legal protection and/or pay amounts necessary in the opinion of the Issuer or the Bondholder, as the case may be, and of their respective members, directors, officers, agents and employees; to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(f) Notwithstanding any provisions of this Section 8.7, the Bondholder and the Issuer retain the right to defend themselves in any action or actions which are based upon or in any way relate to such Hazardous Substances. In any such defense of themselves, the Bondholder and the Issuer shall each select their own counsel, and any and all costs of such defense, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, shall be paid by the Company.

Section 8.8 Discharge of Liens and Encumbrances. The Company, throughout the Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof. The Company shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such Lien. The Company shall reimburse the Bondholder for any expenses incurred by the Bondholder to discharge or remove any Lien.

Section 8.9 Identification of Equipment. All items of Equipment that are or may become the Property of the Issuer pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Bondholder.

Section 8.10 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with

respect to any depreciable property comprising a part of the Equipment and to any investment credit with respect to any part of the Facility.

Section 8.11 Employment Opportunities; Notice of Jobs. The Company covenants and agrees that, in consideration of the participation of the Issuer in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively, the "Referral Agencies"). The Company also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 8.12 Additional Encumbrances. The Company agrees it will not allow or permit any additional encumbrances to be placed on the Facility or incur any additional debt without first obtaining the written consent of the Bondholder.

Section 8.13 Personal Property. The parties hereby agree that the Equipment is, and during the period this Lease Agreement is in force will remain, personal property and, when subjected to use by the Company hereunder, will not be or become fixtures; provided, however, that if contrary to the parties' intent the Equipment is or may be deemed to be a fixture, the Company shall cause filings to be made with the applicable government officials or filing offices to create and preserve for the Bondholder as assignee of the Issuer a perfected first priority security interest in the Equipment.

Section 8.14 Occupancy.

(a) The Company hereby irrevocably grants to the Bondholder the right to occupy the Facility at any time after the occurrence and during the continuance of an Event of Default.

(b) The right of the Bondholder to occupy the Facility shall cease and terminate upon the earlier of (i) payment in full and discharge of all obligations of the Company and the Issuer hereunder, and (ii) final sale or disposition of all of the Facility and delivery of such Facility to purchasers.

(c) The Bondholder shall not be obligated to pay or account for any rent or other compensation for the occupancy of the Facility. The Company will pay, or reimburse the Bondholder for, all taxes, fees, duties, levies, charges and expenses at any time incurred by or imposed upon the Bondholder by reason of the execution, delivery, existence, recordation, performance or enforcement of this Section 8.14.

Section 8.15 Rebate Covenant. The Company covenants to make, or cause to be made, any and all payments required to be made to the United States Department of the Treasury in connection with the Bonds pursuant to Section 148(f) of the Code and to comply

with instructions received from Bond Counsel pursuant to the certification with respect to the making of any such payments.

ARTICLE IX ASSIGNMENTS AND SUBLEASING; PLEDGE OF INTERESTS

Section 9.1 Restriction on Sale of Facility. Except as otherwise specifically provided in this Article IX and in Article X hereof, the Issuer shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Lease Agreement without the prior written consent of the Company and the Bondholder.

Section 9.2 Removal of Equipment.

(a) The Issuer shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company, with the prior written consent of the Bondholder (which consent may not be unreasonably withheld but may be subject to such reasonable conditions as the Bondholder may deem appropriate), may remove such items from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, free from the Lien of the Mortgage, provided that such removal will not materially impair the operation of the Facility for the purpose for which it is intended or change the nature of the Facility so that it does not constitute a "project" under the Act.

(b) The Issuer and the Bondholder shall execute and deliver to the Company all instruments prepared by or on behalf of the Company which are necessary or appropriate to enable the Company to sublease or otherwise dispose of, free and clear of any lien, claim or encumbrance, including, but not limited to, any releases of and from this Lease Agreement, any such item of Equipment. The Company shall pay any costs (including reasonable counsel fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

(c) The removal of any item of Equipment pursuant to this Section shall not entitle the Company to any abatement or diminution in or postponement of the Lease Payments payable by it under this Lease Agreement or any payments due by the Company or the Sublessee under the PILOT Agreement or the Recapture Agreement.

Section 9.3 Assignment and Subleasing.

(a) This Lease Agreement may not be assigned, in whole or in part, and the Facility may not be subleased (except pursuant to the Sublease Agreement), in whole or in part, without the prior written consent of the Bondholder and the Issuer in each instance. Any assignment or sublease, if approved, shall be on the following conditions:

- (i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder;
- (ii) the assignee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;
- (iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Issuer and to the Bondholder a true and complete copy of such assignment or sublease and the instrument of assumption;
- (iv) neither the validity nor the enforceability of the Bonds or any Bond Document shall be adversely affected thereby;
- (v) the exclusion of the interest on the Bonds from gross income for Federal income tax purposes will not be adversely affected;
- (vi) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act;
- (vii) any sublessee will execute and deliver an agency compliance agreement, in form and substance satisfactory to the Issuer; and
- (viii) such other conditions as the Bondholder or the Issuer shall reasonably require.

(b) If the Bondholder or the Issuer shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 9.3, the Company at its cost shall furnish the Bondholder or the Issuer, as appropriate, with an opinion, in form and substance reasonably satisfactory to the Bondholder or the Issuer, as appropriate, (i) of Bond Counsel as to items (v) and (vi) above, and (ii) of Independent Counsel as to items (i), (ii) and (iv) above.

Section 9.4 Security Agreement and Pledge of Issuer's Interests to Bondholder. The Issuer shall (i) grant a security interest in the Facility, and (ii) pledge and assign its rights to and interest in this Lease Agreement and in all amounts payable by the Company pursuant to Section 5.3 hereof and all other provisions of this Lease Agreement (other than Unassigned Rights and except for the moneys and investments from time to time in the Rebate Fund) to the Bondholder as security for the payment of the principal of and premium, if any, and interest on the Bonds. The Company hereby acknowledges and consents to such pledge and assignment by the Issuer. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such pledge and assignment, continue to run to the Issuer for its benefit as well as for the benefit of the Bondholder.

Section 9.5 Merger of Issuer.

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

- (i) upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease Agreement to be kept and performed by the Issuer shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred; and
- (ii) the exclusion of the interest on the Bonds from gross income for federal income tax purposes shall not be adversely affected thereby.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Issuer, at the expense of the Company, shall give notice thereof in reasonable detail to the Company and the Bondholder and shall furnish to the Company and the Bondholder (i) a favorable opinion of Independent Counsel as to compliance with the provisions of Section 9.5(a)(i) hereof, and (ii) a favorable opinion of Bond Counsel as to compliance with the provisions of Section 9.5(a)(ii) hereof. The Issuer promptly shall furnish such additional information with respect to any such transaction as the Company or the Bondholder may reasonably request.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

- (a) The following shall be "Events of Default" under this Lease Agreement:
- (i) failure by the Company to pay to the Bondholder, as assignee of the Issuer, when due any Lease Payment, Debt Service Payment or to pay any other payment required to be paid hereunder ten (10) days after the date that such payment is required to be paid;
 - (ii) failure by the Company to maintain insurance on the Facility in accordance with Section 6.4 hereof;
 - (iii) failure by the Company or the Issuer to observe and perform any other covenant, condition or agreement contained herein, in the Company Documents, including, but not limited to, the Guaranty and the Mortgage, in the Bond Documents, or in any other document or agreement executed in connection herewith on its part to be observed or performed for a period of thirty (30) days after written notice is

given to the Company or the Issuer, as the case may be, specifying such failure and directing that it be remedied; *provided, however*, that, if the failure stated in such notice cannot be corrected within such thirty (30)-day period, the Bondholder will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Company or the Issuer, as the case may be, within the applicable period and diligently pursued until the default is corrected;

- (iv) initiation by the Issuer of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning the indebtedness of the Issuer;
- (v) The Company or any of the Guarantors shall be or become insolvent, or admit in writing its inability to pay its or his debts as they mature, or make an assignment for the benefit of creditors; or the Company or any of the Guarantors shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or him, or for all or any substantial part of its or his Property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the Company or any of the Guarantors, as the case may be; or the Company or any of the Guarantors shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against the Company or any of the Guarantors; or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the Property of the Company or any of the Guarantors;
- (vi) determination by the Bondholder that any representation or warranty made by the Company, the Issuer or any of the Guarantors herein, in the Tax Compliance Agreement or in any other document executed in connection herewith was untrue in any material respect when made;
- (vii) a Determination of Taxability shall occur;
- (viii) the occurrence of a default or an event of default under any instrument, agreement or other document evidencing, relating to or securing any indebtedness or other monetary obligation of the Company to the Bondholder or any other party in an amount greater than \$0;
- (ix) the Company or any of the Guarantors shall repudiate, purport to revoke or fail to perform its or their obligations under the Guaranty;

- (x) the occurrence of a default or an event of default under any of the Bond Documents or any other agreement between or among the Bondholder or any of its affiliates and the Company;
- (xi) ownership of a controlling interest of the Company or the Sublessee changes during the period that the Bonds are outstanding (the Company hereby acknowledges that the Bondholder has made its decision to enter into the transactions contemplated hereby based upon the management expertise of the current members and their ownership of the Company and the Sublessee);
- (xii) failure to satisfy all of the conditions contained in Section 3.02 of the Bond Purchase Agreement by one month or after the Closing Date; and
- (xiii) a breach of any covenant or representation contained in Section 8.7 hereof with respect to environmental matters.

Section 10.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred, the Issuer and/or the Bondholder may take, to the extent permitted by law, any one or more of the following remedial steps:

- (i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 5.3(a) and (b) hereof, (B) all unpaid and past due payments in lieu of taxes pursuant to the PILOT Agreement and, if applicable, the Recapture Agreement, and (C) all other payments due under this Lease Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(v) hereof shall have occurred, such installments of rent and other payments due under this Lease Agreement shall become immediately due and payable without notice to the Company;
- (ii) re-enter and take possession of the Facility, on ten (10) days written notice to the Company, without terminating this Lease Agreement and without being liable for any prosecution or damages therefor, and lease the Facility for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the Debt Service Payments and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from the lessee under the new lease;
- (iii) take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such actions shall not be deemed to constitute a waiver of such Event of Default;

- (iv) declare, by written notice to the Company, that the purchase option set forth in Article XI hereof is deemed exercised and the Issuer shall thereafter reconvey title to the Facility to the Company and terminate the PILOT Agreement. The Issuer shall have the right to execute an appropriate deed with respect to the Facility and to place the same on record in the Suffolk County Clerk's office, at the sole cost and expense of the Company and in such event the Company waives delivery and acceptance of such deed and the Company hereby appoints the Issuer its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such deed;
- (v) terminate, on ten (10) days written notice to the Company, the Lease Term and all rights of the Company under this Lease Agreement and, without being liable for any prosecution or damages therefor, exclude the Company from possession of the Facility and lease or sell the Facility to another Person for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the Debt Service Payments and other amounts payable by the Company hereunder exceeds the aggregate of the rent and other amounts received from such other Person under the new lease or sale agreement;
- (vi) enter upon the Facility and complete the acquisition, renovation and equipping of the Facility in accordance with the Plans and Specifications (with such changes as the Bondholder may deem appropriate) and in connection therewith (a) engage architects, contractors, materialmen, laborers and suppliers and others, (b) employ watchmen to protect and preserve the Facility, (c) assume any contract relating to the Facility and take over and use all labor, materials, supplies and equipment, whether or not previously incorporated into the Facility, (d) pay, settle or compromise all bills or claims, (e) discontinue any work or change any course of action already undertaken with respect to the Facility, (f) take or refrain from taking such action hereunder as the Bondholder may from time to time determine, (g) apply any undisbursed money in the Project Fund and any other Fund or Account under the Indenture (other than those sums attributable to Unassigned Rights and except for the monies and investments from time to time in the Rebate Fund) to the payment of the costs and expenses incurred in connection with the foregoing, and (h) apply any undisbursed moneys in the Project Fund and any other Fund or Account under the Indenture (other than those sums attributable to Unassigned Rights and except for the monies and investments from time to time in the Rebate Fund) to the payment of

the outstanding principal amount of the Bonds and premium, if any, and accrued and unpaid interest on the Bonds;

- (vii) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder and under the PILOT Agreement, to secure possession of the Facility, and to enforce the obligations, agreements or covenants of the Company under this Lease Agreement and under the PILOT Agreement; and
- (viii) exercise any one or more of the remedies provided in the Recapture Agreement, the Guaranty or the Mortgage.

(b) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof or under any other section hereunder.

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

(d) No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Lease Agreement.

(e) In the event the Facility is subleased or leased to another Person pursuant to Section 10.2(a)(ii) or (v) hereof, the Issuer or the Bondholder, as appropriate, may (but shall be under no obligation to) make such repairs or alterations in or to the Facility as it may deem necessary or desirable for the implementation of such sublease or lease, and the Company shall be liable and agrees to pay the costs of such repairs or alterations and the expenses incidental to the effecting of such sublease or lease, together with interest on such costs and expense paid by the Issuer or the Bondholder, as the case may be, at the per annum rate of Prime Rate plus five percent (5%), notwithstanding that the Lease Term and all rights of the Company under this Lease Agreement may have been terminated pursuant to Section 10.2(a)(v) hereof.

Section 10.3 Return of Equipment. Upon an Event of Default, the Company shall within ten (10) calendar days after notice from the Bondholder, at its own cost and expense: (a) perform any testing and repairs required to place the Equipment in the condition required by Section 6.1 hereof; (b) if deinstallation, disassembly or crating is required, cause the

Equipment to be deinstalled, disassembled and crated by an authorized manufacturer's representative or such other service person as is satisfactory to the Bondholder; and (c) deliver the Equipment to a location specified by the Bondholder, freight and insurance prepaid by the Company. If the Company refuses to deliver the Equipment in the manner designated, the Bondholder may enter upon the Company's premises where the Equipment is kept and take possession of the Equipment and charge to the Company the costs of such taking. The Company hereby expressly waives any damages occasioned by such taking.

Section 10.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Bondholder or the Issuer is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bondholder or the Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required by this Article. All remedies herein conferred upon or reserved to the Bondholder or the Issuer shall survive the termination of this Lease Agreement.

Section 10.5 Late Charge. Any Debt Service Payment not paid by the Company on the due date thereof shall, to the extent permissible by law, bear a late charge equal to five percent (5%) of the delinquent amount or the lawful maximum, whichever is less, and the Company shall be obligated to pay the same immediately upon receipt of the Bondholder's written invoice therefor.

Section 10.6 Agreement to Pay Attorneys' Fees and Expenses.

(a) In the event the Company should default under any of the provisions of this Lease Agreement and the Issuer should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Issuer the reasonable fees of such attorneys and such other expenses so incurred upon demand.

(b) In the event the Company should default under any of the provisions of this Lease Agreement and the Bondholder should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Bondholder the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.7 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI
EARLY TERMINATION OF LEASE AGREEMENT;
OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of Lease Agreement. The Company shall have the option to terminate this Lease Agreement at any time after the Closing Date, by paying the prepayment price pursuant to Section 5.3(e) hereof.

Section 11.2 Conditions to Early Termination of Lease Agreement. In the event the Company exercises its option to terminate this Lease Agreement in accordance with the provisions of Section 11.1 hereof, the Company shall make the following payments:

(a) To Bondholder: an amount certified by Bondholder sufficient to pay all unpaid fees and expenses of Bondholder incurred under the Bond Documents together with the prepayment price pursuant to Section 5.3(e) hereof;

(b) To the Issuer or the Taxing Authorities (as such term is defined in the PILOT Agreement), as appropriate under the PILOT Agreement: all amounts due and payable under the PILOT Agreement as of the date of conveyance described in Section 11.3 hereof;

(c) To the Issuer: an amount certified by the Issuer sufficient to pay all unpaid fees and expenses of the Issuer incurred under the Bond Documents; and

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

Section 11.3 Obligation to Purchase Facility. Upon termination or expiration of the Lease Term, in accordance with Sections 5.2 or 11.1 hereof, as the case may be, the Company shall purchase the Facility from the Issuer for the purchase price of One Dollar (\$1.00) plus all unpaid payments in lien of taxes pursuant to the PILOT Agreement through the date on which this Lease Agreement terminates or expires and all amounts due, if any, under the Recapture Agreement. The Company shall purchase the Facility by giving written notice to the Issuer and to the Bondholder (i) declaring the Company's election to purchase, and (ii) fixing the date of closing such termination and purchase, which shall be the date on which this Lease Agreement is to be terminated.

Section 11.4 Conveyance on Purchase. Upon the termination of this Lease Agreement and at the closing of any purchase of the Facility pursuant to Section 11.3 hereof, the Issuer shall, upon receipt of the purchase price, deliver and request Bondholder to deliver to the Company all necessary documents (i) to terminate this Lease Agreement and to convey to the Company title (as applicable) to the Property being purchased, as such Property exists, subject only to the following: (A) any Liens to which title to such Property was subject when conveyed to the Issuer, (B) any Liens created at the request of the Company, or the creation of which the Company consented to or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances, and (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease

Agreement or arising out of an Event of Default hereunder; (ii) to release and convey to the Company all of the Issuer's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Facility (but not including any Unassigned Rights); and (iii) to discharge and release any security interest held by Bondholder.

Section 11.5 Amounts Remaining on Deposit with the Custodian upon Payment of Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds and the payment of all fees, charges, expenses and other amounts required to be paid under the Bond Documents, all amounts on deposit with the Custodian for the account of the Issuer and the Company under the Bond Documents (except for amounts attributable to Unassigned Rights and except for the moneys and investments from time to time in the Rebate Fund) shall belong to and be paid to the Company by the Custodian as an overpayment of rent, and the Custodian shall not have any rights hereunder, except those that shall have theretofore vested.

ARTICLE XII
MISCELLANEOUS

Section 12.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address as any party may specify in writing to the others:

To the Issuer:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 3rd Floor
Farmingville, New York 11738
Attention: Chief Executive Officer

With a courtesy copy to:

Annette Eaderesto, Esq.
Town of Brookhaven
1 Independence Hill, 3rd Floor
Farmingville, New York 11738

To the Company:

Nicola Enterprises of Long Island Corp.
38-42 Wyandanch Avenue
Wyandanch, New York 11798
Attention: Thomas J. Sorge, Vice President

With a courtesy copy to:

Certilman Balin Adler & Hyman LLP
1393 Veterans Memorial Highway
Suite 301S
Hauppauge, New York 11788
Attention: David A. Sloane, Esq.

To the Custodian:

New York Commercial Bank
1601 Veterans Highway
Islandia, New York 11749
Attention: James T. Burns, First Vice-President

To the Bondholder:

Omega Commercial Mortgage Corp.
c/o New York Commercial Bank
1601 Veterans Highway
Islandia, New York 11749
Attention: James T. Burns, First Vice-President

With a courtesy copy to:

Lamb & Barnosky, LLP
534 Broadhollow Road, P.O. Box 9034
Melville, New York 11747-9034
Attention: Michael J. Heller, Esq.

A duplicate copy of each notice, certificate and other written communication given hereunder by either the Issuer or the Company to the other shall also be given to the Bondholder and a duplicate copy of each notice, certificate and any other written communication given hereunder by either the Bondholder or the Issuer to the other shall also be given to the Company, at the addresses herein set forth or provided for. Such notices shall be deemed to have been given upon receipt or upon refusal of the party being notified to accept delivery of such notice. Failure to provide a courtesy copy as set out above shall not impair the effectiveness of the notice.

Section 12.2 Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 12.3 Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.4 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and with the concurring written consent of the Bondholder; provided, however, that the Company and the Bondholder agree to amend Exhibit B to this Lease Agreement to identify more specifically the Equipment being financed hereunder at such time as such identification is possible. Such amendment shall be effected by written instrument signed by the Company and the Bondholder. The Issuer's consent to the amendment referred to in this paragraph shall not be required. Such amendment may take the form of a Form of Requisition in the form attached as Exhibit B to the Bond Purchase Agreement as executed by the Company and the Bondholder.

Section 12.5 Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Only possession of the counterpart marked "Secured Party's Original" shall be effective to perfect the rights of any holder of the Lease Agreement, as counterparts shall be marked "Duplicate" and no security interest therein can be created except by possession of the "Secured Party's Original" counterpart.

Section 12.6 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 12.7 List of Additional Equipment; Further Assurances.

(a) If requested by the Issuer in writing, upon the Completion Date with respect to the Facility and the installation of all of the Equipment therein, the Company shall prepare and deliver to the Issuer and the Bondholder a schedule listing all of the Equipment not previously described in this Lease Agreement. If requested by the Issuer or the Bondholder, the Company shall thereafter furnish to the Issuer and the Bondholder, within sixty (60) days after the end of each calendar year, a schedule listing all of the Equipment not theretofore previously described herein or in the aforesaid schedule.

(b) The Issuer and the Company hereby agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further acts, instruments, conveyances, transfers and assurances as the Bondholder reasonably deems necessary or advisable for the implementation, correction, confirmation or perfection of this Lease Agreement or any other Company Documents and any rights of the Bondholder hereunder or thereunder.

Section 12.8 Survival of Obligations. This Lease Agreement shall survive the purchase and sale of the Bonds and the performance of the obligations of the Company to make payments required by Section 5.3, and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement and the payment of the Bonds.

Section 12.9 Table of Contents and Section Headings not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been

prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

Section 12.10 Non-Recourse Against the Issuer; Special Obligations.

(a) All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Issuer Documents and in the other documents and instruments connected therewith shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, officer, agent or employee of the Issuer in their individual capacity, and no recourse under or upon any obligation, covenant or agreements contained in the Bond Documents and the Bonds or otherwise based upon or in respect to the Bond Documents and the Bonds or any documents supplemental hereto or thereto, or for any of the Bonds or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company) or employee, as such, of the Issuer, or any successor public benefit corporation or political subdivision, or any person executing the Bond Documents and the Bonds either directly or through the Issuer or any successor public benefit corporation or political subdivision, it being expressly understood that the Bond Documents and the Bonds are solely special obligations, and that no such personal liability whatsoever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company) or employee of the Issuer or of any such successor public benefit corporation or political subdivision, or any person executing the Bonds because of the creation of the indebtedness authorized thereby, or under or by reason of the obligations, covenants or agreements contained in the Bond Documents or in any of the Bonds or implied therefrom, and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent or employee because of the indebtedness authorized hereby, or under or by reason of the obligations, covenants or agreements contained in the Bond Documents or in any of the Bonds or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of the Bond Documents and the issuance of the Bonds.

(b) The obligations and agreements of the Issuer contained herein shall not constitute or give rise to an obligation of the State or any municipality or subdivision thereof (including the Town of Brookhaven) and neither the State nor any municipality or political subdivision thereof (including the Town of Brookhaven) shall be liable thereon, and further such obligations and agreements shall not constitute or give rise to a general obligation of the Issuer, but rather shall constitute limited obligations of the Issuer payable solely from the revenues of the Issuer derived and to be derived from the Lease Agreement and the lease or other disposition of the Facility (except for Unassigned Rights).

Section 12.11 Costs and Expenses of Bondholder. The Company shall pay to the Bondholder, in addition to the Debt Service Payments payable by the Company hereunder, such amounts in each year as shall be required by the Bondholder in payment of any reasonable costs and expenses incurred by the Bondholder in connection with the performance or enforcement of this Lease Agreement, including but not limited to payment of all reasonable fees, costs and expenses and all administrative costs of the Bondholder in

connection with the Facility, expenses (including, without limitation, attorneys' fees and disbursements), fees of auditors or attorneys, insurance premiums not otherwise paid hereunder and all other direct and necessary administrative costs of the Bondholder or charges required to be paid by it in order to comply with the terms of, or to enforce its rights under, this Lease Agreement. Such costs and expenses shall be billed to the Company by the Bondholder from time to time, together with a statement certifying that the amount so billed has been paid by the Bondholder for one or more of the items above described, or that such amount is then payable by the Bondholder for such items. Amounts so billed shall be due and payable by the Company within thirty (30) days after receipt of the bill by the Company.

Section 12.12 Binding Effect; Time of the Essence. This Lease Agreement shall inure to the benefit of and shall be binding upon the Bondholder, the Issuer, the Company and their respective successors and assigns. Time is of the essence.

Section 12.13 Entire Agreement. The Bond Documents constitute the entire agreement among the Bondholder, the Custodian, the Issuer and the Company. There are no understandings, agreements, representations or warranties, express or implied, not specified herein or in such documents regarding this Lease Agreement or the Property financed hereby.

Section 12.14 Usury. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary in this Lease Agreement, in no event shall this Lease Agreement require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum permitted by applicable law.

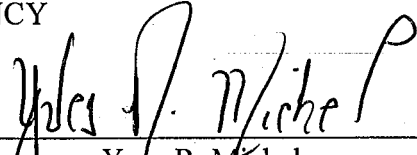
Section 12.15 Waiver of Jury Trial. THE BONDHOLDER, THE ISSUER AND THE COMPANY HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS LEASE AGREEMENT, ANY OF THE RELATED DOCUMENTS, ANY DEALINGS AMONG THE BONDHOLDER, THE ISSUER OR THE COMPANY RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED BY THIS LEASE AGREEMENT OR ANY RELATED TRANSACTIONS AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG THE BONDHOLDER, THE ISSUER AND THE COMPANY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS LEASE AGREEMENT, ANY RELATED DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS LEASE AGREEMENT OR ANY RELATED TRANSACTIONS. IN THE EVENT OF LITIGATION, THIS LEASE AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 12.16 Third Party Beneficiaries. The Bondholder is a third party beneficiary of this Lease Agreement, entitled to enforce the provisions as if a party hereto.

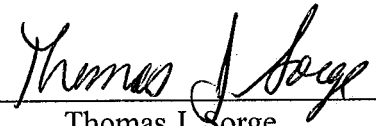
[Remainder of page left intentionally blank]

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

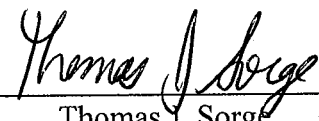
TOWN OF BROOKHAVEN
INDUSTRIAL DEVELOPMENT
AGENCY

By: 
Name: Yves R. Michel
Title: Acting Chief Executive Officer

NICOLA ENTERPRISES OF LONG
ISLAND CORP.

By: 
Name: Thomas J. Sorge
Title: Vice President

PALLETS R US INC.

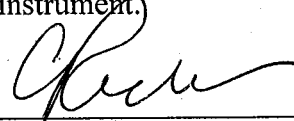
By: 
Name: Thomas J. Sorge
Title: Vice President

STATE OF NEW YORK)

ss:

COUNTY OF NASSAU)

On the 6th day of November in the year 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Yves R. Michel, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.)



Notary Public

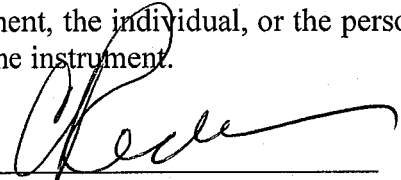
Cynthia Rechtman
Notary Public, State of NY
No. 4813107, Nassau County
Term Expires August 31, 2010

STATE OF NEW YORK)

ss:

COUNTY OF NASSAU)

On the 6th day of November in the year 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas J. Sorge, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public

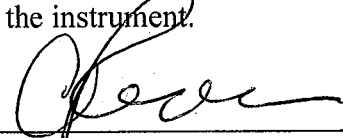
Cynthia Rechtman
Notary Public, State of NY
No. 4813107, Nassau County
Term Expires August 31, 2010

STATE OF NEW YORK)

ss:

COUNTY OF NASSAU)

On the 6th day of November in the year 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas J. Sorge, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public

Cynthia Rechtman
Notary Public, State of NY
No. 4813107, Nassau County
Term Expires August 31, 2010

EXHIBIT A

Legal Description of Real Property

CHICAGO TITLE INSURANCE COMPANY

Title No.: 3807-00442

LEGAL DESCRIPTION

ALL THAT CERTAIN PLOT, PIECE, OR PARCEL OF LAND, SITUATE, LYING, AND BEING IN THE TOWN OF BROOKHAVEN, COUNTY OF SUFFOLK AND STATE OF NEW YORK BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY SIDE OF WOODSIDE AVENUE (C.R. 99); SAID POINT OR PLACE OF BEGINNING BEING DISTANT 2,149.44 FEET EASTERLY AS MEASURED ALONG THE NORTHERLY SIDE OF WOODSIDE AVENUE FROM THE CORNER FORMED BY THE INTERSECTION OF THE EASTERLY SIDE OF WALKER AVENUE WITH THE NORTHERLY SIDE OF WOODSIDE AVENUE;

RUNNING THENCE FROM SAID POINT OR PLACE OF BEGINNING, NORTH 05 DEGREES 29 MINUTES 50 SECONDS WEST 1,012.00 FEET;

RUNNING THENCE NORTH 79 DEGREES 43 MINUTES 06 SECONDS EAST 1,092.82 FEET;

RUNNING THENCE SOUTH 05 DEGREES 37 MINUTES 11 SECONDS EAST 527.50 FEET TO THE NORTH SIDE OF WOODSIDE AVENUE (C.R. 99) AND;

THENCE ALONG THE NORTH SIDE OF WOODSIDE AVENUE (C.R. 99) THE FOLLOWING 7 COURSES AND DISTANCES:

1. SOUTH 56 DEGREES 40 MINUTES 00 SECONDS WEST 205.64 FEET;
2. SOUTH 79 DEGREES 17 MINUTES 07 SECONDS WEST 13.00 FEET;
3. NORTH 33 DEGREES 20 MINUTES 00 SECONDS WEST 25.00 FEET;
4. SOUTH 56 DEGREES 40 MINUTES 00 SECONDS WEST 70.00 FEET;
5. SOUTH 33 DEGREES 20 MINUTES 00 SECONDS EAST 25.00 FEET;
6. SOUTH 34 DEGREES 02 MINUTES 53 SECONDS WEST 13.00 FEET AND;
7. SOUTH 56 DEGREES 40 MINUTES 00 SECONDS WEST 933.18 FEET TO THE POINT OR PLACE OF BEGINNING.

FOR INFORMATION ONLY: DISTRICT 0200 SECTION 844.00 BLOCK 03.00 LOT 008.011 AND PART OF LOT 022.007

EXHIBIT B

Equipment

All equipment, fixtures, furniture, machinery, building materials and items of personal property acquired and/or purchased in whole or in part with the proceeds of the Town of Brookhaven Industrial Development Agency's Industrial Development Revenue Bonds, Series 2008 (Nicola Enterprises of Long Island Corp./Pallets R Us Inc. Facility) and installed and/or to be acquired and installed by the Company in connection with the completion of the Town of Brookhaven Industrial Development Agency's Nicola Enterprises of Long Island Corp./Pallets R Us Inc. Facility located in the Yaphank, Town of Brookhaven, New York.

EXHIBIT C

Form of Completion Certificate

I, the undersigned, hereby certify that I am the duly qualified and acting [] of Nicola Enterprises of Long Island Corp. (the "Company") and, with respect to the Lease Agreement, dated as of November 1, 2008 (the "Lease Agreement"), by and between the Company and the Town of Brookhaven Industrial Development Agency ("the Issuer"), that:

1. The property described in the Lease Agreement (the "Facility") has been acquired, constructed and equipped in accordance with the Company's specifications and has been accepted by the Company.

2. The Company has obtained from a reputable insurance company qualified to do business in the State of New York insurance with respect to all risks required to be covered thereby pursuant to Section 6.4 of the Lease Agreement.

3. Attached to this Completion Certificate are vendor invoice(s) and/or bill(s) of sale relating to the Facility and, if such invoices have been paid by the Issuer or the Company, evidence of payment thereof and, if applicable, evidence of official intent to reimburse such payment as required by the Code (as defined in the Lease Agreement).

4. Except for amounts retained in the Project Fund for the payment of incurred but unpaid Costs of the Facility, the payment of all labor, services, materials and supplies used in such acquisition, construction and installation has been made or provided for.

5. The Company hereby directs Bondholder, on behalf of the Issuer, to pay or cause to be paid the Bond Proceeds (as defined in the Lease Agreement) as follows:

6. All of the representations and warranties of the Company contained in the Lease Agreement are true and correct as of the date hereof and no Event of Default has occurred thereunder.

Dated: _____

NICOLA ENTERPRISES OF LONG ISLAND CORP.

By: _____
Name: []
Title: []

EXHIBIT D

Compliance with Labor Law, Executive Law and Civil Rights Law

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

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

Now therefor, it is the intent of the Issuer that Nicola Enterprises of Long Island Corp. (the "Company") and Pallets R Us Inc. (the "Sublessee") agree to be bound by the following, which will be made a part of this Lease Agreement.

I. The Company and the Sublessee agree that:

(a) no laborer, workman or mechanic, in the employ of any of the Company or any contractor, subcontractor or other person doing or contracting to construct the Facility shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law;

(b) (i) the acquisition, construction and equipping of the Facility shall be governed by the requirements of Section 220-d of Article 8 of the Labor Law of the State of New York (the "Labor Law") as if such Section 220-d of the Labor Law applied to the Company, the Sublessee and the Facility, and when requested by the Issuer, it will provide to the Issuer a plan for an apprenticeship program, or (ii) it will provide to the Issuer a project labor agreement or alternative proposal to pay fair wages to workers at the construction site; and

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

II. To the extent required by law, the Company and the Sublessee agree that:

(a) in the hiring of employees for the performance of work in acquiring, constructing and equipping of the Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction and equipping of the Facility, neither the Company, the Sublessee nor any contractor, subcontractor nor any person acting on

behalf of the Company, the Sublessee shall by reason of race, creed, color, disability, sex, national origin, marital status or Vietnam era veteran status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

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

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

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

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

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

and

PALLETS R US INC.

2014 EQUIPMENT LEASE AGREEMENT

Dated as of May 1, 2014

Town of Brookhaven Industrial Développement Agency
(Nicola Enterprises of Long Island Corp./Pallets R Us Inc. Facility)

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Exhibit A - Description of 2014 Equipment

THIS 2014 EQUIPMENT LEASE AGREEMENT, dated as of May 1, 2014 (this “**Equipment Lease Agreement**”), is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, an industrial development agency and a public benefit corporation of the State of New York, having its principal office at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738 (the “**Issuer**”), and PALLETS R US INC., a business corporation duly organized and existing under the laws of the State of New York, having an office at 555 Woodside Avenue, Bellport, NY 11713 (the “**Sublessee**”).

RECITALS

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the “**State**”); and

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State; and

WHEREAS, the aforesaid act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act and Chapter 358 of the Laws of 1970 of the State, as amended (collectively, the “**Act**”), the Issuer was created and is empowered under the Act to undertake the leasing and subleasing of the Equipment defined below; and

WHEREAS, the Issuer previously provided its assistance to Nicola Enterprises of Long Island Corp. a business corporation duly organized and validly existing under the laws of the State of New York (the “**Company**”) and the Sublessee through the issuance of its \$9,500,000 Industrial Development Revenue Bonds, Series 2008 (Nicola Enterprises of Long Island Corp./Pallets R Us Inc. Facility) (the “**Bonds**”) to finance the acquisition of an approximately 19.2 acre parcel of land located at 555 Woodside Avenue, Bellport, Town of Brookhaven, New York (and further identified as Section 844.00 Block 03.00 Lot 022.010) and the construction and equipping of an approximately 115,000 square foot facility located thereon, which was leased by the Issuer to the Company and further subleased by the Company to, and used by the Sublessee for the manufacturing, remanufacturing, repairing and recycling of all types of wooden pallets and related products (the “**Original Facility**”); and

WHEREAS, the Issuer leased the Original Facility to the Company pursuant to and in accordance with a certain Lease Agreement, dated as of November 1, 2008 (the "**Lease Agreement**") by and between the Issuer and the Company; and

WHEREAS, the Company subleased the Original Facility to the Sublessee pursuant to and in accordance with a certain Sublease Agreement, dated as of November 1, 2008 (the "**Sublease Agreement**"), by and between the Company and the Sublessee; and

WHEREAS, in connection with the leasing and the subleasing of the Original Facility, the Issuer, the Company and the Sublessee entered into a Payment-in-Lieu-of-Tax Agreement, dated as of November 1, 2008 (the "**Original PILOT Agreement**"), whereby the Company and the Sublessee agreed to make certain payments-in-lieu-of real property taxes on the Original Facility (as defined therein); and

WHEREAS, in connection therewith the Company, the Sublessee and the Issuer entered into a certain Recapture Agreement, dated as of November 1, 2008 (the "**Original Recapture Agreement**");

WHEREAS, in connection with the leasing and the subleasing of the Original Facility, the Issuer, the Company and the Sublessee entered into an Environmental Compliance and Indemnification Agreement, dated as of November 1, 2008 (the "**Original Environmental Compliance and Indemnification Agreement**"), whereby the Company and the Sublessee agreed to comply with all Environmental Laws (as defined therein) applicable to the Original Facility; and

WHEREAS, the Company and the Sublessee have now requested the Issuer's assistance in (i) the acquisition, construction and equipping of an approximately 16,000 square foot addition to the Original Facility, including landscaping and repaving of the existing parking area (the "**2014 Improvements**"), and (ii) the equipping and furnishing of the 2014 Improvements (the "**2014 Equipment**"; and together with the 2014 Improvements, the "**2014 Facility**") (the 2014 Facility and the Original Facility are collectively referred to herein as, the "**Facility**"); and

WHEREAS, the Sublessee will convey or cause to be conveyed an interest in the 2014 Equipment to the Issuer pursuant to a 2014 Equipment Bill of Sale, May 30, 2014 (the "**2014 Equipment Bill of Sale**"), from the Sublessee to the Issuer; and

WHEREAS, the Issuer will lease the 2014 Equipment to the Sublessee pursuant to this Equipment Lease Agreement; and

WHEREAS, the Company will convey or cause to be conveyed an interest in the 2014 Improvements to the Issuer pursuant to a 2014 Improvements Bill of Sale, dated May 30, 2014 (the "**2014 Improvements Bill of Sale**"), from the Company to the Issuer; and

WHEREAS, the 2014 Improvements shall become part of the Original Facility and shall be leased to the Company pursuant to Section 6.1(b) of the Lease Agreement; and

WHEREAS, in connection with the construction, equipping and furnishing of the 2014 Facility, the Company, the Sublessee and the Issuer will enter into a certain Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated as of May 1, 2014 (the “**Amended and Restated PILOT Agreement**”), by and among the Company, the Sublessee and the Issuer, to amend and restate the terms and conditions of their agreement regarding the Company’s and Sublessee’s payments in lieu of real property taxes in connection with the increased assessment on the 2014 Facility; and

WHEREAS, the Company and the Sublessee will enter into a 2014 Facility Recapture Agreement, dated as of May 1, 2014 (the “**2014 Facility Recapture Agreement**”), from the Company and the Sublessee to the Issuer in order to reflect the repayment of obligations of the Company and the Sublessee upon the occurrence of a Recapture Event (as defined therein) with respect to the 2014 Facility; and

WHEREAS, as an inducement for the Issuer to enter into and perform the transactions contemplated by this Equipment Lease Agreement, the Issuer will require the Company and the Sublessee to enter into a 2014 Facility Environmental Compliance and Indemnification Agreement, dated as of May 1, 2014 (the “**2014 Facility Environmental Compliance and Indemnification Agreement**”), by and among the Company, the Sublessee and the Issuer; and

WHEREAS, the 2014 Equipment Bill of Sale, the 2014 Improvements Bill of Sale, the Amended and Restated PILOT Agreement, the 2014 Facility Recapture Agreement, the 2014 Facility Environmental Compliance and Indemnification Agreement and this Equipment Lease Agreement are collectively referred to herein as the “**Transaction Documents**”, those Transaction Documents to which the Issuer is a party are referred to herein as the “**Issuer Documents**” and those Transaction Documents to which the Company is a party are collectively referred to herein as the “**Company Documents**”; and

WHEREAS, the Issuer will acquire an interest in the 2014 Equipment, which 2014 Equipment is to be installed in the 2014 Facility, and which 2014 Equipment is the subject of this Equipment Lease Agreement, and the Issuer proposes to lease the 2014 Equipment to the Sublessee, and the Sublessee desires to rent the 2014 Equipment from the Issuer, upon the terms and conditions set forth in this Equipment Lease Agreement;

AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

ARTICLE I DEFINITIONS

All capitalized terms used in this Equipment Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Bond Purchase Agreement and Building Loan Contract, dated as of November 1, 2008 (the “**Bond Purchase Agreement**”) by and among the Issuer, the

Company, New York Commercial Bank (the “**Custodian**”) and Omega Commercial Mortgage Corp. (the “**Bondholder**”) which definitions are incorporated herein and made a part hereof by reference.

ARTICLE II REPRESENTATIONS AND COVENANTS

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

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

(b) The Issuer will cause the 2014 Equipment to be acquired, leased and installed and will lease the 2014 Equipment to the Sublessee pursuant to this Equipment Lease Agreement, all for the Public Purposes of the State.

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

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

(e) The Issuer has been induced to enter into this Equipment Lease Agreement by the undertaking of the Sublessee to utilize the 2014 Equipment in the Town of Brookhaven, New York.

Section 2.2 Representations and Covenants of the Sublessee. The Sublessee makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Sublessee is a business corporation organized and existing under the laws of the State of New York, is in good standing under the laws of the State of New York and has full legal right, power and authority to execute, deliver and perform each of the Sublessee

Documents and the other documents contemplated thereby. Each of the Sublessee Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Sublessee.

(b) Neither the execution and delivery of any of the Sublessee Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Sublessee Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof or of the Sublessee's Certificate of Incorporation, By-Laws, restriction or any agreement or instrument to which the Sublessee is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Sublessee under the terms of any such law, ordinance, Certificate of Incorporation, By-Laws, restriction, agreement or instrument.

(c) The Facility is and will continue to be a "Project" as such term is defined in the Act. The Sublessee will not take any action, or fail to take any action which would cause the Facility to not constitute a "Project" as such term is defined in the Act.

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

ARTICLE III CONVEYANCE OF THE EQUIPMENT

Section 3.1 Agreement to Convey to Issuer. The Sublessee has conveyed or has caused to be conveyed to the Issuer lien-free title, leasehold interest or subleasehold interest to the 2014 Equipment, except for Permitted Encumbrances.

Section 3.2 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the 2014 Equipment and the interest therein to be conveyed by this Equipment Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the 2014 Equipment and the leasehold interests therein are securing the financial obligations of the Sublessee. The 2014 Equipment and the leasehold interests therein secure the Sublessee's obligations to the Issuer under the Amended and Restated PILOT Agreement, the 2014 Recapture Agreement and this Equipment Lease Agreement, including the Sublessee's obligation to acquire, install and maintain the 2014 Equipment on behalf of the Issuer and the Company's obligation to indemnify and hold harmless the Issuer in accordance with the terms of this Equipment Lease Agreement.

Section 3.3 Subordination of Equipment Lease Agreement. This Equipment Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage, Mortgages, security agreement or security agreements which may be granted by the Issuer and/or the Sublessee on the 2014 Equipment

or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

ARTICLE IV
ACQUISITION AND INSTALLATION OF THE EQUIPMENT IN THE FACILITY

Section 4.1 Equipping of Facility.

(a) The Sublessee agrees that, on behalf of the Issuer, it will acquire and install the 2014 Equipment in the 2014 Facility.

(b) A valid title or a valid leasehold interest or subleasehold interest in all 2014 Equipment incorporated or installed in the 2014 Facility shall vest in the Issuer immediately upon the Sublessee obtaining an interest in or to the 2014 Equipment. The Sublessee shall execute, deliver and record or file all instruments necessary or appropriate to so vest such title or leasehold interest or subleasehold interest in or to the Issuer and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(c) The Issuer hereby appoints the Sublessee its true and lawful agent, and the Sublessee hereby accepts such agency appointment (i) to purchase, lease, sublease and install the 2014 Equipment in the 2014 Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for purchasing, leasing, subleasing and installing the 2014 Equipment with the same powers and with the same validity as the Issuer could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the purchasing, leasing, subleasing and installation of the 2014 Equipment, and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing and payable to the Issuer under the terms of any contract, order, receipt, or writing in connection with the leasing and installation of the 2014 Equipment, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Sublessee from purchasing motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets.

(d) The Issuer shall enter into, and accept the assignment of, such contracts or leases as the Sublessee may request in order to effectuate the purposes of this Section 4.1.

(e) The Sublessee, as agent for the Issuer, shall comply with all provisions of the Labor Law of the State applicable to the acquisition and installation of the 2014 Equipment in the 2014 Facility and shall include in all contracts all provisions which may be required to be inserted therein by such provisions. The provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Equipment Lease Agreement.

Section 4.2 Certificates of Completion. To establish the Completion Date, the Sublessee shall deliver to the Issuer (i) a certificate signed by an Authorized Representative of the Sublessee (a) stating that the acquisition, leasing, subleasing and installation of the 2014 Equipment in the 2014 Facility has been completed; (b) stating that the payment of all

labor, services, materials and supplies used in such acquisition and installation has been made or provided for; and (ii) such other certificates as may be requested by the Issuer. The Sublessee agrees to complete the acquisition, leasing and installation of the 2014 Equipment in the 2014 Facility on or before November 30, 2014.

Section 4.3 Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the 2014 Equipment or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Sublessee at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Issuer, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Sublessee, in its own name or in the name of the Issuer, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety or other Person which the Sublessee deems reasonably necessary, and in such event the Issuer, at the Sublessee's expense, hereby agrees to cooperate fully with the Sublessee and to take all action necessary to effect the substitution of the Sublessee for the Issuer in any such action or proceeding.

ARTICLE V DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of 2014 Equipment. The Issuer hereby leases and/or subleases, as the case may be, the 2014 Equipment, as particularly described in Exhibit A attached hereto, to the Sublessee and the Sublessee hereby takes the 2014 Equipment from the Issuer upon the terms and conditions of this Equipment Lease Agreement.

Section 5.2 Duration of Equipment Lease Term; Quiet Enjoyment.

(a) The Issuer shall deliver to the Sublessee sole and exclusive possession of the 2014 Equipment (subject to Sections 8.3 and 10.2 hereof) and the leasehold interest or subleasehold interest created hereby shall commence on the Closing Date and the Sublessee shall accept possession of the 2014 Equipment on the Closing Date.

(b) Except as provided in Section 10.2 hereof, the leasehold or subleasehold interest created hereby shall terminate at 11:59 p.m. on November 30, 2014 or on such earlier date as may be permitted by Section 11.1 and Article XI hereof (the "**Equipment Lease Term**").

(c) Except as provided in Sections 8.3 and 10.2 hereof, the Issuer shall neither take nor suffer or permit any action to prevent the Sublessee during the Equipment Lease Term from having quiet and peaceable possession and enjoyment of the 2014 Equipment and will, at the request of the Sublessee and at the Sublessee's cost, cooperate with the Sublessee in order that the Sublessee may have quiet and peaceable possession and enjoyment of the 2014 Equipment as hereinabove provided.

Section 5.3 Rents and Other Amounts Payable.

(a) The Sublessee shall pay basic rent for the 2014 Equipment throughout the term of this Equipment Lease Agreement as follows: One Dollar (\$1.00) per year commencing on the Closing Date and continuing on the first Business Day of each and every January thereafter during the term of this Equipment Lease Agreement.

(b) In addition to the payments of basic rent pursuant to Section 5.3(a) hereof, throughout the Equipment Lease Term, the Sublessee shall pay to the Issuer as additional rent, within ten (10) days of the receipt of demand therefor, an amount equal to, without duplication, the sum of the expenses of the Issuer and the members thereof incurred (i) by reason of the Issuer's ownership, financing, leasing or subleasing of the 2014 Equipment or (ii) in connection with the carrying out of the Issuer's duties and obligations under the Issuer Documents, the payment of which is not otherwise provided for under this Equipment Lease Agreement. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Issuer.

(c) The Sublessee, under the provisions of this Section 5.3, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Sublessee shall fail to timely make any payment required in Section 5.3(a) or 5.3(b), the Sublessee shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

Section 5.4 Obligations of Sublessee Hereunder Unconditional. The obligations of the Sublessee to make the payments required in Section 5.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Sublessee, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Issuer. The Sublessee agrees it will not (i) suspend, discontinue or abate any payment required hereunder, (ii) fail to observe any of its other covenants or agreements in this Equipment Lease Agreement or (iii) terminate this Equipment Lease Agreement for any cause whatsoever unless and until all obligations of the Sublessee to the Issuer have been satisfied.

Subject to the foregoing provisions, nothing contained in this Section shall be construed to release the Issuer from the performance of any of the agreements on its part contained in this Equipment Lease Agreement or to affect the right of the Sublessee to seek reimbursement, and in the event the Issuer should fail to perform any such agreement, the Sublessee may institute such separate action against the Issuer as the Sublessee may deem necessary to compel performance or recover damages for non-performance, and the Issuer covenants that it will not take, suffer or permit any action which will adversely affect, or create any defect in its title to the 2014 Equipment or which will otherwise adversely affect the rights or interest of the Sublessee in the 2014 Equipment hereunder, except upon written consent of the Sublessee.

ARTICLE VI
MAINTENANCE AND INSURANCE

Section 6.1 Maintenance and Modifications of 2014 Equipment by Sublessee.

(a) The Sublessee shall not abandon the 2014 Equipment or cause or permit any waste to the 2014 Equipment. During the Equipment Lease Term, the Sublessee shall not remove any part of the 2014 Equipment outside of the jurisdiction of the Issuer except for 2014 Equipment released from the provisions of this Equipment Lease Agreement due to damage, destruction or obsolescence and shall (i) keep the 2014 Equipment in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the 2014 Equipment (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (iii) operate the 2014 Equipment in a sound and economic manner.

(b) With the prior written consent of the Issuer, which shall not be unreasonably withheld, the Sublessee from time to time may make any additions, modifications or improvements to the 2014 Equipment or any part thereof, provided such actions do not adversely affect the structural integrity of the 2014 Equipment. All such additions, modifications or improvements made by the Sublessee shall become a part of the 2014 Equipment and the Property of the Issuer. The Sublessee agrees to deliver to the Issuer all documents which may be necessary or appropriate to convey to the Issuer title to or a leasehold interest in such 2014 Equipment.

Section 6.2 Reserved.

Section 6.3 Reserved.

Section 6.4 Insurance Required. At all times throughout the Equipment Lease Term, the Sublessee shall, at its sole cost and expense, maintain or cause to be maintained insurance with respect to the 2014 Equipment against such risks and for such amounts as are customarily insured by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the 2014 Equipment, as determined by a recognized appraiser or insurer selected by the Sublessee.

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance which the Sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees, of the Sublessee. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Sublessee, any contractor or subcontractor first occupy the 2014 Facility.

(c) Insurance protecting the Issuer and the Sublessee against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Sublessee under Section 8.2 hereof) and arising from personal

injury, including bodily injury or death, or damage to the property of others, caused by an accident or occurrence with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage), comprehensive automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage) and with a blanket excess liability coverage in an amount not less than \$5,000,000 combined single limit or equivalent protecting the Issuer and the Sublessee against any loss or liability or damage for personal injury, including bodily injury or death, or property damage.

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 6.4 shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Sections 6.4 shall provide for payment of the losses to the Sublessee or the Issuer as their respective interests may appear hereof and shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Issuer. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Issuer as an additional insured. The policies under Section 6.4(a) shall contain appropriate waivers of subrogation, in accordance with the Sublessee's indemnification obligations.

(b) The certificates of insurance required by Sections 6.4(a) and (c) hereof shall be deposited with the Issuer on or before the Closing Date. The Sublessee shall deliver to the Issuer before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy or policies, the Sublessee shall furnish to the Issuer and any other appropriate Person a new certificate or certificates of insurance or evidence that such policy or policies are no longer required by this Equipment Lease Agreement. The Sublessee shall provide such further information with respect to the insurance coverage required by this Equipment Lease Agreement as the Issuer may from time to time reasonably require.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) hereof shall be applied as provided in Section 7.1 hereof and (ii) the Net Proceeds of the insurance required by Sections 6.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid and the excess, if any, shall be paid to the Sublessee.

ARTICLE VII
DAMAGE OR DESTRUCTION OF THE EQUIPMENT

Section 7.1 Damage or Destruction of the 2014 Equipment.

(a) If the 2014 Equipment shall be damaged or destroyed (in whole or in part) at any time during the Equipment Lease Term:

(i) the Issuer shall have no obligation to replace, repair, rebuild or restore the 2014 Equipment; and

(ii) there shall be no abatement or reduction in the amounts payable by the Sublessee under this Equipment Lease Agreement (whether or not the 2014 Equipment is replaced, repaired, rebuilt or restored); and

(iii) the Sublessee shall promptly give written notice thereof to the Issuer; and

(iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Sublessee; and

(v) if the 2014 Equipment is not replaced, repaired, rebuilt or restored, as provided in Section 7.1(b) hereof, this Equipment Lease Agreement shall be terminated and the provisions of Sections 11.2, 11.3 and 11.4 hereof shall apply; and

(vi) the Sublessee shall have the option to terminate this Equipment Lease Agreement pursuant to Section 11.1 hereof or to promptly replace, repair, rebuild or restore the 2014 Equipment or the damaged part or component thereof to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Sublessee, provided that such changes, alterations or modifications to the 2014 Equipment do not so change the nature of the Facility that it does not constitute a "Project" as such term is defined in the Act and provided that the 2014 Equipment will be subject to no Liens other than Permitted Encumbrances; and

(vii) the Issuer shall have the right to terminate this Equipment Lease Agreement pursuant to Section 10.2 hereof if the Sublessee does not promptly replace, repair, rebuild or restore the 2014 Equipment or the damaged part or component thereof as described in (vi) above.

(b) All such repair, replacement, rebuilding, restoration or relocation of the 2014 Equipment shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Sublessee in accordance with the terms of the applicable contracts, and shall automatically become a part of the 2014 Equipment as if the same were specifically described herein. Any

balance of such Net Proceeds remaining after payment of all costs of replacement, repair, rebuilding, restoration or relocation shall be retained by the Sublessee.

(c) The Sublessee shall have the right to settle and adjust all claims under any policies of insurance required by Section 6.4(a) hereof on behalf of the Issuer and on its own behalf.

(d) If the Sublessee shall exercise its option to terminate this Equipment Lease Agreement pursuant to Section 11.1 hereof, the Net Proceeds derived from such insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof and any balance remaining thereafter shall be retained by the Sublessee. If an Event of Default hereunder shall have occurred and the Issuer shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof and any balance remaining thereafter shall be retained by the Sublessee.

ARTICLE VIII SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability by Issuer. THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF, OR TITLE TO, THE 2014 EQUIPMENT OR THAT IT IS OR WILL BE SUITABLE FOR THE SUBLESSEE'S PURPOSES OR NEEDS.

Section 8.2 Hold Harmless Provisions.

(a) The Sublessee agrees that the Issuer or any of its members, directors, officers, agents or employees shall not be liable for and agrees to defend, indemnify, release and hold the Issuer harmless from and against any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the 2014 Equipment or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the 2014 Equipment or (ii) liability arising from or expense incurred by the Issuer's acquisition, leasing, subleasing, use and operation of the 2014 Equipment, including without limiting the generality of the foregoing, all claims arising from the breach by the Sublessee of any of its covenants contained herein, the exercise by the Sublessee of the authority conferred upon it pursuant to this Equipment Lease Agreement and all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Issuer are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Issuer or any of its members, directors, officers, agents or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Issuer, or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition

by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Equipment Lease Agreement, the obligations of the Sublessee pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Equipment Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Issuer, or its respective members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Issuer, or its respective members, directors, officers, agents or employees by any employee or contractor of the Sublessee or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Sublessee hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 8.3 Right to Inspect 2014 Equipment. The Issuer and its duly authorized agents shall have the right at all reasonable times, upon reasonable notice, to inspect the 2014 Equipment.

Section 8.4 Sublessee to Maintain Its Existence. The Sublessee covenants and agrees that at all times during the Equipment Lease Term, it will (i) maintain its existence, (ii) continue to be a business corporation subject to service of process in the State, (iii) not intentionally 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 Equipment Lease Agreement without the consent of the Issuer (which shall not be unreasonably conditioned, withheld or delayed), and (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it.

Section 8.5 Qualification in State. The Sublessee throughout the term of the Equipment Lease Agreement shall continue to be duly authorized to transact business in the State.

Section 8.6 Agreement to File Annual Statements and Provide Information. The Sublessee shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Section 874(8) of the New York State General Municipal Law (the "GML"). The Sublessee shall also provide the Issuer with the information necessary to comply with Section 874(9) of the GML. The Sublessee shall submit a copy of such annual statement to the Issuer at the time of filing with the Department of Taxation and Finance. The Sublessee further agrees whenever requested by the Issuer to provide and certify or cause to be provided and certified such information concerning the Sublessee, its finances, its operations, its employment and its affairs necessary to enable the Issuer to make any report

required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005, and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Issuer Documents or Sublessee Documents. Such information shall be provided within thirty (30) days following written request from the Issuer.

Section 8.7 Books of Record and Account; Financial Statements. The Sublessee at all times 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 transactions and events relating to the business and affairs of the Sublessee. The Sublessee shall furnish to the Issuer within thirty (30) days of their filing, copies of all reports, if any, filed with the Securities and Exchange Commission, pursuant to the Securities Exchange Act of 1934, as amended, relative to the Sublessee.

Section 8.8 Compliance With Orders, Ordinances, Etc.

(a) The Sublessee, throughout the Equipment Lease Term, agrees that it will promptly comply, and use commercially reasonable efforts to cause any sublessee or user of the 2014 Equipment to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the 2014 Equipment or any part thereof or to the acquisition and installation of the 2014 Equipment in the 2014 Facility, or to any use, manner of use or condition of the 2014 Equipment or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers and companies or associations insuring the premises having jurisdiction of the 2014 Equipment or any part thereof, or to the acquisition and installation of the 2014 Equipment in the 2014 Facility, or to any use, manner of use or condition of the 2014 Equipment or any part thereof.

(b) Notwithstanding the provisions of subsection (a) hereof, the Sublessee may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Sublessee may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom.

(c) Notwithstanding the provisions of this Section 8.8, if, because of a breach or violation of the provisions of subsection (a) hereof (without giving effect to subsection (b) hereof), the Issuer, or any of its respective members, directors, officers, agents, or employees, shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Issuer, the Sublessee shall immediately provide legal protection and/or pay amounts reasonably necessary in the opinion of the Issuer, as the case may be, and as the Sublessee and the Issuer's respective members, directors, officers, agents and employees deem sufficient, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

Section 8.9 Discharge of Liens and Encumbrances.

(a) The Sublessee, throughout the Equipment Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the 2014 Equipment or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the 2014 Equipment or any part thereof.

(b) Notwithstanding the provisions of subsection (a) hereof, the Sublessee may in good faith contest any such Lien. In such event, the Sublessee may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Issuer shall notify the Sublessee that by nonpayment of any such item or items, the 2014 Equipment or any part thereof may be subject to loss or forfeiture, in which event the Sublessee shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Issuer, thereby causing such Lien to be removed or by taking such other actions as may be satisfactory to the Issuer to protect its interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the filing or perfection thereof.

Section 8.10 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Sublessee shall be entitled to all depreciation deductions, if any, with respect to any depreciable property comprising a part of the 2014 Equipment and to any investment credit with respect to any part of the 2014 Equipment.

Section 8.11 Security Agreements. The Issuer and the Sublessee agree to grant a security interest in any 2014 Equipment financed with the proceeds of a Loan to the Lender of such Loan, if the security agreement is in a standard form and substance pre-approved by the Issuer and acceptable to the Issuer (and the Issuer agrees to not unreasonably withhold or delay its approval of such standard form security agreement) and if the security agreement contains the following provisions:

(a) Section __. No Recourse Against Issuer. The general credit of the Issuer is not obligated or available for the payment of the Loan or any amount due and owing under the Loan or the Security Agreement. The Lender will not look to the Issuer or any principal, member, director, officer or employee of the Issuer with respect to the indebtedness evidenced by this Security Agreement or the Loan Documentation or any covenant, stipulation, promise, agreement or obligation contained herein or therein. In enforcing its rights and remedies under this Security Agreement or the Loan Documentation, the Lender will look solely to the collateral covered by the security interest granted by this Security Agreement and/or the Sublessee for the payment of the indebtedness secured by this Security Agreement or the Loan Documentation and for the performance of the provisions hereof or thereof. The Lender will not seek a deficiency or

other money judgment against the Issuer or any principal, member, director, officer or employee of the Issuer and will not institute any separate action against the Issuer by reason of any default that may occur in the performance of any of the terms and conditions of this Security Agreement or the Loan Documentation. This agreement on the part of the Lender shall not be construed in any way so as to effect or impair the lien of this Security Agreement or the Lender's right to foreclose or collect hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Lender in any foreclosure or collection proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Issuer's and not of any member, director, officer, employee or agent (except the Sublessee) of the Issuer in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Sublessee) of the Issuer or any natural person executing this Security Agreement on behalf of the Issuer. No covenant contained herein shall be deemed to constitute a debt of the State of New York nor the Town of Brookhaven, New York and neither the State of New York nor the Town of Brookhaven, New York shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Issuer.

Section _____. Hold Harmless Provisions. (a) The Sublessee agrees that the Issuer, its directors, members, officers, agents (except the Sublessee) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Issuer, its directors, members, officers, agents (except the Sublessee) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the 2014 Equipment or arising by reason of or in connection with the use thereof or under this Security Agreement or any of the Loan Documentation, or (ii) liability arising from or expense incurred by the Issuer's acquisition, installation, owning, leasing or financing of the 2014 Equipment, including without limitation the generality of the foregoing, all claims arising from the breach by the Sublessee of any of its covenants contained herein or under any of the Loan Documentation and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of

any provision of the Security Agreement (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Issuer are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Issuer or any of its directors, members, officers, agents (except the Sublessee) or employees. The foregoing indemnities shall apply irrespective of the breach of a statutory obligation on the part of the Issuer, or any of its members, directors, officers, agents, or employees or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Security Agreement, the obligations of the Sublessee pursuant to this Section ___ shall remain in full force and effect after the termination of this Security Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Issuer, or its respective members, directors, officers, agents (except the Sublessee) and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Issuer or its members, directors, officers, agents (except the Sublessee) or employees by any employee or contractor of the Sublessee or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Sublessee hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 8.12 Leasing of 2014 Equipment. The Issuer hereby agrees that the Sublessee may lease any 2014 Equipment as agent for the Issuer for a term not to exceed five (5) years pursuant to the term of a lease and the Sublessee may assign its rights under such lease to the Issuer and the Issuer shall sublease such 2014 Equipment to the Sublessee pursuant to the terms of this Equipment Lease Agreement, if such lease is in a standard form

and substance pre-approved by the Issuer and acceptable (and the Issuer agrees to not unreasonably withhold or delay its approval of such standard form lease) to the Issuer and the lease contains the following provisions:

(a) Section _____. No Recourse Against Issuer. The general credit of the Issuer is not obligated or available for the payment of this lease. The lessor will not look to the Issuer or any principal, member, director, officer or employee of the Issuer with respect to the rent, or other obligations evidenced by this lease or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this lease, the lessor will look solely to the 2014 Equipment and/or the Sublessee for the payment of the rent secured by this lease and for the performance of the provisions hereof. The lessor will not seek a deficiency or other money judgment against the Issuer or any principal, member, director, officer or employee of the Issuer and will not institute any separate action against the Issuer by reason of any default that may occur in the performance of any of the terms and conditions of this lease or the documentation executed and delivered in connection with the lease. This agreement on the part of the lessor shall not be construed in any way so as to effect or impair the lien of this lease or the lessor's right to foreclose or collect hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the lessor in any foreclosure or collection proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Issuer's and not of any member, director, officer, employee or agent (except the Sublessee) of the Issuer in his or her individual capacity, and no recourse shall be had for the payment of the principal of any rent or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Sublessee) of the Issuer or any natural person executing this lease on behalf of the Issuer. No covenant contained herein shall be deemed to constitute a debt of the State of New York nor the Town of Brookhaven and neither the State of New York nor the Town of Brookhaven shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Issuer.

Section _____. Hold Harmless Provisions. (a) The Sublessee agrees that the Issuer, its directors, members, officers, agents (except the Sublessee) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Issuer, its

directors, members, officers, agents (except the Sublessee) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the 2014 Equipment or arising by reason of or in connection with the use thereof or under this lease, or (ii) liability arising from or expense incurred by the Issuer's acquisition, installation, owning, leasing, subleasing and financing of the 2014 Equipment, including without limitation the generality of the foregoing, all claims arising from the breach by the Sublessee of any of its covenants contained herein and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of the lease (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Issuer are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Issuer or any of its directors, members, officers, agents (except the Sublessee) or employees. The foregoing indemnities shall apply irrespective of the breach of a statutory obligation on the part of the Issuer, or any of its members, directors, officers, agents, or employees or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this lease, the obligations of the Sublessee pursuant to this Section ___ shall remain in full force and effect after the termination of this lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Issuer, or its respective members, directors, officers, agents (except the Sublessee) and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Issuer or its members, directors, officers, agents (except the Sublessee) or employees by any employee or contractor of the Sublessee or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Sublessee hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 8.13 Employment at the Facility. The Company and the Sublessee collectively, covenant at all times to maintain at the Facility one hundred thirty (130) full time equivalent employees as of December 31, 2016, and thereafter throughout the Lease Term calculated on the basis of 35 hours per week who are employees of the Company or the Sublessee or any subsidiary or affiliates of the Company or the Sublessee or any consultants or subcontractors of the Company or the Sublessee or any subsidiary or affiliates of the Company or the Sublessee whose place of employment or workplace is located at the Facility (“FTE”).

ARTICLE IX
RELEASE OF CERTAIN EQUIPMENT; ASSIGNMENTS AND
SUBLEASING; SECURITY INTEREST AND PLEDGE OF INTERESTS

Section 9.1 Restriction on Sale of 2014 Equipment; Release of Certain Equipment.

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Issuer shall not sell, convey, transfer, encumber or otherwise dispose of the 2014 Equipment or any part thereof or any of its rights under this Equipment Lease Agreement, except at the request of the Sublessee in the ordinary course of the Sublessee’s business.

(b) The Issuer and the Sublessee from time to time shall release from the provisions of this Equipment Lease Agreement and the leasehold estate created hereby any part of, or interest in, the 2014 Equipment which is not necessary, desirable or useful for the 2014 Facility. In such event, the Issuer, at the Sublessee’s sole cost and expense, shall execute and deliver, any and all instruments necessary or appropriate to so release such part of, or interest in, the 2014 Equipment.

Section 9.2 Removal of 2014 Equipment.

(a) The Issuer shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of 2014 Equipment. In any instance where the Sublessee determines that any item of 2014 Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Sublessee may remove such items from the 2014 Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, provided that such removal will not materially impair the operation of the remaining 2014 Equipment or the

Facility for the purpose for which it is intended or change the nature of the remaining 2014 Equipment or the Facility so that it does not constitute a “Project” under the Act.

(b) The Issuer shall execute and deliver to the Sublessee all instruments necessary or appropriate to enable the Sublessee to sell or otherwise dispose of any such item of 2014 Equipment. The Sublessee shall pay any costs (including reasonable counsel fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

Section 9.3 Assignment and Subleasing.

(a) This Equipment Lease Agreement may not be assigned, in whole or in part, and the 2014 Equipment may not be subleased, in whole or in part, without the prior written consent of the Issuer in each instance which consent will not be unreasonably withheld or delayed. Any assignment or sublease shall be on the following conditions:

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

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

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

(iv) neither the validity nor the enforceability of this Equipment Lease Agreement shall be adversely affected thereby; and

(v) the 2014 Equipment shall continue to constitute a “project” as such quoted term is defined in the Act.

(b) The Issuer shall execute and deliver to the Sublessee all instruments necessary or appropriate to enable the Sublessee to sell or otherwise dispose of any such item of 2014 Equipment. The Sublessee shall pay any costs (including reasonable counsel fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

Section 9.4 Merger of Issuer.

(a) Nothing contained in this Equipment Lease Agreement shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or transfer of title to the entire Equipment to any other public benefit corporation or political subdivision of the State of New York which has the legal authority to own and lease the 2014 Equipment, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Equipment Lease Agreement to be kept and performed by the Issuer shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the 2014 Equipment shall be transferred.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Issuer shall give notice thereof in reasonable detail to the Sublessee. The Issuer promptly shall furnish such additional information with respect to any such transaction as the Sublessee may reasonably request.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

(a) The following shall be “Events of Default” under this Equipment Lease Agreement:

(i) the failure by the Sublessee to pay or cause to be paid on the date due or within the applicable grace period, the amount specified to be paid pursuant to Section 5.3(a) or 5.3(b) hereof;

(ii) the failure by the Sublessee to observe and perform any covenant contained in Sections 8.2, 8.4 and 9.3 hereof;

(iii) any representation or warranty of the Sublessee herein or in any of the Sublessee Documents shall prove to have been false or misleading when made in any material respect;

(iv) the failure by the Sublessee to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii) and (iii)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Sublessee by the Issuer;

(v) the dissolution or liquidation of the Sublessee; or the failure by the Sublessee to release, stay, discharge, lift or bond within thirty (30) days of notice of any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Sublessee generally to pay its debts as they become due; or an assignment by the Sublessee of all or substantially all of its assets for the benefit of creditors; the commencement by the Sublessee (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Sublessee (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Sublessee as the debtor in such case or proceeding, or such case or proceeding is consented to by the Sublessee or remains undismissed for thirty (30) days, or the Sublessee consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Sublessee for the purpose of enforcing a lien against such Property or for

the purpose of general administration of such Property for the benefit of creditors;

(vi) Reserved.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 4.1 and 6.1 of this Equipment Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Equipment Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall use diligent efforts to remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred, the Issuer may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) declare, by written notice to the Sublessee, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 5.3(a) and (b) hereof, and (B) all other payments due under this Equipment Lease Agreement;

(ii) take any other action as it shall deem necessary to cure any such Event of Default, provided that the taking of any such actions shall not be deemed to constitute a waiver of such Event of Default;

(iii) terminate this Equipment Lease Agreement and the sales tax letter, and reconvey the 2014 Equipment to the Sublessee. The Issuer shall have the right to execute an appropriate bill of sale with respect to the 2014 Equipment.

(iv) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, to enforce the obligations, agreements or covenants of the Sublessee under this Equipment Lease Agreement.

(b) Reserved.

(c) No action taken pursuant to this Section 10.2 shall relieve the Sublessee from its obligation to make all payments required by Section 5.3 hereof.

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Issuer is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Equipment Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer, as appropriate, to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Equipment Lease Agreement.

Section 10.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Sublessee should default under any of the provisions of this Equipment Lease Agreement and the Issuer should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Sublessee herein contained, the Sublessee shall, on demand therefor, pay to the Issuer the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.6 Certificate of No Default. The Sublessee shall deliver to the Issuer each year no later than January 15 a certificate signed by an Authorized Representative of the Sublessee stating that the Sublessee is not in default under this Equipment Lease Agreement and no Event of Default exists under this Equipment Lease Agreement, or any other Sublessee Document. Such certificate shall also contain all information required by Section 8.6 hereof.

ARTICLE XI EARLY TERMINATION OF EQUIPMENT LEASE AGREEMENT; OPTION IN FAVOR OF SUBLESSEE

Section 11.1 Early Termination of Equipment Lease Agreement. The Sublessee shall have the option to terminate this Equipment Lease Agreement at any time upon filing with the Issuer a certificate signed by an Authorized Representative of the Sublessee stating

the Sublessee's intention to do so pursuant to this Section and the date upon which such payment shall be made (which date shall not be less than 45 nor more than 90 days from the date such certificate is filed) in compliance with the requirements set forth in Section 11.2 and 11.3 hereof.

Section 11.2 Conditions to Early Termination of Equipment Lease Agreement. In the event the Sublessee exercises its option to terminate this Equipment Lease Agreement in accordance with the provisions of Section 11.1 hereof, the Sublessee shall pay the Issuer an amount certified by the Issuer as equal to all reasonable unpaid fees and expenses of the Issuer incurred under the Issuer Documents to the date of termination.

Section 11.3 Obligation to Purchase Equipment. Upon termination or expiration of the Equipment Lease Term, in accordance with Sections 5.2 or 11.1 hereof, the Sublessee shall purchase the 2014 Equipment from the Issuer for the purchase price of One Dollar (\$1.00). The Sublessee shall purchase the 2014 Equipment or take an assignment of any equipment leases by giving written notice to the Issuer (which may be contained in the certificate referred to in Section 11.1 hereof) (i) declaring the Sublessee's election to purchase or take an assignment of lease and (ii) fixing the date of closing such purchase, which shall be the date on which this Equipment Lease Agreement is to be terminated.

Section 11.4 Conveyance on Purchase. At the closing of any purchase or assignment of lease of the 2014 Equipment pursuant to Section 11.3 hereof, the Issuer shall, upon receipt of the purchase price or assignment price, deliver to the Sublessee all necessary documents (i) to convey to the Sublessee title to the 2014 Equipment being purchased or leases being assigned, as such 2014 Equipment exists, subject only to the following: (A) any Liens to which title to such 2014 Equipment was subject when conveyed to the Issuer, (B) any Liens created at the request of the Sublessee, to the creation of which the Sublessee consented or in the creation of which the Sublessee acquiesced, (C) any Permitted Encumbrances and (D) any Liens resulting from the failure of the Sublessee to perform or observe any of the agreements on its part contained in this Equipment Lease Agreement or arising out of an Event of Default hereunder, and (ii) to release and convey to the Sublessee all of the Issuer's rights and interest in and to any rights of action or any Net Proceeds of insurance with respect to the 2014 Equipment (but not including any Unassigned Rights).

ARTICLE XII MISCELLANEOUS

Section 12.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally with a receipt obtained, or sent by first class or certified mail, postage prepaid, return receipt requested, or by a reputable overnight carrier, addressed as follows or to such other address as any party may specify in writing to the other:

To the Issuer:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 3rd Floor
Farmingville, New York 11738
Attention: Chief Executive Officer

with a copy to:

Brookhaven Town Attorney's Office
1 Independence Hill, 2nd Floor
Farmingville, New York 11738
Attention: Annette Eaderesto, Esq.

To the Sublessee:

Nicola Enterprises of Long Island
555 Woodside Avenue
Bellport, NY 11713
Attention: Thomas J. Sorge, Vice President

With a copy to:

J. Lee Snead, Esq.
144 South Country Road
P.O. Box 489
Bellport, New York 11713

Notices shall be deemed given when received, refused or returned by the carrier as undeliverable and all notices may be given by the attorney for a party with the same force as if given by such party.

Section 12.2 Binding Effect. This Equipment Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 12.3 Severability. In the event any provision of this Equipment Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.4 Amendments, Changes and Modifications. This Equipment Lease Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto.

Section 12.5 Execution of Counterparts. This Equipment Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6 Applicable Law. This Equipment Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 12.7 List of Additional Equipment; Further Assurances. Upon the Completion Date with respect to the 2014 Equipment and the installation of all of the 2014 Equipment in the 2014 Facility, the Sublessee shall prepare and deliver to the Issuer a schedule listing all of the 2014 Equipment not previously described in this Equipment Lease Agreement. If requested by the Issuer, the Sublessee shall thereafter furnish to the Issuer, within sixty (60) days after the end of each calendar year, a schedule listing all of the 2014 Equipment not theretofore previously described herein or in the aforesaid schedule.

Section 12.8 Survival of Obligations. This Equipment Lease Agreement shall survive the performance of the obligations of the Sublessee to make payments required by Section 5.3 and all indemnities shall survive the foregoing and any termination or expiration of this Equipment Lease Agreement.

Section 12.9 Table of Contents and Section Headings not Controlling. The Table of Contents and the headings of the several Sections in this Equipment Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Equipment Lease Agreement.

(Remainder of Page Intentionally Left Blank – Signature Page Follows)

IN WITNESS WHEREOF, the Issuer and the Sublessee have caused this Equipment Lease Agreement to be executed in their respective names by their duly authorized officers, all as of May 1, 2014.

**TOWN OF BROOKHAVEN
INDUSTRIAL
DEVELOPMENT AGENCY**

By: *Lisa M Mulhgan*
Name: Lisa M Mulhgan
Title: Chief Executive Officer

PALLETS R US INC.

By: _____
Name: Thomas J. Sorge
Title: Vice President

IN WITNESS WHEREOF, the Issuer and the Sublcssce have caused this Equipment Lease Agreement to be executed in their respective names by their duly authorized officers, all as of May 1, 2014.

**TOWN OF BROOKHAVEN
INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Lisa MG Mulligan
Title: Chief Executive Officer

PALLETS R US INC.

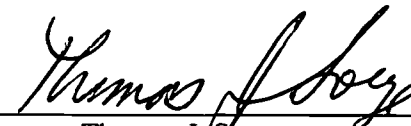
By:  _____
Name: Thomas J. Sorge
Title: Vice President

EXHIBIT A

Equipment

All equipment, machinery, furniture, and other items of personal property (expressly excluding the purchase of motor vehicles, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets) (the **“Equipment”**), acquired and/or installed and/or to be acquired and/or installed by Pallets R Us Inc. (the **“Sublessee”**), as agent for the Town of Brookhaven Industrial Development Agency (the **“Issuer”**), in connection with the completion of the construction and equipping of an approximate 16,000 square foot addition to Issuer’s Nicola Enterprises of Long Island/Pallets R Us Inc. Facility located in Yaphank, Town of Brookhaven, New York, and leased by the Issuer to the Sublessee pursuant to the terms of the Equipment Lease Agreement, dated as of May 1, 2014 (the **“Equipment Lease Agreement”**).