

Transcript Document No. 4

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(SUFFOLK COUNTY, NEW YORK)

and

INTERCOUNTY ASSOCIATES II LLC

INSTALLMENT SALE AGREEMENT

Dated as of January 1, 2005

\$9,000,000

Town of Brookhaven Industrial Development Agency
Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2005
(Intercounty Associates II LLC/Intercounty Appliance Corp. Facility)

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Exhibit A Legal Description of Real Property
Exhibit B Equipment

THIS INSTALLMENT SALE AGREEMENT, dated as of January 1, 2005 (the "Installment Sale Agreement"), is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the "Issuer"), and INTERCOUNTY ASSOCIATES II LLC, a New York limited liability company duly organized and validly existing under the laws of the State of New York having an office at 360 Moreland Road, Commack, New York 11725 (the "Company").

RECITALS

Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State") and Section 892 of the General Municipal Law of the State was duly enacted into law as Chapter 358 of the Laws of 1970 of State, as amended (collectively, the "Act"); and

The Act authorizes the creation of industrial development agencies for the Public Purposes of the State, and specifically the creation of the Issuer; and

The Act further authorizes each such agency to lease or sell any or all of its facilities at such rentals or such sale prices 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 price 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 leasing or sale of its facilities; and

Pursuant to and in accordance with the provisions of the Act, the Issuer was created and is empowered under the Act to undertake the providing, acquisition, construction, furnishing, equipping, improvement, financing and sale of the Facility as defined below; and

The Company has requested that the Issuer issue its Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2005 (Intercounty Associates II LLC/Intercounty Appliance Corp. Facility) (the "Bonds") in an aggregate principal amount of \$9,000,000 to provide funding for the acquisition of an approximately 29.41 acre parcel of land located at the northwest corner of Sills Road and Southaven Avenue, Medford and being a part of the South Industrial Haven II, Section 1 and South Silver Industrial Park, Section 2, Town of Brookhaven, Suffolk County, New York, and the construction and equipping thereon of an approximately 250,000 square foot building, all to be used by InterCounty Appliance Corp., a business corporation duly organized and validly existing under the laws of the State of New York, having an office at 360 Moreland Road, Commack, New York 11725 (the "Lessee"), for the purposes of warehousing and distributing appliances (the "Facility"); and

The Bonds will be issued pursuant to an Indenture of Trust, dated as of January 1, 2005 (the "Indenture"), between the Issuer and The Bank of New York, as trustee (the "Trustee"); and

The Company, the Lessee and North Fork Bank (the "LOC Bank") have entered into a Letter of Credit Reimbursement Agreement, dated of even date herewith (the "Reimbursement Agreement"), pursuant to which the LOC Bank has issued its irrevocable, direct-pay letter of credit (the "Letter of Credit") in favor of the Trustee for the benefit of holders of the Bonds to secure the payment of the principal or Redemption Price of, Purchase Price of and interest on the Bonds; and

Concurrently with the execution hereof and to further secure the Bonds and to secure the Company's obligations to the LOC Bank pursuant to the Reimbursement Agreement, (i) the Issuer has executed a Pledge and Assignment, dated as of January 1, 2005 (the "Pledge and Assignment"), in favor of the Trustee and the LOC Bank, of substantially all of its rights under this Installment Sale Agreement (other than Unassigned Rights), and (ii) the Issuer and the Company will grant a mortgage lien on and a security interest in the Facility to the LOC Bank pursuant to the Mortgage and Security Agreement, dated January 26, 2005 (the "Mortgage"), from the Issuer and the Company to the LOC Bank.

To further secure the Bonds, the Company and the Lessee have entered into the Guaranty Agreement, dated as of January 1, 2005 (the "Guaranty Agreement"), with the Issuer and the Trustee guaranteeing, among other things, the payment of the principal of, Redemption Price of, Purchase Price of, and interest on the Bonds; and

The Company has agreed with the Issuer, on behalf of the Issuer and as the Issuer's agent, to acquire, construct, furnish, equip, improve and operate the Facility; and

The Issuer proposes to sell the Facility to the Company, and the Company desires to purchase the Facility from the Issuer, upon the terms and conditions set forth in this Installment Sale Agreement; and

The Company has agreed to lease the Facility to the Lessee pursuant to a Lease Agreement, dated January 26, 2005 (the "Lease Agreement"), between the Company and the Lessee.

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

Section 1.1 Definitions. All capitalized terms used in this Installment Sale Agreement and not otherwise defined shall have the meanings assigned thereto in the Schedule of Definitions attached to the Indenture, which are incorporated herein and made a part hereof by reference.

Section 1.2 Indenture, Mortgage and Reimbursement Agreement to Control. Notwithstanding anything to the contrary herein, in the event of a conflict in terms among this Installment Sale Agreement, the Indenture, the Mortgage and the Reimbursement Agreement, the terms set forth in the Indenture or the Mortgage or the Reimbursement Agreement, as the case may be, shall govern such provision.

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 Facility to be acquired, constructed, furnished, equipped and improved and will sell the Facility to the Company pursuant to this Installment Sale Agreement, all for the Public Purposes of the State.

(c) To finance certain of the costs of the Facility, the Issuer will issue the Bonds in the aggregate principal amount of \$9,000,000. The Bonds will be issued, mature, bear interest, be redeemable and have other terms and provisions as provided for in the Bond and the Indenture.

(d) By resolution adopted on September 20, 2004, 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 acquisition, construction, equipping, improvement and financing of the Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQR Act.

(e) 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, 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 Certificate of Establishment, By-Laws, restriction, agreement or instrument, except for Permitted Encumbrances.

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

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

(a) The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is in good standing under the laws of the State and has full legal right, power and authority to execute, deliver and perform each of the Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

(b) Neither the execution and delivery of any of the Company 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 Company 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 Company's Articles of Organization or Operating Agreement, as amended, or any corporate restriction or any agreement or instrument to which the Company 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 Company under the terms of any such law, ordinance, Articles of Organization or Operating Agreement, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

(c) The Facility and the design, acquisition, construction, furnishing, equipping, improvement and operation thereof will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility.

(d) Except as otherwise provided in the Mortgage, the Company shall perform or cause to be performed for and on behalf of the Issuer each and every obligation of the Issuer under and pursuant to the Indenture and the Mortgage.

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

(f) The Facility will be operated throughout the Sale Term as a "project" as such quoted term is defined in the Act as of the date hereof.

Section 2.3 Covenant with Owners. The Issuer and the Company agree that this Installment Sale Agreement has been 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 Installment Sale Agreement are hereby declared to be for the benefit of the Owners from time to time of the Bonds.

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 and the existing Improvements located thereon, and (ii) lien-free title to the Equipment, in each case except for Permitted Encumbrances.

Section 3.2 Title Insurance. The Company has obtained or will obtain title insurance for the benefit of the Issuer and the LOC Bank in an amount equal to \$9,000,000 (i) insuring fee title in the name of Issuer to the Land and the Improvements and (ii) insuring the Lien of the Mortgage on the Improvements, except for Permitted Encumbrances.

Section 3.3 Subordination of Installment Sale Agreement. This Installment Sale Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to the Mortgage and the Indenture and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

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, furnish, equip and improve 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 the LOC Bank, which approval may not be unreasonably withheld but may be subject to such conditions as the Issuer and the LOC Bank may deem appropriate.

(c) Title to all Equipment, materials, machinery and other items of Property acquired and/or purchased in whole or in part with the proceeds of the Bonds incorporated or installed in the Facility (including for this purpose, the presently existing improvements on the Land) shall vest in the Issuer immediately upon the Company's obtaining an interest in or to the materials, equipment, machinery and other items of Property. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title to 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 (i) to acquire, construct, furnish, equip and improve

the Facility (including for this purpose, the presently existing Improvements located on the Land) and as contemplated by Section 6.2 hereof, (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 that be requisite or proper, all for acquiring, constructing, furnishing, equipping, improving and installing the Facility and the additional items contemplated by Section 6.2 hereof with the same powers and with the same validity as the Issuer could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the acquisition of the Land and the existing Improvements located thereon and the acquisition, construction, furnishing, equipping, improving and installation of the Facility from funds made available therefor in accordance with this Installment Sale Agreement, and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever that be due, owing and payable to the Issuer under the terms of any contract, order, receipt, or writing in connection with the acquisition of the Land the existing Improvements located thereon and the acquisition, construction, furnishing, equipping, improving and installation of the Facility and the additional items contemplated by Section 6.2 hereof, and 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, as agent for the Issuer, shall comply with all provisions of the Labor Law of the State applicable to the acquisition, construction and equipping of the Facility and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions. Except as provided in the preceding sentence, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Installment Sale Agreement.

Section 4.2 Issuance of the Bonds; Disbursement of Bond Proceeds. In order to provide funds for 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 Indenture. Bond Proceeds shall be disbursed in accordance with the provisions of the Indenture and Section 4.3 hereof.

Section 4.3 Application of Bond Proceeds. Except as provided in Section 10.2(a)(iv) hereof, Bond Proceeds, upon the written direction of an Authorized Representative of the Company, and on the conditions provided for in the Indenture, shall be applied to pay only the following costs and items of expense paid and incurred by or on behalf of the Issuer, except as may otherwise be provided under the Bond Documents:

(a) subject to review and approval by the LOC Bank, the cost of preparing the Plans and Specifications (including any preliminary study or planning of the Facility or any aspect thereof), and all costs of acquiring, furnishing, constructing, equipping and improving the Facility (including architectural, engineering, environmental audits and surveys, and supervisory services with respect to the Facility),

(b) all fees, taxes, charges and other expenses for recording or filing, as the case may be, the instrument or instruments conveying the Land to the Issuer, and any other documents that the Issuer, the LOC Bank or the Trustee may deem desirable in order to protect or perfect the title to the Land and any security interest contemplated by the Mortgage, the Reimbursement Agreement or the Indenture,

(c) the premium on any fee or mortgagee title insurance procured on the Land and the Improvements,

(d) interest payable on the Bonds during the period of equipping the Facility and interest payable during the period of acquiring, constructing, furnishing, equipping and improving the Facility on such interim financing as the Company may have secured with respect to the Facility in contemplation of the issuance of the Bonds,

(e) 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 Installment Sale Agreement or the Indenture,

(f) any fee paid to the LOC Bank in connection with the issuance of the Letter of Credit,

(g) any administrative fee and fee for services of the Issuer, and

(h) reimbursement to the Company for any of the above-enumerated costs and expenses.

Section 4.4 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Issuer, the LOC Bank and the Trustee a certificate signed by an Authorized Representative of the Company (i) stating that acquisition, furnishing, constructing, equipping and improvement of the Facility has been completed; (ii) stating that except for amounts retained in the Project Fund for the payment of incurred but unpaid items of the Costs of the Facility, the payment of all labor, services, materials and supplies used in such acquisition, construction and equipping has been made or provided for; and (iii) such certificates as may be reasonably satisfactory to the Issuer, the Trustee and the LOC Bank, including without limitation, a temporary or final certificate of occupancy, if applicable. The Company agrees to complete the acquisition, construction, furnishing, equipping and improvement of the Facility on or before December 1, 2006.

Section 4.5 Completion by Company.

(a) In the event that the Net Proceeds of the Bonds are not sufficient to pay in full all costs of acquiring, constructing, and equipping the Facility, the Company agrees to pay, for the benefit of the Issuer, the LOC Bank and the Trustee, all such sums as may be in excess of the Net Proceeds of the Bonds. Title to all portions of the Facility installed at the Company's cost or expense shall immediately upon such installation be subject to the Lien of the Mortgage. The Company shall execute, deliver and record or file such instruments as the

Issuer, the LOC Bank or the Trustee may reasonably request in order to perfect or protect 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 the Trustee or the Owner of the Bond nor shall it be entitled to any diminution or abatement of any other amounts payable by the Company under this Installment Sale Agreement.

Section 4.6 Reserved.

Section 4.7 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 expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Issuer, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Issuer, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety or other Person that 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 or subcontractor or materialman or other Person shall be deposited in the Renewal Fund and applied as provided in Section 7.4 hereof and the Indenture.

ARTICLE V SALE AND INSTALLMENT PAYMENT PROVISIONS

Section 5.1 Demise of Facility. The Issuer hereby agrees to sell the Facility, consisting of the Improvements and the Equipment located or to be located on the Land, as more particularly described in Exhibit A attached hereto, and the Equipment as more particularly described in Exhibit B attached hereto, to the Company, and the Company hereby agrees to purchase the Facility from the Issuer, upon the terms and conditions of this Installment Sale Agreement.

Section 5.2 Duration of Sale 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 and 10.2 hereof) and the Sale Term (as defined hereinafter) created hereby shall commence on the Closing Date and the Company shall accept possession of the Facility on the Closing Date.

(b) Installment Payments for the purchase price of the Facility shall be made in installments as provided in Section 5.3 hereof and shall continue until January 1, 2025, or the earlier date as may be provided in Article XI hereof, provided, however, that in no event

shall this Installment Sale Agreement be terminated until the Bonds shall have been paid in full (the "Sale Term").

(c) Except as provided in Sections 3.3, 8.3 and 10.2 hereof, the Issuer shall neither take nor suffer or permit any action to prevent the Company during the Sale 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.

(d) Notwithstanding anything to the contrary contained herein, at such time as the Company is required to make payments in lieu of taxes under the PILOT Agreement equal to 100% of the taxes that would have been owing on the Facility, but for the Issuer's ownership of the Facility, then the Issuer shall upon not less than ten (10) days prior notice to the Company convey the Facility to the Company subject to this Installment Sale Agreement, which Installment Sale Agreement shall otherwise remain in full force and effect and constitute a lien against the Facility, and subject to Permitted Encumbrances and to such Liens (i) as existed when the Facility was acquired by the Issuer, (ii) as were created by the Company, (iii) the creation of which the Company consented to or in the creation of which the Company acquiesced, and (iv) which the Company was required to remove, but failed to do so. At such time, the Issuer shall, at the sole expense of the Company, execute, deliver and record or file such instruments, and shall take such other action as may be deemed necessary or appropriate by the Company to evidence or confirm such conveyance.

Section 5.3 Installment Payments and Other Amounts Payable.

(a) The Company shall pay as basic Installment Payments for the purchase price of the Facility on or before each Bond Payment Date directly to the Trustee, in immediately available funds, an amount equal to the Debt Service Payment becoming due and payable on the Bonds on such Bond Payment Date.

(b) In addition to the Installment Payments pursuant to Section 5.3(a) hereof, throughout the Sale Term, the Company shall pay to the Issuer as additional Installment Payments of the purchase price of the Facility, within ten (10) days of the receipt of demand therefor, an amount equal to the sum of the reasonable expenses of the Issuer and the members thereof incurred (i) by reason of the Issuer's 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 Installment Sale 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 Company, under the provisions of this Section 5.3, agrees to make the above-mentioned Installment Payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Company shall fail to timely make any Installment Payment required in Section 5.3(a) the Company shall pay the same together with all late payment penalties specified in the Bonds. In the

event the Company shall fail to timely make any Installment Payment required in Section 5.3(b), the Company shall pay the same together with interest on such Installment Payment at the Default 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.

(d) In addition, the Company shall pay as additional Installment Payments of the purchase price of the Facility within fifteen (15) days after receipt of a written demand therefor the Ordinary Expenses and Extraordinary Expenses payable by the Issuer to the Trustee pursuant to and under the Indenture.

(e) As security for the performance of its basic Installment Payment obligations with respect to the Bonds, the Company shall, simultaneously with the issuance and delivery of the Bonds, arrange for the delivery of the Letter of Credit to the Trustee. The Company hereby authorizes and directs the Trustee to draw moneys under the Letter of Credit in accordance with the provisions of the Indenture to the extent and at the times necessary to pay the principal of, Redemption Price of, Purchase Price of, and interest on the Bonds when due. The obligations of the Company to make payments pursuant to Section 5.3(a) hereof shall be deemed to be satisfied and discharged to the extent of any corresponding drawing made by the Trustee under the Letter of Credit and applied to such payment.

(f) Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the Bond Fund is not sufficient to pay the principal of, Redemption Price of, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Company shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the Bond Fund and such payment shall constitute Installment Payments under this Section 5.3.

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

Section 5.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Sections 5.3, 5.5 and 5.9 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 Company, 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 Company 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 Installment Sale Agreement, or (iii) terminate this Installment Sale Agreement for any cause whatsoever unless and until the Bonds, including premium, if any, and interest thereon, is paid or provided for.

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 Installment Sale Agreement or to affect the right of the Company to seek

reimbursement, and in the event the Issuer should fail to perform any such agreement, the Company may institute such separate action against the Issuer as the Company may deem necessary to compel performance or recover damages for non-performance, and the Issuer covenants that it will not, subject to the provisions of Sections 3.3 and 8.3 and Article X hereof, take, suffer or permit any action that will adversely affect or create any defect in its title to the Facility or that will otherwise adversely affect the rights or estate of the Company hereunder, except upon written consent of the Company.

Section 5.5 Payment of Additional Moneys in Prepayment of Bonds. In addition to any other moneys required or permitted to be paid pursuant to this Installment Sale Agreement, the Company may, subject to the terms of the Indenture, pay moneys to the Trustee as prepayments of the Installment Payments of the Purchase Price of the Facility (i) to be applied as the prepayment of amounts to become due and payable by the Company pursuant to Section 5.3(a) hereof, or (ii) to be used for the redemption or prepayment of any Bond at such time or times and on such terms and conditions as is provided in such Bond and in the Indenture. The Company shall notify the Issuer and the Trustee at least forty-five (45) days prior to the proposed Redemption Date in writing as to the purpose of any such intended payment.

If the Bonds are to be redeemed in whole as a result of the occurrence of any of the events described in Section 2.05(c) of the Indenture, the Company shall deliver to the Issuer, the LOC Bank and the Trustee a certificate of an Authorized Representative of the Company stating that, as a result of the occurrence of the event giving rise to such redemption, the Company has discontinued, or at the earliest practicable date will discontinue, its operation of the Facility for its intended purposes.

Section 5.6 Rights and Obligations of the Company upon Prepayment of Bonds. In the event the Bonds 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 Indenture, the Issuer, the LOC Bank and the Trustee at the sole cost of the Company, shall execute, deliver and record or file appropriate discharges or releases of the Mortgage, the Pledge and Assignment and any other security interest relating to the Facility or this Installment Sale Agreement.

Section 5.7 Security Interest. The Company acknowledges that this Installment Sale Agreement is intended as security for payment of the principal of, Redemption Price of, Purchase Price of, and interest on the Bonds. In addition, to secure payment of all Installment Payment and other sums owing by the Company hereunder and to secure the payment and performance of all debts, liabilities and obligations of the Company under all of the Bond Documents, the Company hereby grants a security interest to the Issuer in (i) all of the Company's right, title and interest in and to the Equipment, whether now or hereafter sold or conveyed under this Installment Sale Agreement, together with any and all substitutions, additions, attachments, parts, fittings, accessories, special tools, accessions or replacements, and the proceeds and all general intangibles arising from all of the foregoing, (ii) all insurance, now owned or hereafter acquired, insuring any of the Equipment or the Facility against any loss or damage whatsoever, and all proceeds thereof, (iii) all awards heretofore and hereafter paid or payable to the Company by reason of a taking or

Condemnation of any part of the Facility (including any Equipment) or any right of the Company appurtenant thereto by competent authority as a result of the exercise of the power of eminent domain, including but not limited to any awards or payments for use and occupation or for change of grade of streets, together with any and all claims of the Issuer with respect thereto, and the proceeds thereof, and (iv) all moneys and securities from time to time held by the Trustee pursuant to and under any of the Bond Documents, except moneys and securities held in the Purchase Fund and the Rebate Fund, and all investments and re-investments of any such moneys and securities, and the proceeds thereof. The security interest referred to in this Section shall be assigned by the Issuer to the Trustee and the LOC Bank pursuant to and subject to the terms and conditions of the Pledge and Assignment.

Section 5.8 Financing Statements. The Company hereby irrevocably appoints each of the Issuer, the LOC Bank and the Trustee, or any of them, as the Company's lawful attorneys-in-fact and agents, to prepare and execute any UCC Financing Statements or UCC Amendments or Assignments on the Company's behalf in order to protect the Issuer's, the LOC Bank's and the Trustee's security interests in payments made pursuant to this Installment Sale Agreement and any assignment thereof and in any Property demised under this Installment Sale Agreement, and on the Company's behalf to file such Financing Statements signed by the Issuer and the Trustee, or either of them, without the Company's execution thereof, in any appropriate public office.

Section 5.9 Payment of Purchase Price of Tendered Bonds.

(a) The Company agrees, as provided in Section 13.05 of the Indenture, to pay to the Tender Agent all amounts necessary to pay the Purchase Price of Bonds tendered for purchase pursuant to Section 2.06 of the Indenture if sufficient remarketing proceeds are not deposited with the Tender Agent by the Remarketing Agent from the proceeds of the sale of such Bonds under Sections 14.03 and 14.04 of the Indenture or from drawings on or other realizations under the Letter of Credit pursuant to Section 5.06(b) of the Indenture. Each such payment by the Company to the Tender Agent in accordance with this Section 5.9 shall be in immediately available funds and paid to the Tender Agent at its principal office on each Purchase Date.

The Company shall provide for the payment of the amount to be paid pursuant to this Section 5.9 by delivery of the Letter of Credit to the Trustee, simultaneously with the issuance and delivery of the Bonds. The Company hereby authorizes and directs the Trustee to draw moneys under the Letter of Credit in accordance with the provisions of the Indenture to the extent necessary to make such payments when due. The obligation of the Company pursuant to this paragraph shall be deemed to be satisfied and discharged to the extent of any corresponding drawing made by the Trustee on the Letter of Credit and applied to such payment.

(b) The Company hereby approves and agrees to be bound by the provisions of the Indenture regarding the purchase, offer, sale and delivery of Bonds tendered for purchase thereunder, including particularly those set forth in Section 2.06 and in Articles XIII and XIV thereof. The Company shall have all of the rights and obligations provided in the Indenture with respect to the Company in connection with such transaction and the appointment of the

Tender Agent and the Remarketing Agent thereunder. The Issuer shall have no obligation or responsibility with respect to the purchase of Bonds or any related arrangements, except that the Issuer at the expense of the Company shall cooperate in the making of any such arrangements.

Section 5.10 Fixed Interest Rate Conversion. If the Company directs the Issuer to exercise its option to cause the interest rate on the Bonds to be converted to the Fixed Interest Rate pursuant to Section 2.04(a) of the Indenture, the Company shall deliver or cause to be delivered to the Trustee, the Issuer, the LOC Bank and the other Notice Parties, on behalf of the Issuer, the notice and the opinion of Bond Counsel required thereunder in connection with such Fixed Interest Rate Conversion.

Section 5.11 Substitute Letter of Credit. If at any time while the Bonds are Outstanding, the Letter of Credit expires or by its terms is terminated the Company shall cause to be delivered to the Trustee a Substitute Letter of Credit in accordance with the provisions of Section 2.11 of the Indenture.

ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Facility by Company.

(a) The Company shall not abandon the Facility or cause or permit any waste to the Improvements. During the Sale Term, the Company shall not (except as permitted by Section 9.2 hereof) remove any substantial part of the Facility which is still integral to its operation outside of the jurisdiction of the Issuer and shall (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (iii) operate the Facility in a sound and economic manner.

(b) With the written consent of the Issuer and the LOC Bank, which shall not be unreasonably withheld, the Company from time to time may make any other structural additions, modifications or improvements to the Facility or any part thereof, provided such actions do not adversely affect the structural integrity of the Facility. All such additions, modifications or improvements made by the Company shall become a part of the Facility and the Property of the Issuer. The Company agrees to deliver to the Issuer all documents that are necessary or appropriate to convey to the Issuer title to 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 8.10 hereof, the Company, the Lessee, or any other permitted lessees of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (including for this purpose the presently existing improvements on the Land) (which may be attached or affixed to the Facility and/or such existing improvements), and such machinery, equipment or other personal property shall not, unless the Company otherwise elects by written notice to the Issuer and the LOC Bank, become a part of the Facility, (provided that the acquisition and installation of such property is not financed from

either the Project Fund or the Renewal 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 to promptly repair such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges.

(a) The Company agrees to pay, as the same become due and before any fine, penalty, interest (except interest that is payable in connection with legally permissible installment payments) or other cost may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, payments in lieu of taxes and governmental charges of any kind whatsoever that at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Facility or any part or component thereof, or the rental or sale of the Facility or any part thereof and any taxes levied upon or with respect to the income or revenues of the Issuer from the Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Installment Sale Agreement to pay only such installments as are required to be paid during the Sale Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings, and (ii) the Company shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the LOC Bank or the Trustee.

(c) Within thirty (30) days of receipt of written request therefor, the Company shall deliver to the Trustee and the LOC Bank official receipts of the appropriate taxing authorities or other proof reasonably satisfactory to the Trustee and the LOC evidencing payment of any tax.

Section 6.4 Insurance Required. At all times throughout the Sale Term, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance

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

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

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

(c) Insurance protecting the Issuer and the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under 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) and with a blanket excess liability coverage in an amount not less than \$5,000,000 protecting the Issuer and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

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

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

(ii) 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)

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

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

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

(e) A policy or policies of flood insurance in an amount not less than the principal amount of the Bonds 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 Trustee that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

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 selected by the entity required to procure the same and authorized to write such insurance in the State. The company issuing the policies required by Sections 6.4 hereof 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(a) and (e) hereof shall contain a standard New York non-contributory mortgagee clause showing the interest of the LOC Bank as first mortgagee, shall provide for payment to the Trustee of the Net Proceeds of insurance resulting from any claim for loss or damage thereunder and all policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Issuer, the LOC Bank and the Trustee. The policy evidencing the insurance required by Section 6.4(c) hereof shall name the Issuer, the LOC Bank and the Trustee as additional insureds. All policies evidencing the insurance required by Sections 6.4(d)(ii) and (iv) shall name the Issuer, the Trustee, the LOC Bank and the Company as additional insureds. The Company acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Issuer to the LOC Bank pursuant to the Mortgage and the Company consents thereto. Upon request of the Trustee, or, if the Letter of Credit is in effect, the LOC Bank, the Company will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under the Mortgage) to the

Trustee or the LOC Bank, as applicable, the policies of insurance required under Section 6.4(a), so and in such manner and form that the Trustee or the LOC Bank, as applicable, shall at all times, upon such request and until the payment in full of the Bonds, have and hold said policies and, subject to Section 7.1 hereof, the Net Proceeds thereof as collateral and further security under the Mortgage for the payment of the Bonds and until all obligations of the Company to the LOC Bank under the Reimbursement Agreement have been satisfied. The policies under Section 6.4(a) shall contain appropriate waivers of subrogation.

(b) The policies (or certificates or binders) of insurance required by Sections 6.4(a) and (e) hereof shall be deposited with the LOC Bank on or before the Closing Date. A copy of the policy (or certificate or binder) of insurance required by Section 6.4(c) hereof shall be delivered to the Issuer on or before the Closing Date. A copy of the policies (or certificates or binders) of insurance required by Sections 6.4(d)(ii) and (iv) hereof shall be delivered to the Issuer, the LOC Bank and the Trustee on or before the Closing Date. The Company shall deliver to the Issuer and the Trustee before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy, the Company shall furnish the appropriate Person with evidence that such policy has been renewed or replaced or is no longer required by this Installment Sale Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Installment Sale Agreement as the Issuer, the LOC Bank and the Trustee may from time to time reasonably require.

Section 6.6 Application of Net Proceeds of Insurance. Subject to the provisions of Section 6.5(a) hereof and subject to the Lien of the Mortgage, 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 Sections 6.4(a) and (e) 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), (c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.7 Right of Issuer or LOC Bank to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, together with any fine, penalty, interest or cost that may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, assessment or other governmental charge required to be paid by Section 6.3 hereof, (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien that is recorded or filed against the Facility or any part thereof (unless contested in accordance with the provisions of Section 8.9(b) hereof), (v) to pay any other amount or perform any act hereunder required to be paid or performed by the Company hereunder, the LOC Bank or the Issuer may pay or cause to be paid, but shall not be obligated to pay and shall have no liability whatsoever for its failure to do so, such tax assessment or other governmental charge

or the premium for such insurance or any such other payment or may perform any such act. No such payment shall be made or act performed by the LOC Bank or the Issuer until at least ten (10) days shall have elapsed since notice shall have been given by the LOC Bank or the Issuer, as the case may be, to the Issuer, with a copy of such notice being given to the Company, and in the case of any tax, assessment or governmental charge or the amounts specified in paragraphs (iii), (iv) and (v) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Installment Sale Agreement unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the LOC Bank or the Issuer shall affect or impair any rights of the Issuer hereunder or of the Issuer under the Indenture or the LOC Bank under the Reimbursement Agreement or the Mortgage arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Issuer or the LOC Bank for any amount so paid or for expenses or costs incurred in the performance of any such act by the Issuer or the LOC Bank pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Issuer at the Default Rate, and such amount together with such interest shall become additional indebtedness secured by the Mortgage.

ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Facility.

(a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the Sale 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 Installment Sale Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated); and
- (iii) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Trustee and deposited in the Renewal Fund and except as otherwise provided in Section 11.1 and subsection (f) hereof, the Company shall at its option either (A) replace, repair, rebuild, restore or relocate the Facility, or (B) redeem a principal amount of Bonds equal to such Net Proceeds in accordance with the Indenture.

If the Company replaces, repairs, rebuilds, restores or relocates the Facility, the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in Section 5.03 of the Indenture to pay or reimburse the Company for the cost of such replacement, repair, rebuilding, restoration or relocation.

(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 the damage or destruction;

(ii) the Facility shall continue to constitute a "project" as such term is defined in the Act;

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

(iv) any other conditions the Issuer, the Trustee or the LOC Bank 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 and be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts.

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, restoration or relocation, the Company shall nonetheless complete the work and pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. All such replacements, repairs, rebuilding, restoration or relocations made pursuant to this Section, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) Any balance of such Net Proceeds remaining in the Renewal Fund after payment of all costs of replacement, repair, rebuilding, restoration or relocation shall be used to redeem the Bonds as provided in the Indenture.

(f) If the Company shall exercise its option to terminate this Installment Sale Agreement pursuant to Section 11.1 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If an Event of Default hereunder shall have occurred and the Trustee or the LOC Bank 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.

(g) If the entire amount of the Bonds and interest thereon has been fully paid, or provision therefor has been made in accordance with the Indenture, all such remaining Net Proceeds shall be paid first to the LOC Bank to satisfy any amounts due and owing under the Reimbursement Agreement and second to the Company.

(h) Except upon the occurrence of an Event of Default, the Company, with the consent of the LOC Bank, which consent shall not be unreasonably withheld, delayed or conditioned, shall have the right to settle and adjust all claims under any policies of insurance

required by Section 6.4(a), (d) and (e) hereof on behalf of the Issuer, the Trustee, the LOC Bank and on its own behalf.

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 Sale 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 Installment Sale Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated or Substitute Facilities acquired); and

(iii) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid to the Trustee and deposited in the Renewal Fund and except as otherwise provided in Section 11.1 and subsection (f) hereof, the Company shall either:

(A) replace, repair, rebuild, restore or relocate the Facility or acquire Substitute Facilities, or

(B) redeem an amount of Bonds equal to the Net Proceeds in accordance with the Indenture.

If the Company replaces, repairs, rebuilds, restores or relocates the Facility or acquires Substitute Facilities, the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in Section 5.03 of the Indenture to pay or reimburse the Company for the cost of such replacement, repair, rebuilding, restoration, relocation or acquisition of Substitute Facilities.

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

(i) the Facility or the Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to the condemnation;

(ii) the Facility or the Substitute Facilities shall continue to constitute a “project” as such terms are defined in the Act;

(iii) the Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances; and

(iv) any other conditions the Issuer, the Trustee or the LOC Bank 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 and be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts.

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, restoration, relocation or acquisition of Substitute Facilities, the Company shall nonetheless complete the work or the acquisition and pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. All such replacements, repairs, rebuilding, restoration, relocations and such acquisition of Substitute Facilities made pursuant to this Section, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) Any balance of such Net Proceeds remaining in the Renewal Fund after payment of all costs of replacement, repair, rebuilding, restoration, relocation or acquisition of Substitute Facilities shall be used to redeem the Bonds as provided in the Indenture.

(f) If the Company shall exercise its option to terminate this Installment Sale Agreement pursuant to Section 11.1 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Trustee or the LOC Bank 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.

(g) If the entire amount of the Bond and interest thereon has been fully paid, or provision therefor has been made in accordance with the Indenture, all such remaining Net Proceeds shall be paid first to the LOC Bank to satisfy any amounts due and owing under the Reimbursement Agreement and second to the Company.

(h) Except upon the occurrence of an Event of Default, the Company with the consent of the LOC Bank, which consent shall not be unreasonably withheld, delayed or conditioned, shall have the right to settle and adjust all claims under any Condemnation proceedings on behalf of the Issuer, the Trustee, the LOC Bank and on its own behalf.

Section 7.3 Condemnation of Company-Owned Property. Subject to any rights of the LOC Bank under the Mortgage, the Company shall be entitled to the proceeds of any Condemnation award or portion thereof made for damage to or taking of any Property that, at the time of such damage or taking, is not part of the Facility.

Section 7.4 Recovery Against Contractor, Etc.

(a) If at any time during the Sale Term, provided no Event of Default under Section 10.1 has occurred, proceeds shall become available from any recovery against a

contractor, subcontractor, materialman or other Person with respect to the Facility, such proceeds shall be deposited in the Renewal Fund and be applied as follows:

(i) if received prior to the Completion Date, the Net Proceeds of such recovery shall be applied in the manner and subject to the conditions set forth in Section 5.02 of the Indenture to the Costs of the Facility as if such proceeds were deposited in the Project Fund and the balance remaining in the Renewal Fund, if any, shall be applied to redeem the Bond pursuant to the Indenture;

(ii) if received subsequent to the Completion Date, the Net Proceeds of such recovery shall be paid to the Company as reimbursement for the Costs of the Facility that were not paid out of Bond Proceeds upon requisitions by the Company substantially in accordance with Section 5.02 of the Indenture with such variations as are appropriate and the balance remaining in the Renewal Fund, if any, shall be applied to redeem the Bonds pursuant to the Indenture.

(b) After the occurrence of an Event of Default under Section 10.1 hereof, the proceeds of any such recovery shall be applied as provided in Section 10.2 hereof.

(c) If the entire amount of the Bonds and interest thereon have been fully paid, or provision therefor has been made in accordance with the Indenture, the surplus thereof shall be paid first to the LOC Bank to satisfy any amounts due and owing under the Reimbursement Agreement and second to the Company for its business purposes.

(d) Except upon the occurrence of an Event of Default, the Company with the consent of the LOC Bank, which consent shall not be unreasonably withheld, delayed or conditioned, shall have the right to settle and adjust all claims against such contractors, subcontractors, materialmen or other Persons.

Section 7.5 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 MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Issuer, the LOC Bank and the Trustee shall not be liable for and agrees to defend, indemnify, release and hold the Issuer, the LOC Bank and the Trustee 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, or (ii) liability arising from or expense incurred by the Issuer's financing, acquisition, construction and equipping, owning and sale of the Facility, 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 Installment Sale Agreement and all causes of action and reasonable attorneys' fees and expenses and any other expenses incurred in defending any suits or actions that may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Issuer, the LOC Bank or the Trustee are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Issuer, the LOC Bank or the Trustee or any of its members, agents or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Issuer, the LOC Bank or the Trustee, 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.

(b) Notwithstanding any other provisions of this Installment Sale Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Installment Sale 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 LOC Bank, the Trustee 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, the LOC Bank, the Trustee 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.

Section 8.3 Right to Inspect Facility. The Issuer, the LOC Bank and the Trustee and the duly authorized agents of either of them shall have the right at all reasonable times to inspect the Facility.

Section 8.4 Company to Maintain its Existence; Other Covenants. The Company agrees that so long as the Bonds remain outstanding (a) it will maintain its existence as a limited liability company; and (b) the Facility will at all times be operated as a "project" (as such quoted term is defined in the Act as of the Closing Date) throughout the term hereof.

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

(a) Throughout the Sale 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 Indenture, 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 (exempt compulsory counterclaim) of any nature against the Issuer or the Trustee in such litigation. Any action or suit in connection with the Company Documents, the Issuer Documents, the Indenture, 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 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 Installment Sale 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 Installment Sale 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 Installment Sale 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, if any, claimed in connection with the Facility in compliance with Section 874(8) and Section 874(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 and its affairs necessary to enable the Issuer to make any report required by law, governmental regulation or any of the Issuer Documents or Company Documents.

Section 8.7 Books of Record and Account; Financial Statements. The Company 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 Company. The Company shall furnish to the Issuer and to the Trustee 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 Company.

Section 8.8 Compliance with Orders, Ordinances, Etc.

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

(b) The Company shall keep or cause the Facility to be kept free of Hazardous Substances. 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, the Lessee, or any contractor, subcontractor, tenant or subtenant, a release of Hazardous Substances onto the Facility or onto any other property. The Company shall comply in all material respects with and ensure compliance in all material respects by the Lessee, all contractors, subcontractors, tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply in all material respects with, and ensure that the Lessee, all contractors, subcontractors, tenants and subtenants obtain and comply in all material respects with, any and all approvals, registrations or permits required thereunder. The Company shall:

(i) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Substances, 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 reasonable satisfaction of the Trustee, the LOC Bank and 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 Trustee, the LOC Bank and the Issuer, their respective 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 that 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 reasonable policies or requirements of the Trustee, the LOC Bank and the Issuer that are based upon or in any way related to such Hazardous Substances, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses.

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

(c) Notwithstanding the provisions of subsections (a) and (b) hereof, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Issuer or the LOC Bank shall notify the Company that by failure to comply with such requirement or requirements, the lien of the Mortgage as to any part of the Facility may be materially endangered or the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be reasonably satisfactory to the LOC Bank 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 LOC Bank.

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

(e) Notwithstanding any provisions of this Section, the Trustee, the LOC Bank and the Issuer retain the right to defend themselves in any action or actions that are based upon or in any way related to such Hazardous Substances. In any such defense of themselves, the Trustee, the LOC Bank and the Issuer shall each select their own counsel,

and any and all costs of such defense, including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, shall be paid by the Company.

Section 8.9 Discharge of Liens and Encumbrances.

(a) The Company, throughout the Sale 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 by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

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

Section 8.10 Identification of Equipment. All Equipment that is or may become the Property of the Issuer pursuant to the provisions of this Installment Sale Agreement shall be properly identified by the Company by such appropriate records, including computerized records. All Equipment and other Property of whatever nature affixed or attached to the Land or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Issuer, rather than the Company, unless the same were utilized for purposes of construction of the Facility or were installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Installment Sale Agreement and such Equipment and other Property were properly identified by such appropriate records as were approved by the LOC Bank.

Section 8.11 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility pursuant to Section 167 or Section 168 of the Internal Revenue Code of 1986, as amended (the "Code"), and to any investment credit pursuant to Section 38 of the Code with respect to any part of the Facility that constitutes "Section 38 Property."

Section 8.12 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.

**ARTICLE IX
RELEASE OF CERTAIN INTEREST IN LAND; ASSIGNMENTS AND
SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS**

Section 9.1 Restriction on Sale of Facility; Release of Certain Interest in Land.

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Issuer and the Company shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Installment Sale Agreement, without the prior written consent of the Company, the LOC Bank and the Trustee.

(b) With the prior written consent of the LOC Bank (which consent may not be unreasonably withheld but may be subject to such reasonable conditions as the LOC Bank may deem appropriate), the Company from time to time may release from the provisions of this Installment Sale Agreement and the leasehold estate created hereby any part of, or interest in, the Land that is not necessary, desirable or useful for the Facility. In such event, the Company, at the Company's sole cost and expense, shall execute and deliver, and request the LOC Bank to execute and deliver, any and all instruments necessary or appropriate to so release such interest in the Land and convey such interest therein, free from the lien of the Mortgage, to the Company or such other Person as the Company may designate. As a condition to such conveyance, the LOC Bank shall be provided with a copy of the instrument transferring such interest in such Land, together with a certificate of an Authorized Officer of the Company stating that there is then no Event of Default under this Installment Sale Agreement and such interest in the Land is not necessary, desirable or useful for the Facility.

(c) No conveyance of any interest in the Land effected under the provisions of this Section 9.1 shall entitle the Company to any abatement or diminution of the rents payable by it under this Installment Sale Agreement.

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 LOC Bank (which consent may not be unreasonably withheld but may be subject to such reasonable conditions as the Trustee and the LOC Bank 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 shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including 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 of the Installment Payments payable by it under this Installment Sale Agreement.

Section 9.3 Assignment, Leasing and Subleasing.

(a) This Installment Sale Agreement may not be assigned, in whole or in part, and the Facility may not be leased, or subleased, in whole or in part, without the prior written consent of the LOC Bank and the Issuer in each instance; provided however no such written consent is required for the lease of the Facility to the Lessee. Any assignment, lease or sublease shall be on the following conditions:

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

(ii) the assignee, lessee or sublessee shall assume the obligations of the Company hereunder to the extent of the interest assigned, leased or subleased;

(iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Issuer, the LOC Bank and to the Trustee a true and complete copy of such assignment, lease 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 Facility shall continue to constitute a "project" as such quoted term is defined in the Act; and

(vi) the assignee, lessee or sublessee shall execute and deliver an agency compliance agreement, in form and substance reasonably satisfactory to the Issuer.

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

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

Section 9.5 Merger of Issuer.

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

(i) upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Installment Sale 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 status of the Facility as a "project" as such term is defined in the Act, 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 shall give notice thereof in reasonable detail to the Company, the LOC Bank and the Trustee and shall furnish to the Company, the LOC Bank and the Trustee (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 opining 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, the LOC Bank or the Trustee 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 Installment Sale Agreement:

- (i) the failure by the Company to pay or cause to be paid on the date due, the amount specified to be paid pursuant to Sections 5.3(a), 5.3(b) and 5.9 hereof;
- (ii) the failure by the Company to observe and perform any covenant contained in Sections 6.3, 6.4, 6.5, 8.4 and 9.3 hereof;
- (iii) the failure of the Company to pay or cause to be paid on the dates due, the amounts specified to be paid pursuant to the PILOT Agreement;
- (iv) the failure by the Company to observe and perform any covenant contained in the PILOT Agreement;
- (v) any representation or warranty of the Company herein or in the Bond Purchase Agreement shall prove to have been false or misleading in any material respect;
- (vi) the failure by the Company 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) or (vii)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Issuer, the LOC Bank or the Trustee;
- (vii) the dissolution or liquidation of the Company (except as provided in Section 9.3 hereof); or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; an Act of Bankruptcy on the part of the Company or the commencement by the Company (as the debtor) of a case under the Bankruptcy Code or any proceeding under any other insolvency law; or the commencement of a case under the Bankruptcy Code or any proceeding under any other insolvency law against the Company (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor in such case or proceeding, or such case or proceeding is consented to by the Company or remains undismissed for one hundred twenty (120) days, or the Company 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 Company 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 (the phrase "dissolution or liquidation of the Company" as used in this subsection shall not be construed to include any transaction permitted by Section 8.4 hereof);

(viii) an Event of Default under the Mortgage, the Reimbursement Agreement, the Indenture or the Guaranty shall have occurred and be continuing;

(ix) a breach of any covenant or representation contained in Section 8.8 hereof with respect to environmental matters or in the Environmental Compliance and Indemnification Agreement; or

(x) the invalidity, illegality or unenforceability of any of the Bond Documents.

(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 Installment Sale Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the LOC Bank and the Trustee, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Installment Sale 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 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, the LOC Bank or the Trustee 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 Installment Payments payable pursuant to Section 5.3(a) hereof in amount equal to the aggregate unpaid principal balance of all Bonds together with all interest that has accrued and will accrue thereon to the date of payment, (B) all unpaid and past due payments in lieu of taxes pursuant to

the PILOT Agreement, and (C) all other payments due under this Installment Sale Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vii) hereof shall have occurred, such Installment Payments and other payments due under this Installment Sale Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Issuer, the Trustee or the LOC Bank;

(ii) re-enter and take possession of the Facility, on ten (10) days written notice to the Company, without terminating this Installment Sale Agreement and without being liable for any prosecution or damages therefor, and lease or sell the Facility for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the Facility Purchase Price and other amounts payable by the Company hereunder exceeds the aggregate of the rents or installment payments, and other amounts received from the lessee under the new lease or purchaser under the new Installment Sale Agreement

(iii) terminate this Installment Sale Agreement, reconvey 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 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 and 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;

(iv) terminate, on ten (10) days written notice to the Company, the Sale Term and all rights of the Company under this Installment Sale 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 Installment Sale Payments and other amounts payable by the Company hereunder exceeds the aggregate of the Installment Sale Payments and other amounts received from such other Person under the new lease or new Installment Sale Agreement;

(v) enter upon the Facility and complete the acquisition, construction and equipping of the Facility in accordance with the Plans and Specifications (with such changes as the Trustee 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 Trustee may from time to time determine, (g) apply any undisbursed money in the Project Fund, Renewal 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 Purchase 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, the Renewal Fund and any other Fund or Account under the Indenture (other than those sums attributable to Unassigned Rights) to the payment of the outstanding principal amount of the Bonds and premium, if any, and accrued and unpaid interest on the Bonds;

(vi) 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 Installment Sale Agreement and under the PILOT Agreement;

(vii) upon the occurrence of an Event of Default under Sections 10.1(a) (ii), (iii) or (iv) hereof, the Issuer shall have the right without terminating this Installment Sale Agreement to reconvey the Facility to the Company and to 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 County Clerk's office, at the 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; and

(viii) take any other action at law or in equity that may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Installment Sale Agreement.

(b) In the event the Facility is subleased or leased to another Person pursuant to Section 10.2(a)(ii) or (iv) hereof, the Issuer or the Trustee, 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 Trustee at the per annum rate of twelve percent (12%), notwithstanding that the Sale Term and all rights of the Company under this Installment Sale Agreement may have been terminated pursuant to Section 10.2(a)(iii) hereof.

(c) Any sums payable to the Issuer as a consequence of any action taken pursuant to this Section 10.2 (other than those sums attributable to Unassigned Rights and except for moneys on deposit in the Purchase Fund) shall be paid to the Trustee and applied to the payment of the Bonds.

(d) 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.

(e) The Company shall have the right upon notice to the Issuer and the Trustee to enter the Facility with agents or representatives of the Issuer and the Trustee to remove any equipment or other personalty owned by the Company if such equipment or personalty is not part of the Facility.

(f) The Issuer, the Trustee and the LOC Bank shall have all of the rights, powers and remedies of a secured party under the Uniform Commercial Code of New York, including without limitation, the right to sell, lease or otherwise dispose of any or all of the Property subject to the security interests granted by the Company to the Issuer, the Trustee or the LOC Bank pursuant to Section 5.7 of this Installment Sale Agreement (the "Collateral"), and to take possession of the Collateral, and for that purpose Issuer, the Trustee or the LOC Bank may enter peaceably any premises on which the Collateral or any part thereof may be situated and remove the same therefrom, and the Company will not resist or interfere with such action. The Issuer, the Trustee or the LOC Bank may require the Company to assemble the Collateral and make it available to the Issuer at a place to be designated by the Issuer that is reasonably convenient to both parties. The Company hereby agrees that its above-mentioned address and the place or places of location of the Collateral are places reasonably convenient to it to assemble the Collateral. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Issuer, the Trustee or the LOC Bank will send the Company reasonable notice of the time and place of any public sale or reasonable notice of the time after which any private sale or any other disposition thereof is to be made. The requirement of sending reasonable notice shall be met if such notice is mailed, postage prepaid, to the Company at least ten days before the time of the sale or disposition.

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Issuer, the LOC Bank or the Trustee 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 Installment Sale 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, the LOC Bank or the Trustee, 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 Installment Sale Agreement.

Section 10.4 Agreement to Pay Attorneys' Fees and Expenses.

(a) In the event the Company defaults under any of the provisions of this Installment Sale Agreement and the Issuer employs attorneys or incurs 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.

(b) In the event the Company should default under any of the provisions of this Installment Sale Agreement and the Trustee 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 Trustee the reasonable fees and expenses of such attorneys and such other expenses so incurred.

(c) In the event the Company should default under any of the provisions of this Installment Sale Agreement and the LOC Bank 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 LOC Bank the reasonable fees and expenses 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.

**ARTICLE XI
EARLY TERMINATION OF INSTALLMENT SALE AGREEMENT;
OPTION IN FAVOR OF COMPANY**

Section 11.1 Early Termination of Installment Sale Agreement. The Company shall have the option to terminate this Installment Sale Agreement at any time that the Bonds are subject to redemption in whole under the Indenture and upon filing with the Issuer and the Trustee a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and the date upon which such payment shall be made (which date shall not be less than forty-five (45) nor more than ninety (90) days from the date such certificate is filed), and upon compliance with the requirements set forth in Section 11.2 hereof.

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

(a) To the Trustee for the account of the Issuer: an amount certified by the Trustee that when added to the total amount on deposit with the Trustee for the account of the Issuer and the Company and available for such purpose will be sufficient to pay the principal of, premium, if any, and interest on the Bonds.

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

(c) To the LOC Bank: an amount certified by the LOC Bank sufficient to pay all obligations due and owing under the Reimbursement Agreement.

(d) To the appropriate Person: an amount sufficient to pay all PILOT payments due and 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 Sale Term, in accordance with Sections 5.2 or 11.1 hereof, the Company shall purchase the Facility from the Issuer for the purchase price of One Dollar (\$1.00) plus all due and unpaid payments in-lieu-of-taxes pursuant to the PILOT Agreement through the date upon which this Installment Sale Agreement terminates or expires. The Company shall purchase the Facility by giving written notice to the Issuer and to the Trustee (which may be contained in the certificate referred to in Section 11.1 hereof) (i) declaring the Company's election to purchase, and (ii) fixing the date of closing such purchase, which shall be the date on which this Installment Sale Agreement is to be terminated.

Section 11.4 Conveyance on Purchase. At the closing of any purchase of the Facility pursuant to Section 5.2 or Section 11.3 hereof, the Issuer shall, upon receipt of the purchase price, deliver and request the Trustee and/or the LOC Bank to deliver to the Company all necessary documents (i) to convey to the Company title 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, to the creation of which the Company consented or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances (other than the lien of the Mortgage) 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 Installment Sale 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 the Mortgage and any other security interest held by the Trustee or the Owners of the Bonds. Upon the conveyance of the Facility by the Issuer to the Company pursuant to this Article XI, the PILOT Agreement shall terminate.

Section 11.5 Amounts Remaining on Deposit with the Trustee upon Payment of Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds, the payment in full to the LOC Bank of all amounts due and owing under the Reimbursement Agreement and the payment of all amounts owed to the Issuer, and fees, charges, expenses and other amounts required to be paid under the Bond Documents, all amounts on deposit with the Trustee for the account of the Issuer and the Company under the Bond Documents (except for amounts attributable to Unassigned Rights or amounts on deposit in the Purchase Fund) shall belong to and be paid to the Company upon its written request by the Trustee as an overpayment of rent, and neither the Trustee nor the Owners of the Bond shall 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 other:

To the Issuer:

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

To the Company:

Intercounty Associates II LLC
360 Moreland Road
Commack, New York 11725
Attention: Manager

To the Trustee:

The Bank of New York
101 Barclay Street, Floor 21W
New York, New York 10286
Attention: Corporate Trust Department

To the LOC Bank:

North Fork Bank
275 Broadhollow Road
Melville, New York 11747
Attention: Mr. Stephen Sipola, Senior Vice President

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 Trustee and the LOC Bank and a duplicate copy of each notice, certificate and any other written communication given hereunder by the Trustee, the LOC Bank or the Issuer to the others shall also be given to the Company, at the addresses herein set forth or provided for. Such notice shall be deemed to have been given upon receipt or upon refusal of the party being notified to accept delivery of such notice.

Section 12.2 Binding Effect. This Installment Sale 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 Installment Sale 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 Installment Sale Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and without the concurring written consent of the LOC Bank and the Trustee.

Section 12.5 Execution of Counterparts. This Installment Sale 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 this Installment Sale 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 Installment Sale 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) 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, the LOC Bank and the Trustee a schedule listing all of the Equipment not previously described in this Installment Sale Agreement. If requested by the Issuer or the Trustee, the Company shall thereafter furnish to the Issuer, the LOC Bank and the Trustee, 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.

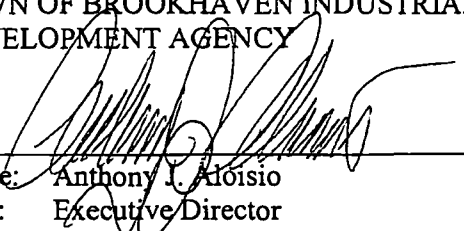
(b) The Issuer and the Company shall execute and deliver all instruments and shall furnish all information necessary or appropriate to perfect or protect any security interest created or contemplated by this Installment Sale Agreement, the Indenture and the Mortgage.

Section 12.8 Survival of Obligations. This Installment Sale 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 Installment Sale Agreement and the payment of the Bonds.

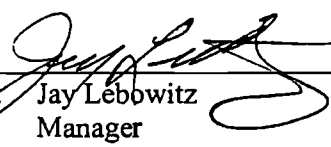
Section 12.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Installment Sale Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of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

IN WITNESS WHEREOF, the Issuer and the Company have caused this Installment Sale Agreement to be executed in their respective names by their duly authorized officers, all as of January 1, 2005.

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: Anthony J. Aloisio
Title: Executive Director

INTERCOUNTY ASSOCIATES II LLC

By: 
Name: Jay Lebowitz
Title: Manager

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

On the 24th day of January in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Anthony J. Aloisio, 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 Installment Sale Agreement, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Installment Sale Agreement, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

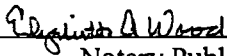
ELIZABETH A. WOOD
Notary Public, State of New York
Reg # 01WO6103025
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires: 12/15/07

Elizabeth A. Wood
Notary Public

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

On the 24th day of January in the year 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Jay Lebowitz, 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 Installment Sale Agreement, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Installment Sale Agreement, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

ELIZABETH A. WOOD
 Notary Public, State of New York
 Reg # 01Y/O6103025
 Qualified in Monroe County
 Certificate Filed in Monroe County
 Commission Expires: 12/15/07



 Notary Public

EXHIBIT A

Legal Description of Real Property

AMENDED AS OF 11/18/04:

ALL that certain plot, piece or parcel of land, situate, lying and being at Medford, in the Town of Brookhaven, County of Suffolk and the State of New York, bounded and described as follows:

BEGINNING at a point on the westerly line of Patchogue-Yaphank Road (C.R. 101) said point being the intersection of the westerly line of Patchogue-Yaphank Road (C.R. 101) with the northerly line of Southaven Avenue, as widened;

RUNNING THENCE the following eleven (11) courses:

- 1 South 84 degrees 29 minutes 41 seconds West, a distance of 731.02 feet along the northerly line of Southaven Avenue to a point;
- 2 North 06 degrees 02 minutes 16 seconds West, a distance of 1,600.47 feet to a point on the southerly line of National Boulevard;
- 3 North 83 degrees 57 minutes 44 seconds East, a distance of 423.86 feet along the southerly line of National Boulevard to a point;
- 4 Along an arc bearing to the left, in a generally southwesterly direction, whose radius is 30.00 feet, a length of 47.12 feet to a point of tangency;
- 5 South 06 degrees 02 minutes 16 seconds East, a distance of 512.02 feet to a point;
- 6 North 83 degrees 57 minutes 44 seconds East, a distance of 627.80 feet to a point;
- 7 South 06 degrees 02 minutes 16 seconds East, 118.98 feet;
- 8 South 65 degrees 31 minutes 06 seconds East, a distance of 239.02 feet to a point on the westerly line of Patchogue-Yaphank Road (C.R. 101);
- 9 Along the westerly line of Patchogue-Yaphank Road (C.R. 101) South 24 degrees 28 minutes 54 seconds West, a distance of 481.04 feet to a point;
- 10 Continuing along the westerly line of Patchogue-Yaphank Road (C.R. 101) South 24 degrees 27 minutes 08 seconds West, a distance of 446.96 feet to a point;
- 11 Continuing along the westerly line of Patchogue-Yaphank Road (C.R. 101) South 39 degrees 09 minutes 10 seconds West, a distance of 35.95 to the POINT OF BEGINNING.

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 Taxable Variable Rate Demand Industrial Development Revenue Bonds, Series 2005 (Intercounty Associates II LLC/Intercounty Appliance Corp. Facility) and installed and/or to be acquired and installed by the Company in connection with the completion of the Facility located in the Town of Brookhaven, Suffolk County, New York.