

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

and

AMNEAL PHARMACEUTICALS OF NEW YORK, LLC

EQUIPMENT LEASE AGREEMENT

Dated as of October 1, 2012

Town of Brookhaven Industrial Development Agency
(LAX Hotel, LLC/Amneal Pharmaceuticals of New York, LLC 2012 Facility)

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS	2
ARTICLE II REPRESENTATIONS AND COVENANTS	3
Section 2.1 Representations and Covenants of Agency.....	3
Section 2.2 Representations and Covenants of Sublessee	3
ARTICLE III CONVEYANCE OF THE EQUIPMENT	4
Section 3.1 Agreement to Convey to Agency.....	4
Section 3.2 Public Authorities Law Representations.....	4
Section 3.3 Subordination of Equipment Lease Agreement.....	5
ARTICLE IV ACQUISITION AND INSTALLATION OF THE EQUIPMENT IN THE FACILITY	5
Section 4.1 Equipping of Facility.	5
Section 4.2 Certificates of Completion.....	6
Section 4.3 Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties	6
ARTICLE V DEMISING CLAUSES AND RENTAL PROVISIONS	6
Section 5.1 Demise of Equipment	6
Section 5.2 Duration of Equipment Lease Term; Quiet Enjoyment.....	6
Section 5.3 Rents and Other Amounts Payable.....	7
Section 5.4 Obligations of Sublessee Hereunder Unconditional.....	7
ARTICLE VI MAINTENANCE AND INSURANCE.....	8
Section 6.1 Maintenance and Modifications of Equipment by Sublessee.....	8
Section 6.2 Reserved.....	8
Section 6.3 Reserved.....	8
Section 6.4 Insurance Required	8
Section 6.5 Additional Provisions Respecting Insurance.....	9
Section 6.6 Application of Net Proceeds of Insurance	9
ARTICLE VII DAMAGE OR DESTRUCTION OF THE EQUIPMENT	10
Section 7.1 Damage or Destruction of the Equipment.	10

	<u>Page</u>
ARTICLE VIII SPECIAL COVENANTS	11
Section 8.1 No Warranty of Condition or Suitability by Agency.....	11
Section 8.2 Hold Harmless Provisions.....	11
Section 8.3 Right to Inspect Equipment	12
Section 8.4 Sublessee to Maintain Its Existence.....	12
Section 8.5 Qualification in State	13
Section 8.6 Agreement to File Annual Statements and Provide Information.....	13
Section 8.7 Books of Record and Account; Financial Statements.....	13
Section 8.8 Compliance With Orders, Ordinances, Etc.....	13
Section 8.9 Discharge of Liens and Encumbrances.....	14
Section 8.10 Depreciation Deductions and Investment Tax Credit.....	15
Section 8.11 Security Agreements.....	15
Section 8.12 Leasing of Equipment.....	17
ARTICLE IX RELEASE OF CERTAIN EQUIPMENT; ASSIGNMENTS AND SUBLEASING; SECURITY INTEREST AND PLEDGE OF INTERESTS.....	19
Section 9.1 Restriction on Sale of Equipment; Release of Certain Equipment.....	19
Section 9.2 Removal of Equipment.	20
Section 9.3 Assignment and Subleasing.	20
Section 9.4 Merger of Agency.....	21
ARTICLE X EVENTS OF DEFAULT AND REMEDIES	21
Section 10.1 Events of Default Defined.	21
Section 10.2 Remedies on Default.....	23
Section 10.3 Remedies Cumulative	23
Section 10.4 Agreement to Pay Attorneys' Fees and Expenses	24
Section 10.5 No Additional Waiver Implied by One Waiver.....	24
ARTICLE XI EARLY TERMINATION OF EQUIPMENT LEASE AGREEMENT; OPTION IN FAVOR OF SUBLESSEE.....	24
Section 11.1 Early Termination of Equipment Lease Agreement.....	24
Section 11.2 Conditions to Early Termination of Equipment Lease Agreement	24
Section 11.3 Obligation to Purchase Equipment	24
Section 11.4 Conveyance on Purchase	24

	<u>Page</u>
ARTICLE XII MISCELLANEOUS	25
Section 12.1 Notices	25
Section 12.2 Binding Effect.....	26
Section 12.3 Severability	26
Section 12.4 Amendments, Changes and Modifications	26
Section 12.5 Execution of Counterparts	26
Section 12.6 Applicable Law	26
Section 12.7 List of Additional Equipment; Further Assurances	26
Section 12.8 Survival of Obligations	26
Section 12.9 Table of Contents and Section Headings not Controlling	26

Exhibit A - Description of Equipment

THIS EQUIPMENT LEASE AGREEMENT, dated as of October 1, 2012 (this “**Equipment Lease Agreement**”), is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a duly organized and validly existing public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville, New York 11738 (the “**Agency**”), and AMNEAL PHARMACEUTICALS OF NEW YORK, LLC, a business corporation organized and existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having offices at 85 Adams Avenue, Hauppauge, New York 11788 (the “**Equipment Lessee**” and “**Sublessee**”).

RECITALS

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

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

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

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

WHEREAS, the Facility shall consist of (i) the acquisition of an approximately 37.8 acre parcel of land located at 50 Horseblock Road, Yaphank, Town of Brookhaven, New York (collectively, the “**Land**”), upon which there is an existing 110,000 square foot building, and upon which there is proposed to be constructed a three-story approximately 322,000 square foot expansion, the components of which are: First Floor (a) an approximately 13,000 square foot first floor office and employee space; (b) an approximately 65,000 square foot manufacturing area, (c) an approximately 117,000 square foot warehousing area, (d) an approximately 30,000 square foot technical area, and (e) an approximately 4,000 square foot pharmacy; Second Floor (f) an approximately 27,000 square foot office and laboratory area, and (g) an approximately 46,000 square foot warehousing area; Third Floor (h) an approximately 20,000 square foot research and development area; and (ii) an approximately 42,000 square foot stand-alone state-of-the-art facility for

manufacturing, warehousing, packaging, and research and development of potent compounds and hormones; (iii) the construction and equipping of an approximately 4,725 square foot on-site sewerage industrial waste treatment plant to process approximately 26,000 gallons/day of industrial waste flow and approximately 22,000 gallons/day domestic waste flow (collectively the “**Improvements**”), and the acquisition and installation of certain equipment not currently owned by the Company or the Sublessee and part of the Equipment (as such term is defined in Exhibit A to this Equipment Lease Agreement (the “**Facility Equipment**”; and, together with the Land and Improvements, the “**Company Facility**”), to be leased by the Agency to LAX Hotel, LLC, a limited liability company (the “**Company**”), for further sublease by the Company to, and used by the Sublessee; and (iv) the acquisition and installation of certain Equipment potentially including, but not limited to, blenders, high share mixers, fluid bed processors, community mills, laser equipment, compression tablet pressers, D-Dusters, metal detectors, hardness testers, weight variation machines, capsulation machines, polishers, weight sorting machines, analytical scales, coding process equipment, air control systems, packing lines including fully automated vision systems, soft gelatin manufacturing equipment, homogenized mixers, soft gel capsulation machines, dying tunnels, sorting equipment, inks, laser printing machines, FVAC systems, temperature and humidity control systems, air compressors, ionized water and dust collection systems, hi-los facilities, laboratory equipment, HPLC, GC, LC, spectrometer, material management software and ERP, a stainless steel ballasted racking system, high-efficiency invertors and a solar panel system to be installed on the roof-top to include approximately 1250 solar panels (collectively, the “**Equipment**”), which Equipment is to be leased by the Agency to, and used by, the Sublessee for the development, manufacturing and warehousing of generic drugs as well as other uses in connection with the operation of the Facility including, but not limited to, executive and administrative office space (the Company Facility and the Equipment collectively referred to herein as the “**Facility**”). The Equipment shall specifically exclude any equipment owned by the Company or the Sublessee which is located at the Improvements as of the date hereof; and

WHEREAS, the Agency proposes to lease the Equipment to the Sublessee, and the Sublessee desires to rent the Equipment from the Agency, upon the terms and conditions set forth in this Equipment Lease Agreement.

AGREEMENT

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

ARTICLE I DEFINITIONS

All capitalized terms used in this Equipment Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement, dated as of October 1, 2012 (the “**Lease Agreement**”), by

and between the Agency and the Company, which definitions are incorporated herein and made a part hereof by reference.

ARTICLE II REPRESENTATIONS AND COVENANTS

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

(a) The Agency 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 Agency Documents and the other documents contemplated thereby. Each of the Agency Documents and the other documents contemplated thereby have been duly authorized, executed and delivered by the Agency.

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

(c) Neither the execution and delivery of any of the Agency 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 Agency Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof or of the Agency's Certificate of Establishment or By-Laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency 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 Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument.

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

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

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

(a) The Sublessee is a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of New York and it has full legal right, power and authority to execute, deliver and perform each of the Sublessee Documents and the other documents contemplated thereby. Each of the Sublessee

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

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

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

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

ARTICLE III CONVEYANCE OF THE EQUIPMENT

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

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

Section 3.3 Subordination of Equipment Lease Agreement. This Equipment Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage, Mortgages, Security Agreement or Security Agreements which may be granted by the Agency and/or the Sublessee on the Equipment or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

ARTICLE IV
ACQUISITION AND INSTALLATION OF THE EQUIPMENT IN THE FACILITY

Section 4.1 Equipping of Facility.

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

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

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

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

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

Section 4.2 Certificates of Completion. To establish the Completion Date, the Sublessee shall deliver to the Agency (i) a certificate signed by an Authorized Representative of the Sublessee (a) stating that the acquisition, leasing, subleasing and installation of the Equipment in the Facility has been completed; (b) stating that the payment of all labor, services, materials and supplies used in such acquisition and installation has been made or provided for; and (ii) such other certificates as may be requested by the Agency. The Sublessee agrees to use commercially reasonable efforts to cause the completion of the acquisition, leasing and installation of the Equipment in the Facility on or before August 31, 2017.

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

ARTICLE V DEMISING CLAUSES AND RENTAL PROVISIONS

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

Section 5.2 Duration of Equipment Lease Term; Quiet Enjoyment.

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

(b) Except as provided in Section 10.2 hereof, the leasehold or subleasehold interest created hereby shall terminate at 11:59 p.m. on August 31, 2017 or on such earlier date as may be permitted by Section 11.1 and Article XI hereof.

(c) Except as provided in Sections 8.3 and 10.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Sublessee during the Lease Term from having quiet and peaceable possession and enjoyment of the Equipment and will, at the

request of the Sublessee and at the Sublessee's cost, cooperate with the Sublessee in order that the Sublessee may have quiet and peaceable possession and enjoyment of the Equipment as hereinabove provided.

Section 5.3 Rents and Other Amounts Payable.

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

(b) In addition to the payments of basic rent pursuant to Section 5.3(a) hereof, throughout the Lease Term, the Sublessee shall pay to the Agency as additional rent, within thirty (30) days of the receipt of a written demand therefor, an amount equal to, without duplication, the sum of the expenses of the Agency and the members thereof reasonably incurred (i) by reason of the Agency's ownership, financing, leasing or subleasing of the Equipment or (ii) in connection with the carrying out of the Agency's duties and obligations under the Agency Documents, the payment of which is not otherwise provided for under this Equipment Lease Agreement. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative fee or fee for services rendered by the Agency.

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

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

Subject to the foregoing provisions, nothing contained in this Section shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Equipment Lease Agreement or to affect the right of the Sublessee to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Sublessee may institute such separate action against the Agency as the Sublessee may deem necessary to compel performance or recover damages for non-performance, and the Agency

covenants that it will not take, suffer or permit any action which will adversely affect, or create any defect in its title to the Equipment or which will otherwise adversely affect the rights or interest of the Sublessee in the Equipment hereunder, except upon written consent of the Sublessee.

ARTICLE VI
MAINTENANCE AND INSURANCE

Section 6.1 Maintenance and Modifications of Equipment by Sublessee.

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

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

Section 6.2 Reserved.

Section 6.3 Reserved.

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

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

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

(c) To the extent of the Sublessee's indemnification obligations, insurance protecting the Agency and the Sublessee against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Sublessee under Section 8.2 hereof) and arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or occurrence with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage), comprehensive automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage) and with a blanket excess liability coverage in an amount not less than \$5,000,000 combined single limit or equivalent protecting the Agency (subject to the Company's indemnification obligations) and the Sublessee against any loss or liability or damage for personal injury, including bodily injury or death, or property damage.

Section 6.5 Additional Provisions Respecting Insurance.

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

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

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) hereof shall be applied as

provided in Section 7.1 hereof and (ii) the Net Proceeds of the insurance required by Sections 6.4(b) and (c) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid and the excess, if any, shall be paid to the Sublessee.

ARTICLE VII
DAMAGE OR DESTRUCTION OF THE EQUIPMENT

Section 7.1 Damage or Destruction of the Equipment.

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

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

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

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

(iv) except as set forth in paragraph (d) below, upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Sublessee; and

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

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

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

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

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

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

ARTICLE VIII SPECIAL COVENANTS

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

Section 8.2 Hold Harmless Provisions.

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

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

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

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

Section 8.3 Right to Inspect Equipment. The Agency and its duly authorized agents shall have the right at all reasonable times, upon reasonable written notice, delivered to the Sublessee, to inspect the Equipment, and subject to the Agency's compliance with such reasonable requirements of the Sublessee to cause the Facility to remain in compliance with all applicable laws and regulations pertaining to the Sublessee's operation of the Facility.

Section 8.4 Sublessee to Maintain Its Existence. The Sublessee covenants and agrees that at all times during the term of this Equipment Lease Agreement, it will (i) maintain its existence, (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign limited liability company in the State, (iii) not intentionally liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Equipment Lease, and (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it provided, however, the Sublessee, without violating the foregoing, may consolidate with or merge into another corporation, or permit one or more corporation to consolidate with or merge into it, or sell or otherwise transfer all or substantially all of its property, business or assets to another such corporation (and thereafter liquidate, wind-up or dissolve or not, as the Sublessee may elect) if, (i) the Sublessee is the surviving, resulting or transferee corporation, and has a net worth (as determined in accordance with generally accepted accounting principles) at least equal to that of the Sublessee immediately prior to such consolidation, merger or transfer, or, with the prior written consent of the Agency, (ii) in the event that the Sublessee is not the surviving, resulting or transferee corporation, (1) the surviving, resulting or transferee corporation (A) is solvent and subject to service of process in the State and organized under the laws of the State, or any other state of the United States, and duly qualified to do business in the State, (B) assumes in writing all of the obligations of the

Sublessee contained in this Equipment Lease Agreement and all other Sublessee Documents to which the Sublessee shall be a party, (2) the Sublessee delivers to the Agency an opinion of counsel to the effect that this Equipment Lease Agreement and all other Sublessee Documents to which the Sublessee shall be a party constitute the legal, valid and binding obligations of such successor Sublessee and are enforceable in accordance with their respective terms to the same extent as they were enforceable against the predecessor Sublessee, and (3) in the opinion of an independent accountant, such successor Sublessee has a net worth (as determined in accordance with generally accepted accounting principles) after the merger, consolidation, sale or transfer at least equal to that of the predecessor Sublessee immediately prior to such merger, consolidation, sale or transfer. The preceding shall not prohibit the Sublessee from restructuring its business operations by way of merger, consolidation, or transfer of its assets to one of its affiliates.

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

Section 8.6 Agreement to File Annual Statements and Provide Information. The Sublessee shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) and (9) of the New York State General Municipal Law. The Sublessee shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Sublessee further agrees whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Sublessee, its operations and its employment reasonably necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or the Sublessee Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 8.7 Books of Record and Account; Financial Statements. The Sublessee at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and affairs of the Sublessee. The Sublessee shall furnish to the Agency within thirty (30) days of their filing, copies of all reports, if any, filed with the Securities and Exchange Commission, pursuant to the Securities Exchange Act of 1934, as amended, relative to the Sublessee.

Section 8.8 Compliance With Orders, Ordinances, Etc.

(a) The Sublessee, throughout the term of this Equipment Lease Agreement, agrees that it will promptly comply, and cause any contractor, subcontractor or sublessee of the Equipment to comply, in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, and written directions and requirements of any federal, state, county,

municipal or other governmental agency with jurisdiction, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Equipment or any part thereof, or to the acquisition and installation of the Equipment in the Facility, or to any use, manner of use or condition of the Equipment, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction over the Facility, and of any companies or associations insuring the premises.

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

(c) Notwithstanding the provisions of this Section 8.8, if, because of the Sublessee's breach or violation of the provisions of subsection (a) hereof (without giving effect to subsection (b) hereof), the Agency, or any of its members, directors, officers, agents, or employees, shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency, the Sublessee shall immediately provide legal protection and/or pay amounts reasonably necessary in the opinion of the Agency, and as the Agency's 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. The preceding shall not serve to limit or disclaim the Agency's liability to the Sublessee for the Agency's acts or omissions as permitted by applicable law, except that the Agency shall only be liable to the Sublessee for any injury to any person, any damage to any property or the Facility, or any fine, liability, expense or imprisonment, resulting from any grossly negligent or intentional action of any officer, employee, agent, representative, contractor, or subcontractor acting on behalf of the Agency with respect to the Equipment.

Section 8.9 Discharge of Liens and Encumbrances.

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

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

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

Section 8.11 Security Agreements. The Agency and the Sublessee agree to grant a security interest in any Equipment financed with the proceeds of a loan to the lender of such loan (in which event the Lien thereby created shall be deemed a Permitted Encumbrance), if the security agreement is in a standard form and substance pre-approved by the Agency and acceptable to the Agency (and the Agency agrees to not unreasonably withhold or delay its approval of such standard form security agreement) and if the security agreement contains the following provisions:

Section __. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of the loan or any amount due and owing under the loan or the security agreement. The lender will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the indebtedness evidenced by this security agreement or the loan documentation or any covenant, stipulation, promise, agreement or obligation contained herein or therein. In enforcing its rights and remedies under this security agreement or the loan documentation, the lender will look solely to the collateral covered by the security interest granted by this security agreement and/or the Sublessee for the payment of the indebtedness secured by this security agreement or the loan documentation and for the performance of the provisions hereof or thereof. The lender will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this security agreement or the loan documentation. This agreement on the part of the lender shall not be construed in any way so as to effect or impair the lien of this security agreement or the lender's right to foreclose or collect hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the lender in any foreclosure or collection proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Sublessee) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member,

director, officer, employee or agent (except the Sublessee) of the Agency or any natural person executing this security agreement on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or the Town of Brookhaven, New York and neither the State of New York nor the Town of Brookhaven, New York shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

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

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

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

Section 8.12 Leasing of Equipment. The Agency hereby agrees that the Sublessee may lease any Equipment as agent for the Agency for a term not to exceed seven (7) years pursuant to the term of a lease and the Sublessee may assign its rights under such lease to the Agency and the Agency shall sublease such Equipment to the Sublessee pursuant to the terms of this Equipment Lease Agreement (in which event such lease shall be deemed a Permitted Encumbrance), if such lease is in a standard form and substance pre-approved by the Agency and acceptable (and the Agency agrees to not unreasonably withhold or delay its approval of such standard form lease) to the Agency and the lease contains the following provisions:

Section ___. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of this lease. The lessor will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the rent, or other obligations evidenced by this lease or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this lease, the lessor will look solely to the Equipment and/or the Sublessee for the payment of the rent secured by this lease and for the performance of the provisions hereof. The lessor will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency and will not institute any separate action against the Agency by reason of

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

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

that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Sublessee) or employees. The foregoing indemnities shall apply irrespective of the breach of a statutory obligation on the part of the Agency, or any of its members, directors, officers, agents, or employees or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

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

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

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

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

(a) Except as otherwise specifically provided in this Article IX, in Section 10.2 hereof and the Mortgage, the Agency shall not sell, convey, transfer, encumber or otherwise

dispose of the Equipment or any part thereof, or any interest therein, or any of its rights under this Equipment Lease Agreement, except at the request of the Sublessee in the ordinary course of the Sublessee's business.

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

Section 9.2 Removal of Equipment.

(a) The Agency 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 Sublessee determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Sublessee 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, provided that such removal will not materially impair the operation of the remaining Equipment or the Facility for the purpose for which it is intended or change the nature of the remaining Equipment or the Facility so that it does not constitute a "Project" under the Act.

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

Section 9.3 Assignment and Subleasing.

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

- (i) no assignment or sublease shall relieve the Sublessee from primary liability for any of its obligations hereunder;
- (ii) the assignee or sublessee shall assume the obligations of the Sublessee hereunder to the extent of the interest assigned or subleased;
- (iii) the Sublessee shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;
- (iv) neither the validity nor the enforceability of this Equipment Lease Agreement shall be adversely affected thereby;

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

(vi) any sublessee will execute and deliver an Agency Compliance Agreement, in form and substance reasonably satisfactory to the Agency.

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

Section 9.4 Merger of Agency.

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

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

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

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

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

(ii) the failure by the Sublessee to observe and perform any covenant contained in Sections 6.4, 6.5, 8.4 and 9.3 hereof, and such failure shall continue for a period of ten (10) days after receipt by the Sublessee of written notice specifying in reasonable detail such failure, and requesting that it be remedied;

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

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

(v) the dissolution or liquidation of the Sublessee; or the failure by the Sublessee to release, stay, discharge, lift or bond within sixty (60) 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 Sublessee generally to pay its debts as they become due; or an assignment by the Sublessee for the benefit of creditors; the commencement by the Sublessee (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Sublessee (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Sublessee as the debtor in such case or proceeding, or such case or proceeding is consented to by the Sublessee or remains undismissed for forty (40) days, or the Sublessee consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Sublessee for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors (the term "dissolution or liquidation of the Sublessee" as used in this subsection shall not be construed to include any transaction permitted by Section 8.4 hereof); or

(vi) an Event of Default or default occurs and is continuing pursuant to the terms of the PILOT Agreement or the Agency Compliance Agreement.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 4.1 and 6.1 of this Equipment Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Equipment Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military

authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall 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 Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

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

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

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

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

(b) [Reserved]

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

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Equipment Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the

Agency, as appropriate, to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Equipment Lease Agreement.

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

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

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

Section 11.1 Early Termination of Equipment Lease Agreement. The Sublessee shall have the option to terminate this Equipment Lease Agreement at any time upon filing with the Agency a certificate signed by an Authorized Representative of the Sublessee stating the Sublessee's intention to do so pursuant to this Section and the date upon which such payment shall be made (which date shall not be less than 30 nor more than 60 days from the date such certificate is filed) in compliance with the requirements set forth in Section 11.2 and 11.3 hereof.

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

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

Section 11.4 Conveyance on Purchase. At the closing of any purchase or assignment of lease of the Equipment pursuant to Section 11.3 hereof, the Agency shall,

upon receipt of the purchase price or assignment price, deliver to the Sublessee all necessary documents (i) to convey to the Sublessee title to the Equipment being purchased or leases being assigned, as such Equipment exists, subject only to the following: (A) any Liens to which title to such Equipment was subject when conveyed to the Agency, (B) any Liens created at the request of the Sublessee, to the creation of which the Sublessee consented or in the creation of which the Sublessee acquiesced, (C) any Permitted Encumbrances and (D) any Liens resulting from the failure of the Sublessee to perform or observe any of the Transaction Documents on its part, or contained in this Equipment Lease Agreement or arising out of an Event of Default hereunder, and (ii) to release and convey to the Sublessee all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance with respect to the Equipment.

ARTICLE XII
MISCELLANEOUS

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

To the Agency:

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

With a copy to:

Brookhaven Town Attorney's Office
1 Independence Hall, 3rd Floor
Farmingville, New York 11738
Attention: Annette Eaderesto, Esq.

To the Sublessee:

Amneal Pharmaceuticals of New York, LLC
85 Adams Avenue
Hauppauge, New York 11788
Attention: Mark Patrichuk, Controller

With a copy to:

Farrell Fritz, P.C.
1320 RXR Plaza
Uniondale, New York 11556-1320
Attention: Peter L. Curry, Esq.

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

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

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

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

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

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

Section 12.7 List of Additional Equipment; Further Assurances. Upon the Completion Date with respect to the Equipment and the installation of all of the Equipment in the Facility, the Sublessee shall prepare and deliver to the Agency a schedule listing all of the Equipment not previously described in this Equipment Lease Agreement. If requested by the Agency, the Sublessee shall thereafter furnish to the Agency, 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.

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

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

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

IN WITNESS WHEREOF, the Agency and the Sublessee have caused this Equipment Lease Agreement to be executed in their respective names by their duly authorized officers, all as of October 1, 2012.

**TOWN OF BROOKHAVEN
INDUSTRIAL
DEVELOPMENT AGENCY**

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

**AMNEAL PHARMACEUTICALS
OF NEW YORK, LLC**

By: _____
Name: Robert Loewenstein
Title: Authorized Signatory

IN WITNESS WHEREOF, the Agency and the Sublessee have caused this Equipment Lease Agreement to be executed in their respective names by their duly authorized officers, all as of October 1, 2012.

**TOWN OF BROOKHAVEN
INDUSTRIAL
DEVELOPMENT AGENCY**

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

**AMNEAL PHARMACEUTICALS OF
NEW YORK, LLC**

By:  _____
Name: Robert Loewenstein
Title: Sr. Vice President, General Counsel

EXHIBIT A

Equipment

All Equipment, machinery and items of personal property acquired and installed and/or to be acquired and installed in the Improvements by Amneal Pharmaceuticals of New York, LLC, as agent for the Town of Brookhaven Industrial Development Agency (“Agency”) in connection with the Agency’s LAX Hotel, LLC/Amneal Pharmaceuticals of New York, LLC 2012 Facility located at 50 Horseblock Road, Yaphank, Town of Brookhaven, Suffolk County, New York.