
COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY

and

NATIONAL BEDDING COMPANY L.L.C.

AGENCY LEASE AGREEMENT

Dated as of October 9th 2008

THIS AGENCY LEASE AGREEMENT (“Lease”) is dated as of this ____ day of October, 2008 by and between the **COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 200 Harrison Street, Jamestown, New York 14701 (“Agency”) and **NATIONAL BEDDING COMPANY L.L.C.**, a limited liability company organized and existing under the laws of the State of Illinois, having an address of 2600 Forbs Avenue, Hoffman Estates, Illinois 60192 (“Lessee”).

WITNESSETH :

WHEREAS, the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to promote, develop, encourage and assist in the acquiring, construction, reconstruction, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, recreation and civic facilities, including industrial pollution control facilities, and to thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living;

WHEREAS, in accordance with the provisions of the Enabling Act, the Agency was established pursuant to Chapter 71 of the 1972 Laws of the State of New York, as amended, constituting Section 895-h of the New York General Municipal Law (said Chapter and the Enabling Act, each as amended from time to time, collectively, the “Act”), for the benefit of the County of Chautauqua and its inhabitants;

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase;

WHEREAS, Lessee has presented an application (the “Application”), including a cost benefit analysis, to the Agency, requesting the Agency to consider undertaking a project (the “Project”) consisting of the following: (A) (1) the acquisition of an interest in an approximately 15.6 acre parcel of land located at 2375 Parkway Drive, Falconer, Town of Ellicott, County of Chautauqua, New York, as more particularly described on Schedule A attached hereto (the “Land”), (2) the renovation of the existing approximately 87,500 square foot building located on the Land and the construction of an approximately 35,000 square foot addition thereto (collectively, the “Building”), (3) certain ancillary facilities, including parking lots and driveways, and related improvements to the Land (the “Ancillary Facilities”)(the Building, the

Ancillary Facilities and any other improvements to the Land, collectively, the "Facility"), and (4) the acquisition and installation therein and thereon of certain Equipment (as defined below)(the Land, the Facility and the Equipment, collectively, the "Project Facility"), all of the foregoing for use by Lessee as a manufacturing and warehousing facility; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes, mortgage recording taxes and real property taxes (but not including special assessments and ad valorem levies) (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to Lessee or such other entity as may be designated by Lessee and agreed upon by the Agency; and

WHEREAS, pursuant to a resolution passed by the Agency on August 19, 2008, the Agency agreed to undertake the Project and to execute and deliver the Transaction Documents (as defined below);

WHEREAS, the Agency proposes to appoint Lessee as agent of the Agency to undertake the acquisition, construction and installation of the Project Facility and to lease the Project Facility to Lessee, and Lessee desires to act as agent of the Agency to undertake the acquisition, construction and installation of the Project Facility and to lease the Project Facility from the Agency, all pursuant to the terms and conditions hereinafter set forth in this Lease;

WHEREAS, the acquisition of the Project Facility, the lease of the Project Facility and the granting of the Financial Assistance to the Lessee is for proper purposes, including, without limitation, the advancement of job opportunities, health, general prosperity and economic welfare of the people of the State of New York and the improvement of their prosperity and standard of living; and

WHEREAS, immediately prior to the execution and delivery of this Lease, Lessee will execute and deliver or cause to be executed and delivered to the Agency (A) a certain deed dated as of the date hereof (the "Deed to the Agency") from Lessee to the Agency, which conveys to the Agency all right, title and interest of Lessee in and to the Premises (as defined below), and (B) a bill of sale dated as of the date hereof (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of Lessee in and to the Equipment.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreement herein contained, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

1.1. **Definitions.** The following words and terms used in this Lease shall have the respective meanings set forth below:

“Applicable Laws” means all current and future statutes, codes, laws, acts, ordinances, treaties, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, determinations and requirements, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Project Facility or any part thereof or the conduct of work on the Project Facility or any part thereof or to the operation, use, manner of use or condition of the Project Facility or any part thereof (the applicability of the foregoing to be determined both as if the Agency were the owner of the Project Facility and as if Lessee and not the Agency were the owner of the Project Facility)

“Authorized Representative” means the person or persons at the time designated to act on behalf of the Agency or Lessee, as the case may be, by written certificate furnished to the Agency or Lessee, as the case may be, containing the specimen signature of each such person.

“Closing” means the closing at which the Transaction Documents are executed and delivered by Lessee to the Agency.

“Closing Date” means the date of the Closing.

“Counsel” means an attorney, or firm of attorneys, admitted to practice before the highest court of any State of the United States of America or the District of Columbia (who may be counsel for the Agency or Lessee).

“County” means Chautauqua County, New York.

“Environmental Laws” means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances, regulations, codes and rules relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials, including but not limited to, each of the following statutes, as well as any and all comparable statutes and regulations of the United States, the State of New York, the County of Chautauqua, or any applicable municipal authority effective on or after the effective date of this Lease: Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Safe Drinking Water Act, 42 U.S.C. Section 3300F et seq.; and the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq.

“Environmental Permits” means all permits, approvals, identification numbers, licenses, registrations, and other authorizations required under any applicable Environmental Laws.

“Equipment” means all those materials, machinery, equipment, fixtures or furnishings intended to be acquired with the proceeds of any payment made by Lessee pursuant to this Lease, and such substitutions and replacements therefor as may be made from time to time pursuant to

this Lease, including without limitation, all the property described in Exhibit A attached hereto. "Equipment" shall not include: (i) rolling stock, (ii) any item of personalty having a useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iii) plants, shrubs, trees, flowers, lawns or plants, or (iv) fine art or other similar decorative items.

"Event of Default" (collectively, "Events of Default") means any of the events or conditions designated as such in this Lease.

"Hazardous Materials" means all hazardous materials, including, without limitation, any explosives, radioactive materials, radon, asbestos-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls, lead based paints, petroleum, petroleum products, methane, hazardous materials, hazardous chemicals, hazardous wastes, extremely hazardous wastes, restricted hazardous wastes, hazardous or toxic substances, toxic pollutants, hazardous air pollutants, pollutants, contaminants, toxic chemicals, toxics, pesticides or related materials as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Clean Water Act, as amended (33 U.S.C. Section 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.) the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.), Articles 15 or 27 of the New York State Environmental Conservation Law, or in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule or regulation.

"Lien" means any interest in personal or real property securing an obligation owed to a Person whether such interest is based on the common law, statute or contract. The term "Lien" includes reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances affecting real property.

"Net Proceeds" means the amount of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

"Permitted Encumbrances" means (i) Liens described in the title insurance policy referred to in Section 3.4 of this Lease, (ii) this Lease, (iii) utility, access and other easements and rights of way, restrictions and exceptions that do not materially impair the utility or the value of the property affected thereby for the purposes for which it is intended, (iv) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens to the extent permitted by the Lease, and (v) Liens for taxes at the time not delinquent.

"Person" means an individual, partnership, corporation, association, joint venture, trust or unincorporated organization, and a government or governmental agency or political subdivision thereof.

“Pilot Agreement” means the Payment in Lieu of Taxes Agreement dated the date hereof between the Agency and Lessee, a copy of which is attached hereto as Exhibit B, pursuant to which Lessee shall make certain payments in lieu of real estate taxes.

“Plans and Specifications” means the plans and specifications for the Project Facility prepared by Lessee’s architect and approved by the Agency and all applicable governmental authorities.

“Premises” means the Land, together with the Facility located thereon.

“Revenues” means all amounts payable by the Lessee in respect of rentals under the Lease and Sublease.

“SEQR Act” means the State Environmental Quality Review Act and the regulations thereunder.

“State” means the State of New York.

“Company” means National Bedding Company L.L.C.

“Title Company” means Lawyers Title Insurance Corporation.

“Transaction Documents” means the Deed to the Agency, the Bill of Sale to Agency, the Pilot Agreement, this Lease and all other instruments, agreements, certificates and documents related thereto and executed in connection therewith, and any other instrument, agreement, certificate or document supplemental thereto, each as amended from time to time.

1.2. Interpretation. In this Lease, unless the context otherwise requires: (i) the words “hereof”, “herein”, “hereto”, “hereby” and “hereunder” when used in the Lease shall refer to this Lease; (ii) words of masculine gender shall mean and include correlative words of feminine and neuter genders; (iii) words importing the singular number shall mean and include the plural number, and vice versa; (iv) words importing persons shall include firms, associations, partnerships, trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons; (v) any certificates, letters or opinions required to be given pursuant to this Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Lease; and (vi) references to documents, instruments or agreements shall mean such documents, instruments and agreements as they may be amended, modified, renewed, replaced or restated from time to time.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF LESSEE

2.1. Representations. Lessee makes the following representations and warranties as the basis for the undertakings on its part contained herein:

(a) Lessee has the power to enter into this Lease and the other Transaction Documents and to perform its obligations hereunder and thereunder. The entry into and the fulfillment of and compliance with the provisions of this Lease and the other Transaction Documents have been duly authorized by all necessary action, and no other consent or approval is required as a condition to the validity or enforceability of this Lease or any of the other Transaction Documents.

(b) This Lease and the other Transaction Documents to which Lessee is a party constitute valid and binding obligations of Lessee, enforceable in accordance with their respective terms, except as enforcement may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights.

(c) Neither the entry into nor the fulfillment of and compliance with the provisions of this Lease or any other Transaction Documents to which Lessee is a party will conflict with or result in a breach of or constitute a default under (i) any provision of law, (ii) any order, writ, judgment, injunction or decree of any court or other governmental agency, or (iii) any instrument by which Lessee or its properties are bound.

(d) There is no litigation, proceeding or investigation before or by any court, public board or body, whether state, local or federal, pending or threatened against or affecting Lessee that would have a material adverse impact on this Lease, nor is there any basis therefor, wherein any unfavorable decision, ruling or finding would, in any way, materially adversely affect the business, operations or condition, financial or otherwise, of Lessee, or question the validity of any of the Transaction Documents or any action to be taken in connection therewith.

(e) The leasing of the Project Facility by the Agency has induced Lessee to locate the Project Facility in the County, will increase employment opportunities and promote the health, general prosperity and economic welfare of the inhabitants of the County and will not result in the removal of any plant or facility of Lessee from one area of the State to another or in the abandonment of a plant or facility of Lessee within the State.

(f) The Project Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws, and all ordinances, rules and regulations of governmental authorities having jurisdiction over the Project Facility. No portion of the Project Facility shall be used for the making of Retail Sales (as defined below) to customers who personally visit the Project Facility. "Retail Sales" means (i) sales by a registered vendor under Article 28 of the Tax Law of the State primarily engaged in the retail sale of tangible personal property, as defined in section 1101(b)(4)(i) of the Tax Law of the State, or (ii) sales of a service to such customers.

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

(h) Lessee acknowledges receipt of notice of Section 874(8) of the Act, which requires that Lessee as agent of the Agency annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales and use tax exemptions claimed by Lessee under the authority granted by the Agency.

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

(j) Lessee acknowledges receipt of notice of Section 874(9) of the Act, which requires the Agency to file within thirty (30) days of the date Lessee is appointed the agent of the Agency, a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, identifying Lessee as agent of the Agency, setting forth the taxpayer identification number of Lessee, giving a brief description of the goods and/or services intended to be exempted from sales and use taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. Lessee agrees to timely provide the foregoing information to the Agency and to otherwise cooperate with the Agency in connection with the preparation and filing of such form.

ARTICLE III

ACQUISITION OF PROJECT

3.1. Transfer.

(a) Pursuant to the Deed to the Agency, Lessee has or will convey to the Agency all of its right, title and interest in and to the Premises for the purpose of undertaking and completing the Project. Lessee represents and warrants that it has good and marketable title to the Premises, free and clear of all Liens, except for Permitted Encumbrances, and agrees to

defend, indemnify and hold the Agency harmless from any liability due to any defect in title thereto.

(b) Title to all materials, equipment, machinery and other items of property intended to be incorporated or installed in the Project Facility shall vest in the Agency immediately upon execution of the Bill of Sale to Agency. Title to all materials, equipment, machinery or other items of property acquired subsequent to the Closing Date and intended to be incorporated or installed in the Project Facility shall vest in the Agency immediately upon deposit on the Premises or incorporation or installation in the Project Facility. Lessee shall execute, deliver and record or file all instruments necessary or appropriate to vest title to the above in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

3.2. Acquisition, Construction and Installation of the Project Facility.

(a) Lessee shall, on behalf of the Agency, acquire, construct, equip and install the Project Facility on the Land in accordance with the Plans and Specifications.

(b) The Agency hereby appoints Lessee, and Lessee hereby accepts such appointment, as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Transaction Documents: (i) to acquire, construct, equip and install any and all aspects of the Project Facility in accordance with the Plans and Specifications; (ii) to execute and deliver any contracts, orders or instruments, and do all other things necessary or appropriate, for the acquisition, construction and installation of the Project Facility, on behalf of the Agency, provided that the liability of the Agency thereunder shall be limited to moneys made available therefor by Lessee and advanced for such purposes by Lessee in accordance with this Lease; (iii) to pay all fees, costs and expenses incurred in connection with completing the Project Facility; and (iv) to ask, sue for, recover and receive all sums of money and other demands that may be due and owing to the Agency under and to enforce any contracts, orders or instruments in connection with the acquisition, construction or installation of the Project Facility.

(c) Lessee shall give or cause to be given all notices, secure all permits and licenses and comply or cause compliance with all Applicable Laws applying to or affecting the construction and operation of the Project Facility, and Lessee will defend and save the Agency and their respective officers, members and agents harmless from all fees, expenses and fines due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be timely procured by Lessee.

(d) Lessee, as agent of the Agency, will cause (i) compliance with the requirements of Article 8 of the New York Labor Law, and (ii) any contractors, subcontractors and other persons involved in the acquisition, construction and installation of the Project Facility to comply with Article 8 of the New York Labor Law. Lessee shall not take any action, or neglect to take any action, including, without limitation, the employment of any contractor, if such action

or inaction results in jurisdictional disputes or strikes or labor disharmony in connection with the Project.

(e) Lessee agrees, for the benefit of the Agency, to undertake and complete the Project and to pay all such sums as may be required in connection therewith, including, without limitation, all costs of construction and installation of the Project Facility and all permitting, planning and consulting fees. Title to portions of the Project Facility acquired, constructed and installed at Lessee's cost shall immediately upon such acquisition, construction or installation vest in the Agency. Lessee shall execute, deliver and record or file such instruments as the Agency may request in order to perfect or protect the Agency's title to such portions of the Project Facility.

(f) No payment by Lessee pursuant to this Section 3.2 shall entitle Lessee to any reimbursement for any such expenditure from the Agency or to any diminution or abatement of any amounts payable by Lessee under this Lease.

3.3. Completion Date. Lessee will proceed with due diligence to complete the construction and installation of the Project Facility on or before January 31, 2009; provided, however, that failure to complete construction and installation of the Project facility on or before such date shall not constitute an Event of Default (as defined herein) so long as Lessee does thereafter complete the construction and installation of the Project facility prior to July 31, 2009. Completion of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of Lessee delivered to the Agency stating: (i) the date of such completion (the "Completion Date"); (ii) that all labor, services, materials and supplies used therefor and all costs and expenses in connection therewith have been paid; (iii) that the acquisition, construction and installation of the Project Facility has been completed, with the exception of ordinary punchlist items (if any), and that such completion has been accomplished in a manner so as to conform with all Applicable Laws; (iv) that Lessee or the Agency has good and valid title to all property constituting a portion of the Project Facility, free and clear of all Liens and encumbrances except Permitted Encumbrances; (v) that the Project Facility is ready for occupancy, use and operation for its intended purposes; and (vi) that all certificates, including any certificate of occupancy, necessary for the operation of the Project Facility have been secured.

3.4. Title Insurance and Survey. On or prior to the Closing Date, Lessee will obtain and deliver to the Agency (i) title insurance in the amount of at least \$100,000 covering the fee title of the Agency, subject only to Permitted Encumbrances, and (ii) a current survey of the Premises certified to the Agency, Lessee and the Title Company.

3.5. Sales Tax Exemption.

(a) Any exemption from the payment of New York sales or use taxes resulting from Agency involvement in the Project shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by Lessee as agent of the Agency as a part of or incorporated within the Project Facility prior to the Completion Date. No

operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of New York sales or use taxes. The Agency makes no representations or warranties that any property is exempt from the payment of New York sales or use taxes.

(b) On the Closing Date, the Agency shall execute and deliver to Lessee a sales tax exemption letter (the "Sales Tax Letter"). The Sales Tax Letter shall be effective commencing on its date and shall expire on the earlier to occur of (i) the termination of this Lease, (ii) the Completion Date, or (iii) the termination of such letter pursuant to its terms. Anything to the contrary in this Lease or the Sales Tax Letter notwithstanding, the sales and use tax exemption provided by the Sales Tax Letter shall not be available for or with respect to tangible personal property having a useful life of less than one year.

(c) Lessee covenants to file annually, and cause any sublessee or other operator of the Project Facility to file with the New York State Department of Taxation and Finance (with a copy to the Agency) a statement, in a form and manner prescribed by the New York State Commissioner of Taxation and Finance, describing the value of the sales and use tax exemptions claimed with respect to the Project Facility by Lessee, any agents of the Lessee or any operator of the Project Facility. If Lessee shall fail to comply with the foregoing, Lessee shall immediately cease to be the agent for the Agency in connection with the Project Facility. Lessee further covenants and agrees that it will, upon any request by the Agency, provide and certify, or cause to be provided and certified, any information concerning Lessee, or any sublessee, and its or their finances, operations and affairs, as may be necessary or appropriate in order to enable the Agency to make or prepare any report required by any provision of law, governmental regulation, this Lease or any other Transaction Document.

(d) Lessee covenants and agrees that it shall include the following language in and as a part of each contract, invoice, bill or purchase order entered into by Lessee, as agent of the Agency, in connection with the acquisition, construction and installation of the Project Facility:

"This [contract] is being entered into by National Bedding Company L.L.C. (the "Agent"), as agent for and on behalf of the County of Chautauqua Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent consisting in part of the renovation of the existing approximately 87,500 square foot building and the construction of an approximately 35,000 square foot addition thereto, and the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at 2375 Parkway Drive, Falconer, Town of Ellicott, Chautauqua County, New York (the "Premises"). The machinery, equipment and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption letter of the Agency; and

the Agent hereby represents that this [contract] is in compliance with the terms of the sales tax exemption letter. This [contract] is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this [contract], the [vendor/contractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.”

If Lessee fails to include, incorporate by reference or otherwise cause a contract, invoice, bill or purchase order to be subject to the above provision, then such contract, invoice, bill or purchase order shall not be an undertaking on behalf of the Agency and shall not be entitled to any of the benefits that may be conferred by the Agency, Lessee shall not claim any sales or use tax benefits or exemptions with respect thereto, and Lessee shall return to the Agency any such benefits or exemptions so taken, together with interest thereon at a rate of 12% per annum (the “Default Rate”) from the date of such taking.

(e) If Lessee shall use the sales or use tax exemption provided pursuant to the Sales Tax Letter in violation of the provisions of this Section 3.5, Lessee shall promptly notify the Agency of the same and shall pay to the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the Default Rate from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was used by Lessee.

ARTICLE IV

DEMISE OF PROJECT FACILITY; RENTAL PROVISIONS

4.1. Demise. The Agency hereby leases the Project Facility to Lessee, and Lessee hereby leases the Project Facility from the Agency, upon the terms and conditions of this Lease.

4.2. Lease Term; Quiet Enjoyment. The leasehold estate created hereby shall commence on the Closing Date and, provided that all amounts, costs and expenses payable by Lessee to the Agency under this Lease and all other Transaction Documents are paid in full, shall terminate at 12:00 a.m. on the earlier to occur of (1) October __, 2018, or (2) the date that this Lease shall terminate pursuant to Article VIII or Article IX hereof. The Agency shall not take nor permit any action, other than pursuant to Article VIII of this Lease, to prevent Lessee during the term of the Lease from having quiet and peaceable possession of the Project Facility or which will otherwise adversely affect the rights or estate of Lessee hereunder, except upon the written consent of Lessee.

4.3. Rent and Other Amounts Payable. Lessee shall pay to the Agency as the basic rental payments due hereunder: (i) the sum of One Dollar (\$1.00) per year on each anniversary of the Closing Date throughout the term of this Lease; (ii) all fees and expenses of Counsel to the Agency with respect to the Project, and (iii) all other costs and expenses incurred by the Agency in connection with the transactions contemplated by this Lease and the other Transaction

Documents (items (ii) and (iii) to be paid upon demand therefor from the Agency). In addition to the foregoing, Lessee shall also pay to the Agency, as additional rent, within fifteen (15) days after receipt of demand therefor from the Agency, the sum of the expenses of the Agency and the officers, members and agents thereof, incurred by reason of the Agency's ownership, leasing or sale of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease or any of the other Transaction Documents, and any other fee or expense of the Agency with respect to the Project Facility, the leasing or sale of the Project Facility to Lessee, or any of the other Transaction Documents, the payment of which is not otherwise provided for under this Lease. All payments made pursuant to this Article IV shall be made in immediately available funds in lawful money of the United States.

4.4. Administrative Fee. Lessee shall pay to the Agency, at Closing, an administrative fee in the amount of \$17,000.00 to cover certain of the Agency's costs with respect to the Project. Such administrative fee is non-refundable and is deemed earned in full upon the execution and delivery of this Lease.

4.5. Security Interest. Lessee hereby grants to the Agency a security interest in all of its right, title and interest in the Project Facility and in all additions and accessions thereto, all replacements and substitutions therefor, all books, records and accounts of Lessee pertaining to the Project Facility, and all proceeds and products thereof (collectively, the "Collateral"), as security for the obligations (payment and otherwise) of Lessee under this Lease and the other Transaction Documents (including, without limitation, Lessee's obligation to make payments under the Pilot Agreement). The Agency is authorized to file financing statements with respect to the Collateral, with or without the signature of Lessee thereon, and to do any other acts or things necessary or appropriate in order to perfect the security interest created hereby. The Agency's rights with respect to the Collateral, in addition to its other rights set forth in or created by this Lease or any Applicable Laws, shall be those of a secured party under the Uniform Commercial Code adopted in the State, as the same may be amended from time to time. The Agency's security interest created by this Section 4.5, together with the Agency's rights in connection therewith, shall survive any termination of this Lease and shall continue in effect until all amounts owed pursuant to this Lease and the other Transaction Documents have been paid in full.

ARTICLE V

COVENANTS OF THE LESSEE

5.1. Maintenance and Operation. Lessee shall: (i) not abandon the Project Facility nor cause or permit any waste, loss or damage, ordinary wear and tear excepted, to the Facility; (ii) not remove any part of the Facility outside the jurisdiction of the Agency; (iii) maintain and operate the Project Facility and make all necessary repairs and replacement thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); (iv) not take any action or fail to take any action which would cause the Project Facility not to constitute a "project" for purposes of the Act. With the written consent of the Agency, Lessee may from time

to time make structural additions, modifications and improvements to the Project Facility which it deems desirable, all of which shall become a part of the Project Facility (but in no way an obligation or expense of the Agency).

5.2. Taxes and Special Assessments.

(a) Lessee shall pay or cause to be paid, as the same respectively become due: (i) all taxes and governmental charges of any kind which may at any time be lawfully assessed or levied against or with respect to the Project Facility (other than those taxes for which payments in lieu thereof are being paid pursuant to the Pilot Agreement); (ii) all utility and other charges incurred or imposed with respect to the Project Facility or the operation, maintenance, use, occupancy, upkeep or improvement thereof, and (iii) all assessments and charges of any kind lawfully imposed by any governmental body.

(b) Lessee may in good faith contest any such taxes, assessments and other charges, so long as the overall operating efficiency of the Project Facility for the purposes for which it is intended is not impaired. In the event of any such contest, Lessee may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that (i) Lessee is not in default under any of the Transaction Documents, (ii) neither the Project 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, (iii) Lessee diligently prosecutes such contest to completion, and (iv) the Lessee shall have set aside on its books adequate reserves with respect thereto.

5.3. Insurance.

(a) At all times throughout the term of this Lease, Lessee will maintain or cause to be maintained, in financially sound and generally recognized responsible insurance companies, the following insurance coverages:

(i) "All-Risk" property insurance protecting the interests of Lessee and the Agency, as their interests may appear, in an amount sufficient to cover 100% of the replacement cost of the Project Facility, without deduction for depreciation;

(ii) insurance protecting Lessee and the Agency against loss or losses from liabilities imposed by law or assumed in any written contract (including the contractual liability assumed by the Lessee under Section 5.6 hereof) and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$2,000,000 per accident or occurrence on account of personal injury and property damage and an excess liability policy in an amount not less than \$5,000,000, naming the Agency as an additional insured party; and

(iii) during any period of construction, renovation, improvement or reconstruction (A) "Builder's Risk" extended coverage casualty insurance in an amount

satisfactory to the Agency, and (B) to the extent not covered by the liability insurance described in the preceding paragraph, Owners & Contractors Liability Insurance for the benefit of Lessee and the Agency with limits for personal and property damage satisfactory to the Agency.

(b) All policies evidencing the insurance required by this Section 5.3 shall name Lessee and the Agency as insureds and provide for (i) payment of the losses to Lessee and the Agency as their respective interests may appear, and (ii) at least thirty (30) days' written notice to Lessee and the Agency prior to cancellation, lapse, reduction of benefits or material change in coverage thereof. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. Prior to the expiration of any policy of insurance, Lessee shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Lease.

(c) The Net Proceeds of the insurance required by Sections 5.3(a)(i) and 5.3(a)(iii)(A) shall be applied as set forth in Section 7.1 hereof, and the Net Proceeds of the insurance required by Sections 5.3(a)(ii) and 5.3(a)(iii)(B) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance is written.

5.4. Disposal of Assets. During the term of this Lease, Lessee shall not liquidate or otherwise dispose of all or substantially all of its assets.

5.5. Right of Agency to Perform Lessee's Obligations. Should Lessee fail to make any payment or to do any act provided for in this Lease, the Agency may, but shall not be obligated to, without notice to or demand on Lessee and without releasing Lessee from any obligation, make or do the same on behalf of Lessee, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of Lessee or the Agency, and paying all premiums, fees, costs and expenses (including reasonable attorneys' fees) incurred by the Agency in connection therewith; and Lessee shall pay immediately upon demand all sums so incurred or expended by the Agency under the authority hereof, together with interest thereon, at the Default Rate.

5.6. Indemnity and Hold Harmless Provisions.

(a) Lessee releases the Agency from, agrees that the Agency shall not be liable for, and indemnifies and holds harmless the Agency and its officers, members, agents (other than Lessee) and employees, past, present and future, from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees) resulting from or arising in connection with the Agency's undertaking the Project, including, but not limited to: (i) liability for loss or damage to property or bodily injury to or death of any and all persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project or the Project 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 Project Facility, (ii) liability arising from or expense incurred by the Agency's

acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Lease or any of the other Transaction Documents or the enforcement of or defense of validity of any provision of any of the Transaction Documents, (iii) liability or loss in connection with or occasioned by any breach of Lessee's covenants or agreements under this Lease; (iv) all claims arising from the exercise by Lessee of its authority conferred pursuant to Section 3.2(b) hereof, and (v) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing or gross negligence of the Agency or any of its officers, members, agents (other than Lessee) and employees. The foregoing indemnities shall not apply to the Agency or any of its officers, members, agents and employees to the extent of their own gross negligence or intentional misconduct. Lessee agrees to provide for and insure, to the extent possible, in the liability policies required by Section 5.3 (a)(ii) of this Lease, its liabilities assumed pursuant to this Section 5.6.

(b) Notwithstanding any other provisions of this Lease, the obligations of Lessee pursuant to this Section 5.6 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, the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency or its officers, members, employees or agents, relating to the enforcement of the provisions herein specified.

5.7. Limitation of Liability of the Agency. Notwithstanding any other provision of this Lease, any liability of the Agency to Lessee under this Lease shall be enforceable only out of the Agency's interest under this Lease, and there shall be no other recourse against the Agency, its officers, members, agents and employees, past, present or future, or any of the property now or hereafter owned by it or them.

5.8. Discharge of Liens. If any Lien (other than a Permitted Encumbrance) is filed or asserted against the Project Facility or the Agency's or Lessee's interest therein, the Lessee will cause each such Lien to be fully discharged and released within thirty (30) days after its assertion; provided, however, Lessee may contest any such Lien in good faith. If any such Lien shall be reduced to final judgment, and such judgment or other process issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, Lessee shall forthwith pay and discharge said judgment.

5.9. Certificate of No Default; Financial Statements. Within ninety (90) days after the close of each fiscal year, Lessee shall, upon the request of the Agency, furnish to the Agency: (i) a certificate stating that no Event of Default under this Lease has occurred, and that no event has occurred which with the giving of notice or lapse of time or both would constitute an Event of

Default (or, if either of such statements is not correct, the details with respect to the event or occurrence); and (ii) audited financial statements of Lessee consisting of a balance sheet as of the last day of such period and an operating or income statement through the last day of such period.

5.10. Compliance with Laws. Lessee agrees that it will, during the term of this Lease, comply with all Applicable Laws.

5.11. Employment Opportunities.

(a) Lessee shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

(b) Pursuant to Section 858-b of the Act, except as otherwise provided by collective bargaining contracts or agreements, Lessee agrees (i) to list all new employment opportunities created as a result of the Project with the New York State Department of Labor, Community Services Division (the "NYSDOL") and with the administrative entity (collectively with NYSDOL, the "JTPA Referral Entities") of the service delivery area created by the federal Job Training Partnership Act (P.L. No. 97-300) (the "JTPA") in which the Project is located, and (ii) where practicable, to first consider for such new employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.

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

(d) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, Lessee agrees to file with the Agency, on an annual basis not later than January 1 of each year during the term of this Lease, reports regarding the number of people employed at the Project Facility and certain other matters, such annual employment report to be in such form and to contain such information as may be reasonably requested by the Agency.

5.12. Payments in Lieu of Taxes.

(a) It is recognized that, under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control or supervision or upon its activities. It is the intention of the parties hereto that the Project Facility be treated as exempt from real property taxation to the extent set forth in the Pilot Agreement. Accordingly, the parties hereto acknowledge that the Agency shall file New York State Board of Real Property Services Form RP-412-a with respect to the Project Facility.

(b) The Agency and Lessee hereby agree that Lessee, or any permitted subsequent user of the Project Facility under this Lease, shall be required to make or cause to be made payments in lieu of taxes to the school district or school districts, city, town, county, village and

other political units wherein the Project Facility is located having taxing powers in such amounts and at such times as are required by the Pilot Agreement.

ARTICLE VI

HAZARDOUS MATERIALS

6.1. Environmental Representations and Warranties. Lessee represents and warrants that (i) Lessee has not used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Environmental Law, (ii) the environmental and ecological condition of the Project Facility is not in violation of any Environmental Law, (iii) Lessee has all Environmental Permits required to construct and operate the Project Facility and is in compliance with their requirements, (iv) the Premises is not listed in CERCLIS, the NPL, the New York State Registry of Inactive Hazardous Waste Sites, or any similar state or local listing nor is it included in an area included in such a list, and Lessee has no knowledge that such a listing is pending or contemplated, (v) no event has occurred which, with the passage of time or the giving of notice or both, would constitute a violation of any Environmental Law, (vi) to the best of Lessee's knowledge, there are not now, nor have there ever been, above ground or underground storage tanks on or under the Premises, (vii) there are no actions, suits, claims or proceedings seeking money damages, injunctive relief, remedial action or any other remedy pending or, to Lessee's knowledge, threatened relating to a violation of Environmental Law or the disposal, discharge or release of Hazardous Materials, (viii) there has been no release or threatened release of any Hazardous Materials on, upon or into the Project Facility site and, to Lessee's knowledge, there have been no such releases or threatened releases on, upon or into any real property adjoining or in the vicinity of the Project Facility site which through soil or groundwater migration could have come to be located upon the Project Facility site, and (ix) to the best of Lessee's knowledge, no prior owner of the Project Facility or any tenant, subtenant, operator, occupant, prior tenant, prior subtenant, prior operator or prior occupant, has used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Environmental Law.

6.2. Environmental Covenants.

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

(b) Lessee shall comply with, and ensure compliance by all tenants, subtenants and occupants of the Project Facility with, all Environmental Laws whenever and by whomever triggered, and shall obtain and comply with, and ensure that all tenants, subtenants, operators and occupants of the Project Facility obtain and comply with, any and all approvals, registrations or permits required thereunder. Lessee agrees to provide the Agency with copies of any notifications given by Lessee to any governmental authority or received by Lessee from any governmental authority with respect to any Environmental Law respecting the Project Facility.

(c) Lessee shall (i) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or contain all Hazardous Material on, from or affecting the Project Facility (A) in accordance with all Applicable Laws, (B) to the satisfaction of the Agency, and (C) in accordance with the orders and directives of all governmental authorities, and (ii) defend (with counsel selected by the Agency), indemnify, and hold harmless the Agency and its employees, agents, officers, attorneys, servants and members, past, present and future, 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, whether groundless or not, arising out of, or in any way related to: (A) the presence, disposal, release or threatened release of any Hazardous Materials on, from, under or affecting the Project Facility, (B) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (C) any lawsuit brought or threatened, settlement reached, or any government order relating to such Hazardous Materials, and/or (D) any violation of any Environmental Law, including, without limitation, attorney and consultant fees, costs of remediation, investigation and laboratory fees, court costs and litigation expenses. Costs under this subsection 6.2 (c) will be repaid immediately with interest at the Default Rate.

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

(e) In the event that insurance is or shall become available at a reasonable cost to cover Lessee's obligations under this Section 6.2, then, at the option of the Agency, Lessee shall obtain adequate coverage.

ARTICLE VII

DAMAGE TO AND STATUS OF PROJECT

7.1. Damage, Destruction and Condemnation.

(a) If (i) the Project Facility or any portion thereof shall be destroyed (in whole or in part) or damaged by fire or other casualty, or (ii) title to, or the temporary use of the Project

Facility or any portion thereof shall be taken under the exercise of the power of eminent domain by a Person acting under governmental authority, Lessee may, within thirty (30) days after the occurrence, terminate this Lease upon notice to the Agency or continue the Lease in effect. In no event shall the Agency have any liability or duty to replace, repair, rebuild or restore the Project Facility and in no event shall there be an abatement or reduction in the amounts payable by Lessee under this Lease (whether or not the Project Facility is replaced, repaired, rebuilt or restored by Lessee).

(b) Lessee shall have the right to settle and adjust all claims under any policies of insurance or in condemnation on behalf of the Agency and itself.

7.2. No Warranty by Agency. THE AGENCY MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR LESSEE'S PURPOSES OR NEEDS. LESSEE ACCEPTS THE PROJECT FACILITY "AS IS".

7.3. Inspection. The Agency and its agents shall have the right at all reasonable times to inspect the Project Facility.

7.4. Information. Lessee agrees to provide promptly such information concerning Lessee, its finances and the Project Facility as the Agency may reasonably request from time to time, including, without limitation, any such information required to enable the Agency to make any report(s) required by Applicable Laws.

7.5. Identification of Equipment. All Equipment which is or may become a part of the Project Facility shall be properly identified by Lessee by such appropriate records as may be approved by the Agency.

7.6. Depreciation. The parties agree that, as between them, Lessee shall be entitled to all depreciation or recovery deductions with respect to any depreciable property in the Project Facility pursuant to Sections 167 or 168 of the Internal Revenue Code and to all other state and/or federal income tax deductions and credits which may be available with respect to the Project Facility.

7.7. Restriction on Sale and Encumbrance of Project Facility. Except as otherwise specifically provided in this Lease, Lessee shall not sell, convey, transfer or encumber the Project Facility or any part thereof without the prior written consent of the Agency, which consent may be granted or withheld in the Agency's sole discretion.

7.8. No Assignment or Sublease. Lessee shall not assign this Lease in whole or in part or sublease all or any portion of the Project Facility without the prior written consent of the Agency.

7.9. Merger of Agency.

(a) Nothing contained in this Lease shall prevent the consolidation of the Agency with, the merger of the Agency into, or the assignment by the Agency of its rights and interests hereunder to, any other public benefit corporation of the State or any political subdivision thereof which has the legal authority to own and lease the Project Facility and to perform the Agency's obligations hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of this Lease 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, surviving such merger or to which the Agency's rights and interests under this Lease shall be assigned.

(b) The Agency shall endeavor to give Lessee notice in reasonable detail as to any such consolidation, merger or assignment. The Agency shall promptly furnish such additional information with respect to any such consolidation, merger or assignment as the Lessee may reasonably request.

7.10. Waiver of Real Property Law Section 227. Lessee hereby waives the provisions of Section 227 of the Real Property Law of the State or any laws of like import now or hereafter in effect.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

8.1. Events of Default Defined. Any one or more of the following events shall be "Events of Default" under this Lease:

(a) failure by Lessee to pay or cause to be paid any amount due under this Lease or under any other Transaction Document;

(b) failure by Lessee to observe and perform any other of the covenants, conditions or agreements in this Lease on its part to be observed or performed and the continuation thereof for a period of thirty (30) days after written notice thereof is given by the Agency to Lessee;

(c) Lessee shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, custodian, trustee or liquidator of itself or of any of its assets, (ii) admit its inability, or be generally unable, to pay its debts as such debts become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition or other request seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization,

winding-up, or composition or adjustment of debts, or (vi) take any corporate action for the purpose of effecting any of the foregoing;

(d) a proceeding or case shall be commenced, without the application or consent of Lessee, in any court of competent jurisdiction, seeking (i) liquidation, reorganization, arrangement, adjustment of debts, adjudication as a bankrupt, dissolution, winding-up, or relief as a debtor, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of Lessee or of any of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of thirty (30) days;

(e) any certificate, statement, representation, warranty or financial statement furnished by or on behalf of Lessee shall prove to have been false or misleading in any material respect at the time as of which the facts therein set forth were made, or to have omitted any substantial or unliquidated liability or claim against Lessee;

(f) there shall be a default in respect of any evidence of indebtedness for money borrowed by Lessee (or with respect to the performance of any obligations of Lessee incurred in connection with any such indebtedness for money borrowed) where the effect of such default is to accelerate the maturity of such indebtedness or to permit the holders thereof (or a trustee on behalf of such holders) to cause such indebtedness to become due prior to its stated maturity, or any such indebtedness shall not be paid as and when due and payable;

(g) the Project Facility, or any portion thereof, shall be removed outside Chautauqua County, New York, without the prior written consent of the Agency; and/or

(h) the occurrence of any event of default under any other Transaction Document.

8.2. Force Majeure. Notwithstanding the provisions of Section 8.1 hereof, if by reason of force majeure (as hereinafter defined) either party hereto is unable in whole or in part to carry out the agreements on its part herein contained, the Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall include acts outside of the control of the Agency and Lessee, including, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, restraint of government and people, civil disturbances, breakage or accident to transmission pipes or canals, and partial or entire failure of utilities. Notwithstanding anything to the contrary contained in this Section 8.2, an event of force majeure shall not excuse, delay or in any way diminish the obligations of Lessee to make the payments required under this Lease, to obtain and provide the insurance required by Section 5.3 hereof, to provide the indemnity required by Sections 3.1, 5.6 and 6.2(c) hereof and to comply with the provisions of Sections 5.4, 5.10 and 7.4 hereof. Lessee agrees that after the occurrence of an event of force majeure, it will

take such steps as may thereafter be within its reasonable control to mitigate the cause or causes preventing Lessee from carrying out its obligations under this Lease.

8.3. Remedy on Default. Upon the occurrence of an Event of Default, in addition to any other remedy which may be available under any applicable law, the Agency may, at its option, terminate this Lease and deed and transfer the Project Facility to Lessee.

8.4. No Remedy Exclusive. No course of dealing and no delay or omission by the Agency in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. The Agency may remedy any default by Lessee hereunder or with respect to any other Person in any reasonable manner without waiving such default. All rights and remedies of the Agency hereunder are cumulative.

8.5. Agreement to Pay Attorneys' Fees and Expenses. In the event Lessee defaults under any of the provisions of this Lease or any other Transaction Document and the Agency retains attorneys or incurs other expenses for the collection of amounts payable hereunder or thereunder, or the enforcement of performance or observance of any obligations or agreements on the part of Lessee herein or therein contained, Lessee shall, on demand therefor, pay to the Agency such fees and expenses (including, without limitation, attorneys' fees and expenses) so incurred, whether an action is commenced or not.

ARTICLE IX

TERMINATION OF THIS LEASE; OPTION IN FAVOR OF LESSEE

9.1. Early Termination. Lessee shall have the option to terminate this Lease at any time prior to the termination date specified in Section 4.2 hereof by filing with the Agency a certificate signed by an Authorized Representative of Lessee stating Lessee's intention to do so pursuant to this Section 9.1.

9.2. Obligation to Purchase Project Facility. Upon termination of this Lease in accordance with Section 4.2, Section 8.3 or Section 9.1 hereof, the Agency shall sell and Lessee shall purchase all of the Agency's right, title and interest in and to the Project Facility for the purchase price of One Dollar (\$1.00) plus payment of all sums required to be paid to the Agency or any other Person pursuant to this Lease and the other Transaction Documents.

9.3. Conveyance on Purchase. At the closing of the purchase of the Project Facility pursuant to Section 9.2 hereof, the Agency shall, upon the satisfaction of the conditions set forth in Sections 9.1 and 9.2 hereof, deliver all necessary documents (a) to convey to Lessee title to the Project Facility, as the Project Facility then exists, subject only to the following: (i) any Liens to which title was subject when conveyed to the Agency, (ii) any Liens created at the request of Lessee, to the creation of which Lessee consented or in the creation of which Lessee acquiesced, (iii) any Permitted Encumbrances, and (iv) any Liens resulting from the failure of Lessee to

perform or observe any of its agreements contained in this Lease or in any other Transaction Document or arising out of an Event of Default; (b) to release and convey to Lessee all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or condemnation awards with respect to the Project Facility; and (c) to discharge and release any security interest or lien of any nature held by the Agency.

ARTICLE X

MISCELLANEOUS

10.1. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given, if by delivery, when delivered and, if delivered by mail, on the second day following the day on which mailed by certified mail, postage prepaid, addressed as follows:

To the Agency: County of Chautauqua Industrial Development Agency
 200 Harrison Street
 Jamestown, New York 14701
 Attention: Administrative Director

To the Lessee: National Bedding Company L.L.C.
 2600 Forbs Avenue
 Hoffman Estates, Illinois 60192
 Attention: Jim Polark

The Agency or Lessee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

10.2. Binding Effect. This Lease shall inure to the benefit of the Agency and Lessee and shall be binding upon the Agency, Lessee and, as permitted by this Lease, their respective successors and assigns.

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

10.4. Execution of Counterparts. This Lease 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.

10.5. Integrated Agreement; Amendments. This Lease represents the entire agreement between the parties hereto on the subject matter hereof and may not be amended, changed, modified or altered except by an instrument in writing signed by the parties hereto.

10.6. Survival of Certain Obligations. The obligations of Lessee to make payments required by the provisions of this Lease and to provide the indemnity required by Sections 3.1, 5.6 and 6.2(c) hereof shall survive the termination of this Lease, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

10.7. Net Lease. The obligation of Lessee to make the payments specified in this Lease shall be absolutely net to the Agency without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that this Lease shall yield, net, to the Agency, the payments set forth herein.

10.8. Applicable Law. This Lease shall be governed and construed under the internal laws of the State without regard to principles of conflicts of law.


10.9. Headings for Convenience Only. The descriptive headings in this Lease are inserted for convenience only and shall not control or affect the meaning or construction of any provisions hereof.

10.10. WAIVER OF JURY TRIAL. THE AGENCY AND LESSEE HEREBY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING IN CONNECTION WITH THIS LEASE OR ANY OTHER TRANSACTION DOCUMENT.


10.11. 3rd Party Beneficiaries. Nothing in this Lease is intended to be for or inure to the benefit of any Person other than the parties hereto.

IN WITNESS WHEREOF, the Agency and Lessee have hereby executed this Lease as of the date first above written.

**COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY**

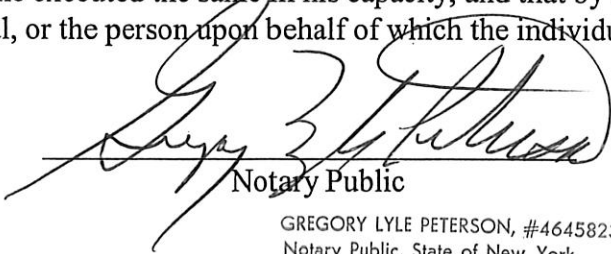
By: 
William J. Daly, Administrative Director

NATIONAL BEDDING COMPANY L.L.C.

By: 
Name: JAMES F. POLLOCK
Title: VP - CFO

STATE OF NEW YORK)
) SS:
COUNTY OF CHAUTAUQUA)

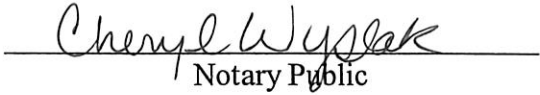
On the 9th day of Oct, 2008 before me, the undersigned, a notary public in and for said state, personally appeared William J. Daly, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

GREGORY LYLE PETERSON, #4645823
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires 6-30-2011

STATE OF Illinois)
) SS:
COUNTY OF McHenry)

On the 6 day of October, 2008 before me, the undersigned, a notary public in and for said state, personally appeared James F Pokrk, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public



Schedule A

LAND

Exhibit A

EQUIPMENT

All equipment, fixtures, machines, building materials and items of personal property and all appurtenances (A) acquired, constructed and/or intended to be installed and/or to be acquired, constructed or installed in connection with the acquisition, construction and installation of the National Bedding Company L.L.C. Project (the "Project") of the County of Chautauqua Industrial Development Agency (the "Agency") located on the real property described on Schedule A hereto (the "Land"), said Project to be acquired, constructed and installed by National Bedding Company L.L.C. (the "Lessee") as agent of the Agency pursuant to an Agency Lease Agreement dated as of the date hereof (the "Lease Agreement") by and between the Agency and Lessee and (B) now or hereafter attached to, contained in or used in connection with the Land or placed on any part thereof, though not attached thereto, including but not limited to the following:

(1) Pipes, screens, fixtures, heating, lighting, plumbing, ventilation, air conditioning, compacting and elevator plants, call systems, stoves, ranges, refrigerators and other lunch room facilities, rugs, movable partitions, cleaning equipment, maintenance equipment, shelving, flagpoles, signs, waste containers, outdoor benches, drapes, blinds and accessories, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors and machinery;

(2) Together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

Exhibit B

PILOT AGREEMENT

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT ("Agreement") is made as of the ____ day of October, 2008 by and between **NATIONAL BEDDING COMPANY L.L.C.**, limited liability company organized and existing under the laws of the State of Illinois, having an address of 2600 Forbes Avenue, Hoffman Estates, Illinois 60192 (the "Lessee"), and the **COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY**, a corporate government agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an address at 200 Harrison Street, Jamestown, New York 14701 (the "Agency").

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of the State of New York, as amended (the "Enabling Act") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, expand, construct, reconstruct, lease, improve, maintain, equip, furnish, and dispose of one or more projects for the purpose of promoting, developing, encouraging, and assisting in the acquisition, expansion, construction, reconstruction, improvement, maintaining, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities, and thereby advance the job opportunities, general prosperity, and economic welfare of the people of the State of New York;

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act and Chapter 71 of the 1972 Laws of New York, as amended (together with the Enabling Act, hereinafter referred to as the "Act"), the Agency, which has been created and established pursuant thereto for the benefit of the County of Chautauqua, proposes to undertake the Project described below;

WHEREAS, the Agency on behalf of Lessee intends to (i) acquire certain land more particularly described on Schedule A hereto (the "Land"); (ii) construct certain renovations and improvements on the Land, including an addition to an existing structure (the "Improvements"); and (iii) acquire the equipment more particularly described on Exhibit A to the Lease (as hereinafter defined) (the "Equipment") (the Land, Improvements and Equipment are hereinafter collectively referred to as the "Project");

WHEREAS, the Agency is or will be the owner in fee simple of the Land and the Improvements (collectively, the "Facility");

WHEREAS, the Agency proposes to undertake the Project as an authorized project under the Act and to lease the interest of the Agency to Lessee pursuant to an Agency Lease Agreement dated as of the date hereof entered into between the Agency, as lessor, and Lessee, as lessee (as amended, modified, restated or replaced from time to time, the "Lease");

WHEREAS, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control.

NOW, THEREFORE, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, Lessee and the Agency formally covenant and agree as follows:

Section 1. Tax-Exempt Status of Facility.

(a) Application. Lessee shall complete, and the Agency shall file, an application for tax exemption pursuant to Section 412-a of the Real Property Tax Law. Such application shall be filed with the assessor of each of the various taxing entities having jurisdiction over the Facility, including, without limitation, the County of Chautauqua, the Town of Ellicott and the Falconer Central School District (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the "Taxing Entities" and individually, as a "Taxing Entity"). The Facility shall not be entitled to exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the taxable status date of such Taxing Entity occurring subsequent to the Agency becoming the owner of record of the Facility, the filing by the Agency of the appropriate applications for tax exemption, and the acceptance of such applications by the appropriate tax assessors.

(b) Completion Date/Assessment. The completion date ("Completion Date") of the Project shall be the date on which (i) the Project is substantially completed, (ii) a certificate of occupancy has been issued, and (iii) the Facility has become entitled to exempt status pursuant to Section 1(a) above. Lessee estimates that the Completion Date will be January 31, 2009 ("Estimated Completion Date"). Lessee shall establish a Completion Date within six (6) months following the Estimated Completion Date.

(c) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease, Lessee will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Facility.

(d) Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Agency or Lessee on the rents under the Lease or the occupancy of or any interest of the Agency or Lessee in the Facility or any part thereof or any personal property used in connection with the business conducted and located therein, the amount of any tax, assessment or charges shall be paid by Lessee. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid directly by Lessee and shall not be credited against nor affect in any manner any payment in lieu of general real estate taxes in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

Section 2. Payments.

(a) Tax Payments. Prior to the Facility becoming entitled to exempt status as set forth in Section 1(a) above, the applicable real estate tax levies on the Facility shall be payable in full by Lessee to the applicable Taxing Entity.

(b) Pilot Payments During Construction. After the Facility becomes entitled to exempt status until the last day of the tax fiscal year of the applicable Taxing Entity in which the Completion Date occurs, Lessee shall pay to the Agency at its address set forth in the heading of this Agreement, for the account and benefit of each Taxing Entity, payments in lieu of the general real estate tax levies on the Facility ("PILOT Payments") in an amount equal to the amount of the tax levies which would be payable if the Facility were listed on the assessment rolls as fully taxable. All such payments shall be payable on the same dates on which general real estate taxes are payable.

(c) Pilot Payments after Completion of Construction. Commencing with the first tax year for the applicable Taxing Entity following the Completion Date, and for each subsequent tax year thereafter during the "Term of the PILOT" (as hereinafter defined), Lessee shall pay to the Agency PILOT Payments as follows:

- (i) for the account and benefit of the County, \$28,103.74;
- (ii) for the account and benefit of the Town, \$13,032.89; and
- (iii) for the account and benefit of the School District, \$60,996.76.

The foregoing PILOT payments shall remain constant during the Term of the PILOT for each applicable Taxing Entity, and shall not increase or decrease regardless of any increase or decrease in the underlying assessment for the Facility or any portion thereof.

The "Term of the PILOT" shall be the period of time from the first day of the first tax fiscal year of the applicable Taxing Entity following the Completion Date until the last day of the tax fiscal year of the applicable Taxing Entity following ten (10) annual PILOT Payments to such Taxing Entity. If the Term of the PILOT for any Taxing Entity shall have expired while the Term of the PILOT for any other Taxing Entity shall not have expired, Lessee shall pay to the Agency, until the termination of this Agreement, PILOT Payments in an amount equal to the amount of the tax levies which would be payable to such Taxing Entity if the Facility was listed on the assessment rolls as fully taxable.

(d) Maximum Payment. Notwithstanding anything to the contrary herein, the PILOT Payments should not exceed the amount Lessee would pay under normal calculations for any period. Hence, if the general real estate tax due (calculated as if Lessee were the record owner of the Facility, and the Facility were assessed at full value for purposes of taxation) otherwise due any Taxing Entity decreases due to a reduction in tax rates or otherwise below the PILOT Payments specified in Section 2(c) above, then the PILOT Payments due that Taxing Entity shall

be decreased to equal the tax that would otherwise be due. If, however, a PILOT Payment has been so reduced, and the taxes that would otherwise be due subsequently increase, the PILOT Payment shall similarly increase, but not in excess of the amount specified in Section 2(c) above. Notwithstanding any other provision of this Agreement, Lessee agrees that Lessee shall not grieve or otherwise challenge the assessment for the Facility (or any portion thereof) on the tax rolls of any Taxing Entity at any time prior to the commencement of the tenth (10th) year of the Term of the PILOT for such Taxing Entity. Lessee's failure to comply with the requirements of the previous sentence shall be deemed an "Event of Default" hereunder.

(e) Payments to Agency. All PILOT Payments shall be made by Lessee directly to the Agency promptly upon receipt of billings from the Agency. It is understood that the Agency shall receive the PILOT Payments in trust for each of the Taxing Entities, and the Agency shall forward such payments to such Taxing Entity within thirty (30) days after receipt thereof.

(f) Due Dates; Interest; and Penalties. The Agency will bill Lessee for the respective PILOT Payments as if the Facility were on the tax rolls at the time when taxes for each Taxing Entity are due. All payments are net if paid on or before the due dates listed below. If any PILOT Payment is not made on or before the due date, such payment shall be delinquent and Lessee shall pay, for the benefit of the applicable Taxing Entity, a late charge equal to five percent (5%) of the payment. For each month, or part thereof, that the payment is delinquent beyond the first month, Lessee shall pay an additional late charge equal to one percent (1%) per month of the total amount payable.

As of the date of this Agreement, the due dates for the PILOT Payment are as follows:

County and Town Taxes:	January 30 th
School Taxes:	September 30 th

(g) Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the term of this Agreement, in the event that any portion of the Land or the Improvements located thereon is sold or disposed of by the Agency, the transferees thereof will thereafter pay the real property taxes on such Improvements as may be located on the portion of the Land sold and on the portion of the Land sold as may be required by applicable law.

(h) Sale; Lessee's Obligation. In the event that the Agency sells the Facility to any party other than Lessee, Lessee's obligation for PILOT Payments shall be prorated to the date of the closing of the transaction and thereupon all obligations of Lessee for PILOT Payments shall cease, but the Agency shall take such steps with the purchaser other than Lessee to assure that each of the Taxing Entities shall suffer no loss of revenue until such Facility can be placed back on the tax rolls and taxes levied and billed therefor.

Section 3. Jobs. Lessee covenants and agrees that it shall, throughout the term of this Agreement, maintain, or create within three (3) years from the date of the application submitted to the Agency with respect to the Project, the number of permanent, private sector jobs at the site

of the Project as set forth in the application. The Company agrees to deliver to the Agency on each annual anniversary of this Agreement a written report describing its compliance or noncompliance with the provisions of this Section 3 and to permit the Agency to audit the books and records of Lessee supporting such report.

Section 4. Effective Date; Duration of Agreement. This Agreement shall become effective upon the delivery of the Lease by Lessee and the Agency and shall continue in effect until the earlier of (i) last day prior to the taxable status date following the final tax fiscal year of a Taxing Entity in which a PILOT Payment is payable pursuant to Section 2(c) above, or (ii) the date on which title to the Facility is conveyed to Lessee pursuant to the Lease or this Agreement.

Section 5. Events of Default. The following shall constitute "Events of Default" under this Agreement:

(a) failure by Lessee to make any payment specified herein and the continuance of such failure for a period of fifteen (15) days following written notice from the Agency or any Taxing Entity;

(b) failure by Lessee to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days following written notice to Lessee specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Lessee shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Lessee shall require in the exercise of due diligence to cure such default;

(c) failure by Lessee to establish a Completion Date within six (6) months after the Estimated Completion Date; and/or

(d) default in the terms of any agreement entered into between the Agency and Lessee (beyond any applicable grace period).

Upon the occurrence and continuance of an Event of Default hereunder, Lessee shall be required to make payments in lieu of general real estate taxes levied by the Taxing Entities on the Facility if it were owned by Lessee, such amounts to commence to be paid for the period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the jurisdiction(s) in which the Facility is located.

Upon the occurrence and continuance of an Event of Default hereunder, the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments in default from Lessee, together with all the costs and expenses of the Agency, its successors or assigns, paid or incurred in such recovery (including court costs and attorney's fees and expenses) and interest at the rate specified in Section 2(f) above. In addition, the Agency

shall have the right to reconvey the Facility to Lessee at any time, and Lessee shall accept any such tender of reconveyance.

The Agency, in enforcing payment by Lessee of said amounts, may take whatever action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every Event of Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises. Lessee irrevocably agrees that any suit, action, or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State of New York, or the courts of the United States located within the State of New York, consents to the jurisdiction of each such court in any such suit, action, or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action, or proceeding in any of such courts.

No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient by the Agency.

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not Lessee makes such payments. Lessee hereby agrees to indemnify the Agency against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

Section 6. Covenants by the Agency. The Agency covenants that, unless otherwise required by law, the Agency will not enact or adopt any laws, ordinances, rules, or regulations imposing any taxes, assessments, or other charges of payments on the Project or Lessee's leasehold interest or personal property therein, or its use or occupancy thereof or its gross receipts or income therefore, except as Lessee and the Agency have herein agreed, or may agree from time to time in the future.

Section 7. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given, if by delivery, when delivered and, if delivered by mail, on the second day following the day on which mailed by certified mail, postage prepaid, addressed as follows:

To the Agency: County of Chautauqua Industrial Development Agency
200 Harrison Street
Jamestown, New York 14701
Attention: Administrative Director

To Lessee: National Bedding Company L.L.C.
2600 Forbs Avenue
Hoffman Estates, Illinois 60192
Attention: Jim Polark

The Agency or Lessee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 8. Assignment of Agreement. This Agreement shall be binding upon the successors and assigns of Lessee, but no assignment shall be effective to relieve Lessee of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency.

Section 9. Independent Agreement. Notwithstanding any other provision of this Agreement, including the recitals hereof, the parties agree that the Lease executed between the parties hereto shall be a separate and independent document from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Lease shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Lease are the only considerations and terms for which the parties hereto have executed this Agreement.

Section 10. Amendments. This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency, Lessee and any Taxing Entity which is affected by the amendment.

Section 11. Severability. In the event any provision of this 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. Prior Agreements; Counterparts. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 13. Delivery of Agreement. The Agency agrees to use its best efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution by the Agency.

IN WITNESS WHEREOF, the Agency and Lessee have executed this Agreement as of the date first above written. .

**COUNTY OF CHAUTAUQUA
INDUSTRIAL DEVELOPMENT AGENCY**

By: _____
William J. Daly, Administrative Director

NATIONAL BEDDING COMPANY L.L.C.

By: _____
Name:
Title:

Schedule A

LAND

Schedule A

Parcel I

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Ellicott, County of Chautauqua, and State of New York, being part of Lot 2, Township 2, and Range 11 of the Holland Land Company's Survey and further bounded and described as follows:

COMMENCING at the intersection of the centerline of Peck Settlement Road (49.5 foot wide right-of-way) with the centerline of Willard Street Extension (49.5 foot wide right-of-way); thence N 87° 40' 06" W along the centerline of Willard Street Extension, 595.89 feet to a point; thence N 88° 35' 00" W and still along the centerline of Willard Street Extension, 558.65 feet to a point; thence continuing westerly on a curve to the left and still along the centerline of Willard Street Extension, 276.44 feet to a point, said curve having a radius 1,000.00 feet and a chord S 83° 29' 48" W, 275.56 feet, said point being the southeasterly corner of lands of Francis E. and Betty L. Travis, as described in a deed recorded in the Chautauqua County Clerk's Office August 30, 1957 in Liber 1087 of Deeds at page 348; thence thence N 00° 13' 31" E along the easterly line of said lands of Travis, 30.00 feet to an iron stake; thence continuing along the same course, N 00° 13' 31" E and still along the easterly line of lands of Travis and further along the easterly line of lands conveyed by Frederick W. Aiken to Stephen T. Nelson and Marilyn K.C. Cavallaro by deed dated November 29, 1985 and recorded in the Chautauqua County Clerk's Office December 11, 1985 in Liber 2077 of Deeds at page 547, a distance of 290.00 feet to an iron stake and the point of beginning of the parcel hereinafter described; thence N 00° 13' 31" E and along the easterly line of said Nelson and Cavallaro, 600.00 feet to an iron stake; thence S 89° 46' 29" E, 750.00 feet to an iron stake; thence S 00° 13' 31" W, 600.00 feet to an iron stake; thence N 89° 46' 29" W, 750.00 feet to the point of beginning.

ALONG WITH the right to use a 100 foot right-of-way running east and west from Peck Settlement Road to the east bounds of the above described parcel and running east of and along the easterly bounds of the above described parcel northerly to Mason Drive and running north of and along the northerly bounds of the above described parcel to within 50 feet of the easterly line of lands conveyed by Frederick W. Aiken to Stephen T. Nelson and Marilyn K.C. Cavallaro by deed dated November 29, 1985, and recorded in the Chautauqua County Clerk's Office December 11, 1985, in Liber 2077 of Deeds at page 547, said right-of-way to be owned and maintained by Chautauqua County for roadway and utility purposes.

Schedule A

Survey control based on New York State Plane Coordinate System, west zone, using NAD 83 (96) northing and easting corrected to ground northing and easting.

Parcel II

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Ellicott, County of Chautauqua and State of New York, being part of Lot 2, Town 2 and Range 11 of the Holland Land Company's Survey and further bounded and described as follows:

COMMENCING at a point in the centerline of Willard Street Extension (also known as County Route 38) at the southeasterly corner of lands of Francis E. and Betty L. Travis as described in a deed recorded in the Chautauqua County Clerk's office August 30, 1957, in Liber 1087 of Deeds at page 348; thence N 00°-13'-31" E, along the easterly line of said Travis, 25.56 feet to the POINT OF BEGINNING of the parcel hereinafter described; thence N 00°-13'-31" E, and along the easterly line of Travis and further along the easterly line of lands conveyed by Frederick W. Aiken to Stephen P. Nelson and Marilyn K. C. Cavallaro by deed dated November 29, 1985 and recorded in the Chautauqua County Clerk's Office in Liber 2077 of Deeds at page 547, a total distance of 294.44 feet to a set rebar with cap at the southwesterly corner of a parcel occupied by National Bedding; thence S 89°-46'-29" E, and along the southerly line of said National Bedding parcel, 750.00 feet to a set rebar with cap at the southwesterly terminus of a 100 foot road known as Parkway Drive; thence continuing along the same course, S 89°-46'-29" E, and along the southerly terminus of Parkway Drive, 100.00 feet to a set rebar with cap; thence S 00°-13'-31" W, 275.21 feet to a set rebar with cap located 24.75 feet northerly from the centerline of Willard Street Extension; thence N 87°-40'-06" W, 24.75 feet northerly of and parallel with the centerline of Willard Street Extension, 17.11 feet to a point; thence N 88°-35'-00" W, 24.75 feet northerly of and still parallel with the centerline of Willard Street Extension, 558.85 feet to a point; thence westerly on a curve to the left, running 24.75 feet northerly of and still parallel with the centerline of Willard Street Extension, 276.82 feet to the point of beginning, said curve having a radius of 1,024.75 feet and a chord S 83°-40'-39" W, 275.98 feet.